INDIAN COMPANY MANUAL

A Practical Handbook for Lawyers & Businessmen

FOURTH EDITION

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INDIAN COMPANY MANUAL

PREFACE TO THE FOURTH EDITION

This book has been very long in the press thanks to the difficulties of getting a book through the press in these days, not forgetting the uncertainties in the supply of printing paper. In the meantime a revolution has taken place and we have two Dominions in the place of what was British India. Dislocations incidental to the change over have been many.

However we have succeeded in getting out the book at last at a heavy cost, for which the price has had to be substantialy raised.

I have to apologise to the public not only for the delay in publishing this edition and the increase in price but also for the many imperfections in its get up including unfortunate, though happily not material, errors of printing.

I trust that the public will extend to this edition the favourable reception given to previous editions.

Mr. K C. Sen has collaborated in this edition as before I have to thank my son Mr. S K. Sen Gupta, B. Com for preparing the index.

N.C.S.-G.

PREFACE TO THE THIRD EDITION

The extensive amendment of the Indian Companies Act by the Act of 1936 and subsequent amendments have been incorporated in this edition as well as the new rules of the Government of India and the High Court.

These changes have necessitated an elaborate recasting of the Manual, and the opportunity has been taken also to deal with important special provisions regarding Insurance Companies in the Insurance Act as also the new provisions of the Income Tax Act up to the time of going to the press.

I trust that Company people and others interested will find this edition adequately helpful and will extend to it the same welcome that they have extended to its predecessors.

I am indebted to Mr. Hemanta Kumar Bose, M.A., B.L., Advocate, for preparing the Index.

CALCUTTA
June 10, 1942.

N. C. S.-G.

PREFACE TO THE SECOND EDITION

I must apologise to the public for delay in bringing out the second edition of this book which has been out of print for several months.

In the present edition the whole book has been submitted to a thorough and critical revision and a great deal of attention has been given both to accuracy and method of exposition. Some of the chapters have been rearranged and a chapter has been devoted to the subject of Company promotion and Prospectus. The Chapter on Income-Tax has been completely rewritten and every part of the

book has been carefully attended to in order to make the treatment of the subject precise, accurate and lucid.

The main brunt of the work of revision has been borne by my collaborator Mr. K. C. Sen whose sound knowledge and ripe experience in Company matters gained during his connection of several years with the Share Department of Messrs. Bird & Co. has been of incalculable advantage to me. The Chapter on Income-Tax has been entirely re-written by him and Mr. S. Ahmed, M.A., Income-Tax Officer, Companies District, Calcutta, has placed us both under a debt by kindly revising this Chapter.

I had originally contemplated adding case-notes to the sections of the Indian Companies Act printed in the appendix, as desired by several lawyer readers of the book But I had to abandon the idea as I found that it would considerably increase the bulk of the book and make it unsuitable as a manual for handy reference, without adding to its value for business men for whom the work was primarily intended

References have been made in the text to the new English Act of 1929, and a comparative table showing the correspondence between the sections of the new English Act and the repealed Act has been added

I trust that this edition will be found to have been an improvement on the last one and will have the same cordial reception that has been accorded to the first edition.

N C S-G.

PREFACE TO THE FIRST EDITION

Having had to advice several companies on many matters under the Indian Companies Act of 1913 for a number of years I have felt the necessity of a hand-book of this character for Secretaries, Directors, Promoters and other people connected with Companies as well as for lawyers who are not specialists in Company Law but are nevertheless called upon to deal with it occasionally. There is no other book like this in the market dealing with the Indian Law with special reference to Indian conditions and environments. The valuable works of Palmer, Gore Brown, Coles and others are very helpful guides, but they do not deal with the Indian Law

The Indian Companies Act of 1913 has little in common with its predecessor of 1882. it was based essentially on the English Companies (Consolidation) Act of 1908 which itself introduced large and outstanding changes in the English Law relating to companies. Most of the sections of the present Act are taken verbatim from the English Act. Yet the Indian-Law is not identical with the English Act There are important departures made by the Act itself from the English Statute in various parts with special reference to Indian conditions Besides the Indian Law relating to Contract as well as other independent branches of law which have an important bearing on Company Law, is so different from English Law in material particulars that there are vital matters in which English text-books would prove an entirely false guide to the Indian Company lawyer. Thus, for instance, the law relating to the capacity of an infant to enter into a contract is different under the Indian Contract Act from that under the English Common Law as modified by the Infants Relief Act. When therefore English authorities lay down that an infant member's subscription to a Memorandum or a contract to take shares is not a nulliiy, theycannot apply to India where all contracts of infants are void. This difference affects the applicability of many English decisions

to India. In the English Act. Sec. 40 provides for a special method of reduction of capital by return to shareholders of accumulated profits *without an application* to the Court. This has not been reproduced in the Indian Act. In reading many English cases on reduction of capital, the unwary reader is liable to fall into the error of supposing that the same thing could be done in India. Very important differences in the Indian Law have also been introduced by Secs. 83A and 83B as well as well as Secs. 91A, 91B, 91C, and 91D with regard to the number of Directors and their capacity to enter into contracts with the Company. Sec. 75 of the Indian Act introduces a new provision, which should never be lost sight of by the Company Secretary, that wherever the authorised capital is published, the subscribed and paid-up capital must also be mentioned. In these matters English manuals of Company Law would be a very misleading guide. There are other differences in minute particulars which are apt to escape notice. Thus in Sec. 32 of the Indian Act there is no provision for the audit of the summary of share capital as is required by Sec. 26 of the English Act There is much to be said against retaining this difference in the law, for the statement under Sec. 32, which will often be very different from the statement of the same items in the balance-sheet based on figures of a much earlier date, if it is to serve the purpose for which it is designed, ought to be thoroughly reliable and should therefore be audited. But the difference is there

It is to be feared that Company lawyers also have not always been very mindful of the differences in the English and the Indian Law in advising companies. An illustration of this fact is furnished by the examination of the Articles of Association of various companies drawn up by eminent lawyers Table A, Art. 21 lays down, following the English Act to the letter that the executors or administrators of a deceased shareholder shall be the only persons recognised by companies as representatives of the deceased. In England it must be so, as representative title to personality there can only be established by probate or letters of administration But in India, in the case of large classes of persons to whom the corresponding provisions of the Indian Succession Act do not apply, legal title to the assets of a deceased intestate need not be established by letters of administration No doubt it is nevertheless possible for a company to insist on letters of administration, but that can only lead to inconvenience, notably in the case of small shareholders. This provision of Table A has, however, been incorporated varbatim in the Articles of many Indian Companies. The result is that such companies cannot lawfully accept a Succession Certificate or an Administrator General's Certificate as sufficient to establish the right of the heir to the shares of the deceased. At any rate no such representative can insist on the company recognising him on the basis of such certificates The most remarkable thing about it is that many such companies are in practice, daily accepting a Succession Certificate as adequate ! A little more attention to the differance in the English and the Indian Law would have prevented the anomaly.

There are other matters in which the Indian Company officers cannot, safely rely exclusively on the standard English books on the subject. And I have long felt that there was a real need for a book to which the Company officer in India could safely refer as giving the law *in India*.

In the general plan of the work I have followed the lines of the standard English authors, notably Palmar. But I have made some departures also. In giving references to authorities I have been considerably influenced by the special scope of this work. The book is primarily designed for the Company officer who is generally not much of a lawyer. For him reference to cases would not be of much use. But I had also to bear in mind that lawyers, who are not specialists in Company Law, would also require to use the book. For them a reference to authorities was a *sine qua non*. I had, therefore, to steer a middle course. While I have made no attempt to make case references exhaustive, so as to make the

work more or less confusing to Company people, I have given reference to all important cases, and also referred the reader to standard text books where the case law is exhaustively dealt with. With regard to Indian cases I have been more liberal and have seldom excluded a case except where it laid down a point that was too obvious, or was obviously wrong. In this way I felt that the book could be made useful to lawyers without being burdensome and confusing to Company people. Some matter which is of interest only to the lawyer has been set out in small type, and in parts of the book case references are more sparingly given than in others. Thus in the Chapter on Winding-up any attempt to make the case law exhaustive would have led to a development of the book beyond all proportions. And when the company has reached this stage, the whole matter will necessarily be in the hands of specialists in Company Law. All that I found necessary therefore was to give a comparatively brief outline of the law, with reference to only indispensable cases.

I have incorporated in this volume numerous matters, outside the scope of Company Law, with regard to which the company officer often requires guidance. Thus the provisions of the Stamp Act in all matters of interest for the company officer have been set out in appropriate places The subject of Company Accounts has been treated in some detail. The provisions of the law relating to Income-Tax which affect companies have been summarised in a separate Chapter I have also given in a separate Appendix a large number of forms which are needed by companies every day. Altogether, every attempt has been made to make the work useful to companies, notably smaller companies who cannot always command the services of a solicitor well up in Company Law

A warning must, however, be given to company people who use this book. It is not meant to give them, nor can any single book give them, ***all the Law.*** The application of Law to facts is a difficult art which can only be exercised by a trained lawyer. The company man who uses the book must not run away with the impression that it can enable him to dispense with the lawyer The chief use of books of this character for the non-lawyer is, like that of books on first aid, to instruct him to deal with emergencies and to tell him when to go to the lawyer. To seek to use this book as a complete substitute for the lawyer may well be to invite disaster.

In writing this book I have derived considerable assistance from standard English books which I have referred to in the notes Most notably I have derived assistance, as every company lawyer must, from Palmer's *Company Law* and *Company Precedents* and Lord Wrenbury's (Buckley) *Companies (Consolidation) Act.*

IMPORTANT NOTE.

The Indian Independence Act and the Orders under Sec. 9 thereof were passed when this book was largely in type so that all necessary amendments could not be incorporated in it. The text of this book has therefore to be read subject to the provisions of the India (Adaptation of Existing Indian Laws) Order. The Pakistan (Adaptation of Existing Indian Laws) order in its application to India and Pakistan respectively.

In the Indian Dominion the text must also be read subject to the following amendments made by the Indian Independence (Adaptation of Central Acts) Order 1948.

" Section 1—In sub-section (3) omit "British Beluchistan and"

" Section 2A—For the words from 'which was immediately before' to 'in Burma or Aden' substitute 'the registered office whereof is in Burma, Aden or Pakistan or which was immediately before the separation of that country from India a company as defined by the said section" and in clause (ii) of the proviso, for 'Burma and Aden' substitute 'that country'.

"Section 245—In sub-section (1) for 'sworn in British India' sustitute 'sworn in India' and omit "or in any part of India other than British India before any Court authorised on continued by the Central Government or the Crown Representative'.

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(VII OF 1913)
(as amended upto 1st January 1947)

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INDIAN
COMPANY MANUAL

CHAPTER 1

PRELIMINARY

Trade and business in India, where it is not carried on by individuals as such, is carried on by three classes of groups of persons: (1) Joint families, (2) Partnerships and (3) Corporations.

Joint family business is excluded from the definition of Partnership in the Partnership Act (IX of 1932) sec. 5. By the Amendment of 1936, joint families carrying on business are excluded from the operation of sec. 4 of the Companies Act which requires associations of more than a specified number to be incorporated as a company. There is of course no bar to the members of such a joint family from either converting their business into a partnership or into a company by an appropriate contract. But in the absence of any such contract joint families can carry on their business without coming under the provisions either of the Partnership Act or the Companies Act. They *will be governed by the rules of Hindu Law and the ordinary law of* contract. Where however two or more joint families form a partnership, the numerical limitation of partnership enjoined by section 4 of the Companies Act applies thereto.

Partnership, as defined in sections 4 and 5 of the Partnership Act (IX of 1932) "is a relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all." Partnership arises from contract and not from status, so that any joint ownership of business arising out of status, such as being members of a Hindu trading family or being a Burmese Buddhist husband and wife is not a partnership.

Under the Partnership Act, Chapter VII, Partnership firms are now required to register themselves except those in areas excluded from the operation of the Chapter under sec. 56. The provisions of sec. 57—71 of that Act bear a close analogy to similar provisions of the Companies Act, and sec. 69 provides in substance that an unregistered partnership firm or a partner thereof cannot sue or recover any money due to it or him.

Corporations are creatures of Statute. Some of them e.g. the Reserve Bank of India, the Imperial Bank of India etc., and non-trading corporations like the Universities or the Corporation of Calcutta are created by special statutes. But the bulk of trading corporations come into existence by incorporation under the Indian Companies Act. Here, as in partnerships the initial act is a contract between the

parties, but the difference is that while in a Partnership the contract forms the essence and substance of the firm, in a Company, the agreement is merely one to incorporate, and the legal consequences of the agreement involving the creation of the company as a legal "person" follow by operation of law.

The *independent personality* of the corporation is the essential feature distinguishing a company from a firm. Person, in law, means an entity capable of having rights and obligations. Each individual human being in modern society is a person in law. But by a fiction well-established in law, corporations also are deemed to be such persons. A company like every other corporation is a 'person' *which has rights and obligations of its own* which are not the rights and obligations of its members severally. Accordingly, it *can sue or be sued* in its own name in respect of such rights and obligations.

Although in modern times many firms and associations not incorporated have developed a large measure of permanency and have by convention as well as by some laws been vested with a sort of quasi-personality, yet, in the last analysis such firms are merely groups of separate persons and their rights and obligations are the rights and obligations of their members personally. The firm is merely a compendious name or an alias for all its members, while a company is a different person from each and all of its members.

GROWTH OF THE PERSONALITY OF CORPORATIONS.

It is interesting to study the growth of this idea of "personality" of corporate bodies. There are no data available to suppose that this idea is indigenous to this country, though traces of a notion akin to that of corporations may be found in Hindu Law in the disposal of property for charitable and religious purposes, *e g.* to *maths* and deities, and in the provisions of the law relating to local bodies or *ganas*. Jurists agree that the doctrine of corporations, as understood today, is derived from Roman law. Apart from the Tribunes, Religious and Charitable Endowments, the Fiscus or the King's Treasury, which were recognised as juristic persons in Roman Law, there were several voluntary associations which were more akin to Corporations, *e.g.*, the College of Pontiffs, Trade Guilds, Clubs, Unions and associations of State Officers, Scribes and Magistrates analogous to the Notaries of modern times. During the Augustan period, it was definitely established that a guild had to be recognised by the Senate by authorisation to act as a "person" before it could function. This recognition of a corporation as a "person" set at rest the confusion between co-ownership and corporate ownership. The 'universitas', as a corporation was, was essentially the corporate association of to-day.

The laws in Europe are mostly based on the Roman law but after the fall of the Roman Empire, it took some time before the juridical ideals of Rome could filter through in Central Europe. It was not till about the middle of the thirteenth century that we can find any development of this idea of a 'group person' in the laws of Europe. As in all agricultural communities, there were joint families with a common end and common policy, but these were regarded more as collective associations of co-owners of property. But with the passage

of time, instances multiplied where property was left for ecclesiastical and charitable purposes which naturally fostered the growth of the idea of a corporate existence. The Church came to be recognised as a juristic person capable of owning property as apart from the clergy. Along with this, grew the lay-corporations as the 'boroughs' in medieval England.

It was in the Elizabethan period, when discoveries of new routes to the East and the West, stimulated trade and commerce that we find associations of merchants trying to obtain monopoly to trade by Royal Charters. These were called Regulated Companies and were more or less trade guilds. The chief examples of such companies were the Hanseatic League, the Levant Company, the Hudson Bay Company and the East India Company. These companies were not formed at their inception with joint-stock capital. The charters by which these were created were granted by the Kings by virtue of their Royal prerogative. These were allowed to trade on a monopolistic basis in specified countries in return for a substantial tribute to the King and also to appoint their own governors and officers in the specified regions to protect and further their enterprises. The East India Company, with which we are more directly concerned, was formed in 1600 A. D. by a charter from Queen Elizabeth and it was not till 1612 that the members "united into a joint stock" to work the Company as a joint concern for the common benefit of the stock-holders. But although the Company's charter was renewed from time to time by successive monarchs, Parliament had not ratified these charters as this was considered not within its jurisdiction. After the Revolution of 1688, however, Parliament was recognised to be the only authority which could grant monopolies of trade. In 1698, therefore, a new East India Company was formed with joint-stock capital under an Act of Parliament. For nearly a century and a half following, there was no further development of the legal status of joint-stock companies, athough numbers of such companies flourished. In 1855, a fresh Act was passed, by which the liability of stock-holders was for the first time recognised to be limited to the amount of capital subscribed by each. In 1856, the then existing Acts were all repealed and a codified law was passed, followed by an amending Act in 1857. In 1862, the law on the subject was codified again and a series of amending Acts followed till in 1908, all the Acts were consolidated by the Companies (Consolidation) Act, 1908. Since then, a few minor amendments were made in 1913 and 1917, but in 1928, some large changes were made necessitating a fresh consolidating Act, which was passed in 1929.

In India, an Act for registering literary, scientific and charitable associations was passed in 1860, giving these institutions an opportunity for registering themselves as incorporated bodies. But the first Companies Act in India based on English law was passed in 1882. Following the amendments of Companies Acts in England, several Acts were passed in India, *e.g.*, in 1887' 1891, 1895 1896, 1900 and 1910, till the law on Company matters was finally codified in 1913. Although based mainly on English law, there are important differences in details between the laws of the two countries which will be noticed as we proceed with the book. Following upon the new English Act of 1929, the Act of 1913 has now been amended by the amending Act of 1936

which not only incorporates most of the provisions of the English Act of 1929 but makes other new provisions.

As we have already noticed there are corporate bodies other than limited companies formed for trading and banking purposes, or to use a legal phrase, for carrying on business "with the object of gain." These are genera ly formed by separate Acts, such as the Co-operative Sccieties Act, or by special Acts passed with a view to constitute special corporate bodies, like the Imperial Bank of India, or Reserve Bank of India.

A business is generally carried on by ordinary partnerships or companies under the Indian Companies Act.

PARTNERSHIPS AND COMPANIES.

A distinction has been drawn between a partnership and a 'company' which is not an incorporated company, and the distinction may be of importance with reference to incorporation of unregistered 'companies' in sec. 253. According to Lindley L.J. the only distinction between a partnership and an unincorporated company consists in this that in the latter the shares are transferable while in the former they are not. (a) In other words unincorporated 'companies' are partnerships with transferable shares.

The firm of an ordinary partnership is not recognised in law as a person distinct from the partners who compose the firm, while a company registered under the Indian Companies Act becomes a body corporate (*vide* sec. 23 of the Act), and in the contemplation of law a distinct person from the members, who are interested in it. "A corporation is a legal *persona* just as much as an individual." (b) (*Vide* the General Clauses Act.—Act 10 of 1897 (Imp.) —sec. 3, sub-sec. 39; as also sec. 3, sub-sec. 32, Bengal General Clauses Act I of 1899). It becomes a person distinct from each and all of its members or shareholders for the time being.

Distinction between an ordinary partnership and a company limited by share

Under Or. 30 of the Civil Procedure Code as under Or. 48 A of the Rules of the Supreme Court in England rules of procedure are laid down for partnership firms suing and being sued in their firm name, and certain special provisions are made, *e. g.* dispensing with the need for substitution on the death of a partner of the firm. But the effect of this is not to vest such firms with a distinct personality but only to provide a compendious procedure for suits by or against firms. A firm name is only a sort of an *alias* for the members of the firm and nothing more. (c)

In an ordinary partnership *each partner is personally liable* within the scope of business, (sec. 25, 26, 27, Indian Partnership

(a) *Reg v. Registrar of Joint Stock Co.*, (1891) 2 Q. B. 610.
(b) *Ram Kanai Singh v. Mathewson*, L. R. 42 I A 91 : I. L. R. 42 Cal. 1029.
(c) *Haribandhu v. Hari Mohan &c.*, 41 C. L. J. 30.

Difference between the liabilities of a member of a partnership and a member of a company.

Act), for all the debts of the firm, while in an incorporated company the members have *no individual liability* to creditors for debts owing by the company, their personal liability being limited to the payment of calls properly made upon them to the value of their shares, except in the case of companies with unlimited liability.

A partner, in an ordinary partnership, *may ordinarily bind the partnership* concerned by contracts to any amount within the scope of its business and thus may involve his partners in liability; but no individual member of a company, as such, can bind the company or any of its shareholders by his acts. The company is *only bound by the acts of directors* or other persons authorised by the regulations of the company to act on its behalf and only to the extent of their authority under the regulations.

Palmer thus summarises the distinction between an ordinary partnership and a company with limited liability (d):—

(1) In a partnership, the property of the firm belongs to the individual members; whereas in the case of a company, it belongs to the company, and not to the members.

(2) Creditors of the firm (i. e., a partnership firm) are creditors of the members of the firm and on obtaining a judgment against the firm they can levy execution on the porperty of the partners of the firm; whereas in the case of a company the creditor has no debtor but the company and the direct remedy of the creditor is solely against the incorporated company.

(3) A member of a firm can dispose of property and incur liabilities, within the scope of the business, to any extent; whereas a member of a company, as such, has no such power.

(4) In the case of a partnership, restriction on a member's authority contained in the partnership contract is of no avail as against an outsider. Lord Justice James remarked: "As between the partners and the outside world, whatever may be the partners' private arrangements between themselves, each partner is the unlimited agent of the firm in every matter connected with the partnership business or which he represents as partnership buisness, and not being in its nature beyond the scope of the partnership" (sec 27 of the Indian Partnership Act); whereas in the case of a company such restrictions are effective, because the members of the public having dealings with the company are bound to acquaint themselves with the regulations of the company.

(5) A partner cannot contract with the firm; whereas a member of the company can contract with the company.

Furthermore, under the Indian Partnership Act sec. 25, "every partner is liable, jointly with all other partners and also severally,

(d) *Palmer's Company Law*, 9th Ed., pp. 55-56.

Neglect or fraud of partner.

for all acts of the firm done while he is a partner," while a shareholder of a company as such is not similarly liable in any way for such neglect or fraud of any other shareholder as such.

Dissolution of partnership.

With the death or the bankruptcy of any individual partner or merely at the will of any partner who is unwilling to carry on the business, the partnership business may come to an end in the absence of a contract to the contrary. Moreover a partnership may be dissolved at the instance of a partner by institution of a suit in Court ; while a company limited by shares cannot come to an end for any of the above reasons, as the member of a limited company has no right to dissolve the company or withdraw his shares once subscribed except upon a liquidation according to law.

NUMERICAL LIMITATION OF AN ORDINARY PARTNERSHIP.

Under sec. 4 of the Indian Companies Act. 1913, no company, association or partnership consisting of more than ten persons may be formed for the purpose of carrying on banking business, and no company, association or partnership consisting of more than twenty persons may be formed for the purpose of carrying on any other business that has for its object the acquisition of gain, unless registered under the Companies Act or formed in pursuance to some other Act of Parliament or of Letters Patent.

An association or partnership formed in violation of the Act is an illegal association. Hence, it cannot sue, or be sued, nor can it either enter into contracts or be wound up. In short, its existence will not be recognised by the law. (e)

But none of the cases on the point go so far as to lay down that money lawfully recoverable by members of such firms cannot be recovered by suit or that no suit for lawful liabilities can be brought against them, except in so far as the claim is founded on a contract directly in furtherance of the object of the illegal association. (f)

The amendment of 1936 by sub-section (3) of section 4 provides that "a joint family carrying on joint family trade or business" is excluded from the operation of this section so that a joint family, (which apparently need not be a *Hindu* joint family) carrying on a business does not become an illegal association merely because the number of its members having interest in the business exceeds ten or twenty as the case may be. (g)

(e) *In re Day* 6 Ch. D. 609. *Shaw* v. *Benson.* 11 Q. B. D. 563 ; *London Marine Ass,.* 8 Eq. 176 ; *Jennings* v. *Hammond,* 9 Q. B. D. 229 ; *Ramkumar* v. *Nim Chand,* A. L. J. 836 ; *Neelamega* v *Appiah,* 29 Mad. 7 F. B. ; *Madras &c. Fund* v. *Raghava,* 19 Mad. 200 ; *Ramasamy* v. *Jagendrayan,* 19 Mad. 31 ; *Madan* v. *Janki,* 25 A. L. J. 146 ; *Pannaji* v. *Kapurchand,* 51 M. L. J. 667 ; *Mewa Ram* v. *Ram Gopal,* 24 A. L. J. 777.

(f) See per Sulaiman, J , in *Mewa Ram* v. *Ram Gopal,* supra.
See however *Nibaran* v. *Lalit* (1938) 2 Cal 368 ; *Parsurama* v. *Subburamachari* 176 I. C. 290.

(g) See *Nibaran* v. *Lalit* (1938) 2 Cal. 368—181 I. C. 717

That sub-section further provides that where two or more joint families enter into a partnership, for computing the number of members for the purpose of this section, the minor members should be excluded. In other words, such a partnership would become illegal only if the number of *adult* members exceeds ten or twenty as the case may be.

The principle of this last clause seems to be that under section 30 of the Indian Partnership Act, a minor cannot, strictly speaking, be a member of a firm, though he may be admitted to the benefits of the partnership, so that, while he is entitled to his share of the profits of the partnership and his share in the firm is liable for all dues of the firm, he is not personally liable for the acts of the firm. If this is the real reason for the exclusion of minor members in counting the number for the purposes of this section, it is difficult to follow why this exclusion should be limited only to firms of which joint families are members. There may be partnerships other than partnership between Joint families which may admit minors to the benefits of the partnership. Minors so admitted are not partners of the firm under section 30 of the Indian Partnership Act. There appears to be no reason therefore why in such cases also minors should not be excluded in counting the members for the purposes of this section.

It is clear that where members of a joint family Karbar convert their business into a partnership, they would not have the benefit of this exclusion but would become an unlawful association if the number of their members exceed this limit.

The section bars the 'formation" of such associations only. But it obviously includes the continuance as a lawful association originally formed of less than twenty members which is subsequently enlarged beyond that limit. (h)

But an association of persons such as a pool of manufacturers where there is no common business does not become an illegal association under this section merely because provision is made for sharing profits. (i)

Sub-section (4) introduced by the amendment of 1936 lays down that every member of an association of more than ten or twenty persons becomes personally liable for all liabilities incurred by the business. And sub-section (5) imposes liability to fine on every person who is a member of a firm "formed" in contravention of this section. It has however been held that the liability to fine under this sub-section also attaches to a member of such an illegal association for continuing as a member after the enactment of this section even though the firm was formed before this enactment. (j)

But the question of the right of such firms to recover debts due to it has not been clarified by the amendment.

(h) See *Nibaran* v. *Lalit* (1938) 2 Cal. 368—181 *I. C.* 717
(i) *New Mofussil &c.* v. *Rustomji* 61 Bom. 811
(j) A. I. R 1942 Mad. 283

COMPANIES WITH LESS THAN MINIMUM MEMBERS

Where the number of members of a Company falls below seven in the case of a public company or below two in a private company, any person who *knowingly* participates in the business of the company for *over six months* is liable personally for all debts of the company under sec. 147 of this Act, and under sec. 162 of the Act this deficiency in the number of members is also a ground on which the Court *may* wind up the Company.

The incorporation of the Company does not however automatically cease. And the company can function, for the purpose of admitting new members to make up the number and also to trade, subject to the provision for penalty under sec. 167 unless dissolved by Court.

KINDS OF COMPANIES.

There are three kinds of companies known to the Indian Companies Act, *viz.*, (1) Companies *limited by shares*, (2) Companies *limited by guarantee* and (3) Companies with *unlimited liability*.

Companies again are either (a) *Private* Companies or (b) *Public* Companies,

A Private Company is a Company which by its regulations restricts the right of transferring its shares, limits the number of its shareholders between two and fifty and prohibits any invitation to the public to subscribe its shares and debentures. (k)

A Public Company is a company of which the membership is open to the public under the provisions of its regulations. The number of members must not be less than seven.

CHAPTER II

FORMATION AND FLOATATION OF A COMPANY LIMITED BY SHARES

MEMORANDUM AND ARTICLES.

Formation of a company

The first step in forming a company is to prepare a Memorandum of Association, which may be described as the Charter of the Company, (under sec. 5 of the Act) (l) and Articles of Association (under sec. 17 of the Act), (u) unless the Articles in Table A in the First Schedule of the Act are adopted. *If no Articles of Association are framed, Table A will be deemed to be the regulations of the company.*

(k) See *post* Chapter XIX.
(l) See *infra* Chapter III.
(u) See *infra* Chapter IV.

SUBSCRIPTION AND ATTESTATION OF MEMORANDUM.

The memorandum has to be subscribed by *seven persons at least* in case of a Public Company and by *two persons* in case of a Private Company (*vide* sec. 5). Each subscriber must write opposite to his name the *number of shares*, which must not be less than one, (*vide* sec. 6) to be taken by him and the signature of each subscriber must be *attested by a witness* (*vide* sec. 9). A signatory to the memorandum cannot be a witness for any other signature, but the witness must be "some other person who stands by, but is not a party to the transaction." This does not prohibit a secretary or other officer, mentioned in the Articles of Association, who is not a signatory to the Memorandum to be the witness. In writing the number of shares it must be borne in mind that each subscriber writes *with his own hand the number of the shares* he agrees to take. The signatures and the number of shares subscribed can be written by the hand of attorney, duly empowered for the purpose.

The Memorandum must now under sec 9 of the amendment of 1936 (a) be printed (b) divided into paragraphs numbered consecutively and (c) be signed by each subscriber (with his address and description) in the presence of at least one witness who shall attest the signature.

ARTICLES OF ASSOCIATION

The Articles of Association contain the regulations for the management of the company and the conduct of its business.

If Table A is adopted, there is no necessity of registering a separate set of Articles ; but a Private Company according to sec. 2 subsec. 13 of the Act must necessarily have separate Articles, many of the provisions of Table A being unsuitable for Private companies.

When any Articles of Association are submitted for registration, they shall :—

(*a*) be printed ;

(*b*) be divided into paragraphs ; and

(*c*) be signed by subscribers of the Memorandum of Association in the presence of at least one witness, who must attest it (*vide* sec. 19).

As regards signature and attestation, the procedure adopted in the signature and the attestation of Memorandum should be followed in the case of Articles of Association also. It is convenient to have these two documents signed and attested at the same place and time. If they are signed at different times or places there must be separate attestation for each signature.

The Memorandum and Articles of Association are required to be stamped in different Provinces as per schedule given in the foot-note. (m)

(m) MEMORANDUM OF ASSOCIATION [Art. 39 Sch. I of Stamp Act]

1. If accompanied by Articles — Indian Act Rs. 15 Bengal, Bombay, Madras Assam, U. P. and Punjab Rs. 30 (Contd.)

The stamp required for the Articles and Memorandum may be given in impressed non-judicial stamp, as is required in cases of all deeds, or in special adhesive of the same value.

If the Articles are not registered with the Memorandum, the fact has to be noted on the back of the Memorandum. and automatically Table A will be deemed to become the Articles of the Company under sec. 18 of the Act.

REGISTRATION

In order to effect registration of a company, the Memorandum and the Articles of Association should be presented to the Registrar of Joint Stock Companies of the province in which the registered office of the company is stated by the Memorandum to be situate (sec. 22, sub-sec. 1). The documents should be presented for registration by an advocate, attorney or vakil of the High Court engaged in the formation of the company or by a person named in the Articles of the Company as a director, manager, managing agent or Secretary of the Company (sec.24)

Mode of getting registration.

Necessary documents required to be filed on registration.

In order to effect registration of a *public* (n) company, besides Memorandum and Articles of Association, the following documents are required to be filed with the Registrar :—

(1) A **statutory declaration** by an attorney, advocate or Vakil of the High Court engaged in the formation of the company or by a

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2 If not so accompanied

(a) [Outside Bengal & Assam] — India Act Rs. 40, Bombay, Madras U. P. and Punjab Rs. 80

(b) In Bengal and Assam—

(i) where nominal share capital does not exceed one lakh rupees —... Rs. 80

(ii) where nominal share capital exceeds one lakh rupees-- ... Rs. 130

ARTICLES OF ASSOCIATION [Sch. I. Art 10, Stamp Act]

Indian Act— ... . Rs. 25

Madras & U. P.— ... ... Rs. 50

Bombay—

(a) where the company has no share capital or the nominal share capital does not exceed Rs. 2500— ... Rs. 25

(b) where nominal share capital exceeds Rs. 2500 but does not exceed one lakh rupees— ... Rs. 50

(c) where nominal share capital exceeds one lakh rupees- Rs. 100

Punjab

(a) where authorised capital does not exceed Rs. 1,00.000—Rs. 25

(b) in other cases— ... ... Rs. 50

Bengal

(a) where nominal share capital does not exceed Rs. 1,00,000—Rs. 50

(b) where it exceeds Rs. 1,00,000 ... ... Rs. 100

(n) For exemptions of Private Companies, see post Chap. XIX.

person named in the Articles of Association as Director, Secretary, Manager or Managing Agent of the Company that the requirements of the Act have been complied with (sec. 24, sub-sec. 2). (For form of declaration of compliance *vide* Form No. 1 in Appendix A).

(2) **A list of persons who have consented to act as Directors** of the Company (sec. 84, sub-sec. 2) signed by the person authorised to present the Memorandum as above. If this list differs from actual list of consent of Directors, the person filing the list may incur a penalty of fine up to Rs. 500/. (For form *vide* Form No X in Appendix A).

(3) **Consent of the Directors** to act as such signed by them (*vide* sec. 84- sub-sec. 1, clause i). (For form *vide* Form No. IX in Appendix A).

(4) **Contract of the Directors** to take qualification shares of the company as mentioned in the Articles. This is required only if the Director in question has not, by his signature to the Memorandum undertaken to take the number of shares qualifying for directorship. *Where the Director is a signatory to the Memorandum* and has there *subscribed to the necessary number* of shares this contract need not be filed in his case (sec. 84, sub-sec. 1, clause ii. For form *vide* Form No. XI in Appendix A). This contract is required to be stamped; the stamp duty being :—

Imperial : annas eight ; *Bombay, C. Prov., Punjab* Rupee one ; *Bengal. Madras, Assam, U. Prov.* : annas twelve.

(5) **The situation of the registered office** of the company (sec. 72 sub-sec. 2 ; for form *vide* Form No. VI in Appendix A.)

(6) **Prospectus of the Company** if filed on registration (sec. 92). The prospectus may be filed subsequently, but the company cannot issue any circular, advertisement or notice to the public offering subscription of shares until the prospectus has been filed. But the shares may be sold on the basis of the Memorandum and Articles, if anybody likes to subscribe on that basis.

The prospectus or statement in lieu of prospectus *must* be filed with the Registrar, *before applying for commencement of business* [sec. 103 sub-sec. 1 clause (c) and (d)].

Registration of the company.

On the above-mentioned documents being presented by the person, authorised as above, the Registrar, will *register the company* (sec. 22), if everything is in order, on receiving *a fee*, as detailed in clauses 1 and 2 of Table B of the Act (sec. 249), *ad valorem* on the authorised capital of the company for the registration of the Memorandum and further fees at the rate of three rupees for each document other than the Memorandum of Association, which are filed therewith (*vide* Table B).

Certificate of incorporation.

When the company is registered, the Registrar will grant a *certificate of incorporation* to the effect that the company has been registered as a company under the Indian Companies Act VII of 1913 and the company is limited (*vide* sec. 23 sub-sec. 1).

Effect of certificate of incorporation.

The certificate of incorporation is *conclusive evidence* that the Company has been duly registered and no question as to the regularity or otherwise of the previous proceedings may be raised in a Court of Law (*vide* sec. 24, sub-sec. 1). The words "conclusive evidence" imply that the evidence cannot be rebutted by showing that in point of fact the company was not properly registered or that the conditions necessary for its proper registration did not exist. Thus even if in fact the memorandum was subscribed by six persons instead of seven, no one can question the validity of incorporation on that ground after the certificate of incorporation has been obtained. But what the certificate proves is only the fact of due incorporation, it will not have the effect of legalising an illegal object of the company.

CHAPTER III.

MEMORANDUM OF ASSOCIATION

Memorandum—the Charter of the Company.

Every company formed under the Act must ordinarily have a Memorandum of Association, which may be described as the Charter of the Company. Where an existing company, not incorporated under this Act, is registered under sec. 253 of the Act, a Memorandum of Association is not necessary. Such company may be registered, under sec. 255 of this Act, on filing the Act of Parliament or an Act of the Indian Legislature or Letters Patent or a deed of settlement or an agreement of co-partnery or other instrument constituting or regulating the company, and on filing a statement of the other particulars as required by section 255. In the case of such companies, these documents take the place of the Memorandum or the Articles of Association.

The objects of the company proposed to be registered, as stated in the Memorandum cannot be changed except as provided by the Act (*vide* sec. 10). As Lord Selborne remarked : "The Memorandum of Association is under the Act their (the companies') fundamental and

unalterable law, and they are only incorporated for the objects and purposes expressed in that Memorandum. Any act purporting to be done by the company which is beyond the scope of the functions of the company as laid down in the Memorandum is *ultra vires* and of no effect". So it should be very cautiously framed with wide, guarded and comprehensive words. Any defect in it causes immense trouble to those who may be in the management of the company.

PARTICULARS OF MEMORANDUM

Under sec. 6, sub-sec. 1, the Memorandum of Association of an ordinary limited company must state the following particulars (o) :—

(*a*) the *name* of the company with "Limited" as the last word in its name ;

(b) the *province* in which the *registered office* of the company is to be situate ;

(c) the *objects* of the company ;

(d) that the liability of the members is *limited* ;

(e) the *amount of the share capital* with which the company is propsed to be registered, and the division thereof into shares of fixed amount.

And a *declaration* by the subscribers that they undertake to subscribe the specified amount of shares set against their names and that they form themselves into a company.

For draft forms of Memorandum *vide* Schedule III of the Act Forms A to D and Form No 3 in Appendix B.

If no separate Articles of Association are filed with the Memorandum, a statement on the back of the Memorandum of Association should be made to the effect that Table A is adopted as Articles of Association of the Company.

Any person dealing with the company is taken to have notice of the contents of the Memorandum and the Articles of Association, which are public documents (p) and may be inspected at the office of the Registrar on payment of a fee not exceeding one rupee for each inspection (*vide* sec. 248, subsec, 5).

Effect of Memorandum on registration.

Right of inspection.

Members of a company are entitled to copies of Memorandum and Articles of Association from the company under the provisions of sec. 25. on payment of one rupee or such smaller sum as the Company may prescribe. The copy must be supplied within fourteen days of demand, failing which the company will be liable to a fine not exceeding ten rupees.

(o) In the case of companies limited by guarantee and unlimited companies the corresponding provisions are to be found in secs. 7 and 8 of the Act.

(p) *Vide* Palmer's Com. Law 9thEd. Page 44. *Ernest* v. *Nicholls*. 6 H. L. C. 401 ; *Sewell's case* L. R. 3 Ch. 640 ; *Campbell's case* L. C. 9 Ch. 1 ; *Mahaney* v. *East Holyford Rail Co.*, L. R. 7 H. L. 869 ; *Griffith* v. *Paget*, 6 C. D. 511 ; *Oakbank Oil Co.* v. *Crum*, 8 App. Cas. 65 ; *Howard* v. *Patent Ivory Co.*, 38 Ch. D. 156 ; *Tyne Mutual Ass.* v. *Brown*, 74 *L.* T. 283.

Similarly under sec. 248, any person may obtain a copy of the certificate of incorporation of any company or a copy or extract of any other document or any part thereof certified by the Registrar on payment, for the certificate of incorporation not more than three rupees and, for the certified copy of the extract, not exceeding six annas for every hundred words or fractional part thereof required to be copied. Emergencies frequently occur when an additional certificate of incorporation is required in legal proceedings or for use abroad, or to open bank accounts etc.

The Act contemplates another kind of incorporation where the liability would be limited but where the Association is exempted from adding the word "Limited" as a part of its name. This is an association of individuals formed for promoting commerce, art, science, religion, charity or any other useful object which prohibits the payment of dividend to its members and has obtained a license from the Central Government directing the registration of the Association as a Company with limited liability but without the additon of the word "Limited" to its name. Such company is also exempted from the duty under Section 32 of the Act of sending annual list of members to the Registrar. Should the license be revoked by the Central Government at any time, the Company still remains incorporated but the exemptions granted under Section 26 are revoked.

Association not for profit

CONTENTS OF MEMORANDUM

The subscribers are at liberty to frame the Memorandum of Association as they choose provided it is not opposed to the Act and that the company is not formed for any illegal object.

The Law contemplates that the subscribers to the Memorandum should have free discretion in framing the objects of the company without any outside interference, provided the law is not violated.

(1) THE NAME OF THE COMPANY.

Particulars in settling the name of a company.

In settling the name of the company the greatest freedom of choice is allowed, but the following points must be borne in mind in selecting the name of a limited company :—

(1) The last word of the name must be the word "Limited" (*vide* sec. 6 sub-sec. 1 and sec. 261), in the case of limited companies. It is not necessary however that the word "Company" should be a part of the name. It may be omitted if so desired.

(2) The words "Crown", "Emperor" "Empire"; "Empress"; "Federal"; "Imperial"; "King"; "Queen"; "Royal"; "State"; "Reserve Bank"; "Bank of Bengal"; "Bank of Bombay"; "Bank of Madras"; or such other words suggesting or implying the sanction of the Crown or the Government. or the words "Municipal"; or "Chartered" or any words which suggest or are calculated to suggest connection with any Muni-

Words that cannot be used as a part of the name.

cipality or local authority or any body established by Royal charter, must not be used as a part of the name without the sanction of the Governor-General in Council, (*vide* sub-sec. 3 of sec. 11). This does not apply to any companies registered prior to the commencement of the Indian Companies Act, 1913.

(3) Section 47 of the Co-operative Societies Act II. of 1912 prohibits the use of the word 'Co-operative' as a part of the name of any company which is not registered under the said Act save with the sanction of the Local Government. But companies which were in existence before that time with the word "Co-operative" as a part of their name are allowed to carry on the business with the old name. As for example, "Co-operative Hindusthan Bank Limited", "Hindusthan Co-operative Insurance Society Ld."

(4) The name must not be identical with the name used by any other concern whether registered or not, carrying on a business similar to that proposed to be carried on by the company, or so nearly resembling such name as to be calculated to deceive. (Section 11 sub-section 1) For this purpose it is advisable to enquire at the Registrar's office before preparing the memorandum as to whether the name proposed is open to objection on this ground.

There are no further legal restrictions upon the choice of a name. But as a matter of business convenience it is desirable that the name should not be too long. If a business of good reputation, existing for a long time is taken over by the company it may be advisable to retain the old name for the good-will of the company.

The following are the provisions of law with regard to the *use of the name* of a company :—

(1) The name of the company must be painted or affixed on the outside of every office or place in which its business is carried on in a conspicuous position in easily legible English character, and also in the vernacular character of the place, where the registered office of the company shall be situate if it is beyond the local limits of the ordinary original civil jurisdiction of the High Court (*see* sec. 73, clause *a*). But there is no restriction that the name of the company shall not be painted in the vernacular of the place within the local limits of the ordinary original civil jurisdiction of the High Court.

Name of the company should be painted on the outside of office.

(2) The name of the company must be engraven in legible character on its seal (*vide* sec. 73, clause *b*). There is nothing said in the Act as to whether the name of the company shall or shall not be engraven on the seal in both the characters. It must, presumably, be in English, but it may be in both the characters as the directors may choose.

Name of the company on the common seal.

(3) The name of the company must be mentioned in legible English characters in all bill-heads and letter-papers and in all noti-

Name of the company on all papers of company.

ces, advertisements and other official publications of the company, and in all bills-of-exchange, hundis, 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 the company [*vide* sec. 73 clause (c).]

This sub-section of the Act provides that the name of the company shall be mentioned on the above papers and documents only in legible English characters. There are many companies which use only vernacular forms. This does not seem to be authorised by the law, the provisions of the section referred to above being peremptory, it is desirable that English characters only should be used in these cases or English characters along with the vernacular. Any violation of this section is attended with heavy penalties for the company as well as the officers concerned.

Penalty. The penalty may extend to a fine not exceeding Rs. 50/- for every day as long as the default continues (*vide* section 74, sub-sec. 1).

Penalty for non-publication of name.

The responsibility of an officer is much more if he uses or authorises the use of the seal purporting to be the seal of the company whereon its name is not engraved as required or issues or authorises the issue of any bill-head, letter-paper, notice, advertisement or other official publication of the company or signs or authorises to be signed on behalf of the company any negotiable instrument or order for money whereon its name is not mentioned in manner aforesaid. He is then liable not only to a fine, not exceeding Rs. 500/- but is further responsible to the holder of any such negotiable instrument or order for money for the payment thereof, unless the same is duly paid off by the company (*vide* sec. 74 sub-sec. 2).

The directors and officers of the company are personally liable for the omission of the word "Limited" from the name of the company upon bills and other negotiable instruments signed by them and are personally liable for giving an incorrect name upon them (q).

Change of name. A company *may change its name* under the following circumstances :—

(1) If through inadvertence or otherwise a company is registered by a name identical with that by which a company in existence was previously registered or so nearly resembling it as to be calculated to deceive, the company thus registered, may, with the *sanction of the Registrar*, change its name (*vide* sec. 11, sub-sec. 2).

(q) *Penrose* v. *Martyn*, E.B & E. 490 ; *Atkin* v. *Wardle*, (1889) 58 L.J. Q.R. 377 *Nassun Steam Co.* v. *Tyler*, (1891) 70 L. T. 376. See however *Stuery* v. *Walls*, 28 T.L.C 209.

(2) And a company may change its name by *special resolution* and subject to the *approval of the Central Government* signifying its consent in writing, under the hand of one of the secretaries to such Government (*vide* sec. 11, sub-sec. 4). This clause contemplates cases other than those referred to in sub-sec. 2 of sec. 11 in which case the only sanction required would be that of the Registrar.

When the change of name is accepted, the Registrar will enter the new name in place of the former and grant a new certificate under (sec. 11, sub-sec. 5) and the change of name will have complete effect. The change of name shall not affect any rights or obligations or render defective any legal proceedings by or against the company. In legal proceedings the new name will be substituted in place of the old name. (*Vide* sec. 11, sub-sec. 6).

(2) REGISTERED OFFICE

Every company registered under this Act must as from the date when it commences business or within twenty-eight days of its incorporation whichever is earlier have a registered office(*vide* sec. 72, the sub-sec. 1) and name of the *province* where the registered office of the company shall be situate must be mentioned in the Memorandum of Association. (*vide* sec. 6 (ii)) This is necessary to ascertain the office of the Registrar where the company will be registered and the jurisdiction of the High Court which will have control in judicial matters.

The Memorandum of Association is *not required to show such particulars* as the number of the house, the name of the street or the town where the registered office of the company shall be situate.

Notice of the situation of the registered office.

These particulars will have to be given to the Registrar by a *separate notice* in writing (*vide* sec. 72. sub-sec. 2) within 28 days after the company is registered, and any *change in the situation* of the registered office must also be communicated to the Registrar in like manner within 28 days of the change (*vide* sec. 72, sub-sec. 2. For forms *vide* Form No. II under Indian Companies Rules, Appendix A). *No business can be done in the registered office unless notice has been given to the Registrar* as above, and if there is a change of office, notice of the new address should be sent to the Registrar within 28 days of the change. The filing fee for such notices is Rs. 3/- for each document. The inclusion of the place of the registered office in the annual return submitted to the Registrar will not dispense with this notice [sec 72 (3)].

If a company carries on business without any registered office or without notifying the situation of the registered office to the Registrar within the time allowed, it is liable to a *fine* not exceeding Rs. 50/- *for every day* during which it carries on business (*vide* sec. 72 sub-sec. 4). The carrying on of business as interpreted by Gore Brown (r) includes the issuing of prospectus, receiving application for and allotting shares and other preliminary matters.

Penalty for carrying on business without notice of registered office.

(r) Gore Brown's Handbook on Joint-stock Companies, 34th Edition, Page 16.

The following are the main objects in requiring a company to have its registered office :—

Purpose of having a registered office.

(1) To provide some definite place in which notices and other documents may be served on it (sec. 148). Documents include summonses, notices, orders, or other legal processes and registers ; (and the service shall be deemed to be effective by properly addressing preparing and posting a letter containing the documents, unless the contrary is proved). The company is deemed to reside or carry on business at its registered office within the meaning of sec. 20 of the Civil Procedure Code (sec. 20 Expl. II).

(2) To define a specific place where the register of members shall be kept and shall, during business hours, be open to inspection except when closed under the provisions of the Act (*vide* sec. 36 sub-sec. 1).

(3) To provide definitely where the register of mortgages or charges is to be kept (*vide* sec. 117), and the right of inspection can be exercised (*vide* sec. 124).

(4) In case of a banking or insurance company, a statement made under sec. 136 shall be kept in a conspicuous place in the registered office of the company as well as in every branch or place of business. (*Vide* sec. 136, sub-sec. 2).

Change of the registered office.

(1) Within the province.

The registered office of the company *may be changed* as many times as the directors may choose *within the province* mentioned in the Memorandum of Association, provided the change is *notified to the Registrar* as previously mentioned (sec. 72).

If the Memorandum of Association, however, definitely specifies the place of office, e.g. "11, Clive Street, Calcutta" without adding any clause like "or any other place in Bengal to which the office may be removed from time to time," the change of office cannot be made without altering the Memorandum of Association, which can only be done under sec. 12 of the Act, by a special resolution confirmed by an order of the Court. It is inadvisable therefore to specify the place of office definitely like this in the Memorandum.

(2) From one province to another

A change of the registered office of the company *from one province to another* involves *an amendment of the* Memorandum, which can only be made by *special resolution* (*vide* sec. 12, cl. c), and an *order of the Court* confirming the alteration (sec. 12, cl. 2) on a petition to be filed in the Court. In making the order for confirmation the *Court will consider the interests of all persons* likely to be affected (sec. 14) and will not ordinarily pass an order without *notice* to such persons [sec. 12 sub-sec. 3, cl. (*a*)]. When the order for change is made by the Court a *certified copy of the order shall be filed with the Registrar* of the province, where the office exists, who will grant a *certificate* to the effect and will send the documents relating to the company to the Registrar of the province where the office will be transferred, to be filed in his office (*vide* sec. 15, sub-sec. 2). The alteration must be

given effect to *within three months* of the date of the Court's order or within such further time as may be allowed by the Court, after which the order of the Court becomes null and void (sec. 16).

(3) THE OBJECTS

This is the most important part in the Memorandum of Association, and accordingly great care should be taken that the objects of the company (*i.e.*, the trade or business which it is formed to carry on) are *stated in the fullest and clearest manner possible*, as the company cannot legally undertake any business, not authorised by its Memorandum ; and even the fullest sanction given by the shareholders will not make valid any act, which is outside the powers of the company and the greatest inconvenience follows for companies having limited powers. The objects of the company, on the other hand, should not be such as to be a mere record of what is remotely contemplated without operative effect.

It is expedient that the powers of the company should be made manifest by an *adequate statement of objects* and *should not be left* to *inference or implications* as far as possible. Vague and indefinite statements such as "to do any other business which the company may, from time to time determine" should be avoided, as they would be ineffectual. The Memorandum should affirmatively determine what shall be the powers reasonably requisite to the attainment thereof. "The objects of the company should be drawn in clear and well-considered terms and must on no account omit any of the clauses which experience has shown, are, or may be, required for the working of the business and should not be left to inference or implication." "Nothing is more annoying to those, who have to manage a company, than to find that the powers of the company are fettered or questioned and its business impeded or prejudiced simply because the draftsman of the Memorandum of Association has framed it without sufficient foresight or judgment." (p) The Memorandum limits and restricts the powers of the company to those thus conferred, save so far as other powers are given by the Statute. "In constructing the Memorandum it must be remembered that where wide general powers are given in addition to the specific powers, the former will only be read as ancillary to the latter and not as an independent object even though the Memorandum states that each paragraph is to be read separately and without limitation." (q)

Powers which cannot be given by the Memorandum.

The subscribers have got a free choice in framing the objects of the Memorandum ; but they cannot give the company powers opposed to the provisions of the Act, *e. g.* the following:—

(1) To apply capital in payment of dividends. (r)
(2) To purchase its own shares or shares of any subsidiary company, (*vide* sec. 54A sub-sec. 1).

(p) Palmer's Company Law. 9th Edition, Page 32.
(q) Gore Brown's Handbook on Joint-stock Companies. 34th Edition, Page 361.
(r) *Vide* clause 97 of Table A. which is now compulsory.

(3) To issue shares at a discount except as provided in sec. 105A or to invest money against own shares. (s)

(4) To advance capital or guarantee financial assistance to purchase its shares or to make presents to directors out of capital. (t) section 54A.

(5) To include any object in contravention of the general law. For example, "to keep a gambling house," "to establish and work lotteries," "to work a scheme for debasing the coinage" or "to promote the commission of burglaries," etc.

Palmer's suggestion for drafting the objects of a Memorandum.

Sir F. B. Palmer with his vast experience has set out the following paragraphs, (u) which it is advisable to be adopted in drafting the objects of a Memorandum of Association :—

(1) A clause authorising the company to carry on the particular business, which it proposes to carry on, and also to carry on various *other businesses*, which it may probably be desirable to carry on in conjunction therewith or in lieu thereof.

The object of this is to avoid the necessity of going to Court under sec. 12 to extend the objects and also to give the company full freedom for developing its business.

(2) A clause empowering the company *to acquire any other business* similar to its own.

It is extremely difficult to imply such a power from the Memorandum. It has been held *ultra vires* to amalgamate business of another company unless authorised by the Memorandum (v)

(3) A clause empowering the company to enter into *any agreement for sharing profits*, joint adventure, reciprocal concession or other arrangement of a like nature with other persons or companies which carry on similar business. (w)

(4) A clause empowering the company *to take shares in other companies* having similar objects. Such a power is commonly wanted and not easily implied. (x)

(5) A clause empowering the company *to promote other companies* for any purpose calculated to benefit the company (y)

(6) A power generally *to acquire property and rights* which the company may think necessary or convenient for the purpose of its business

In dealing with outsiders it is found useful to have an express power like this, to preclude any question of capacity.

(7) A power *to lend money and guarantee* the performance of contract by

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(s) *Oregum Co.* v. *Roper*, (1892) A.C. 125. The former power has now been given to Companies under the English Act of 1929. See now sec. 105 A of the amended Act.

(t) Palmer's Company Law, 9th Edition, Page 193.

(u) Do. Do. Pages 64-66.

(v) *Ernest* v. *Nicolls*, 6 H. L. C. 401.

(w) Ex parte *British Nation &c. Ass.*, 8 Ch. D. 704. *Joint Stock Discount v. Brown* 8 Eq. 381.

(x) *In re Barnet's Banking Co.*, 3 Ch. 105 ; *In re Lands Allotment Co.*, (1894) 1 Ch. 630.

(y) *Joint Stock Discount Co.* v. *Brown*, 8 Eq. 381.

customers and others.

These loan and guaranteed transactions are constantly called for in business and yet the power is one not easily implied.

(8) A power *to borrow* or raise money by the issue of *debentures*, debenture-stock or otherwise.

Although a trading company has an implied power to borrow and to give security to a reasonable amount, it is found in practice highly desirable to have an explicit power in the Memorandum. Some doubt too exists whether debenture-stock of a permanent character can be raised without express power

(9) A power to draw, make, accept, endorse, discount and issue promissory notes, bills-of-exchange, debentures and other *negotiable and transferable instruments*.

This is highly desirable, for although a trading company has implied power to make and accept promissory notes and bills-of-exchange for the purpose of its business (z) the fact that various kinds of companies have been held not to possess any such implied power clouds the implication with a most inconvenient uncertainty.

(10) A power *to sell and dispose of the undertaking of the company* for shares, debentures, or securities of any other company having objects altogether or in part similar to those of this company. This is effective. (a)

(11) A power *to apply for an Act of Legislature* for any purpose which may seem expedient.

Without such an express power a company cannot apply any of its funds in promoting a bill to effect any modification in its constitution (b)

(12) A power to sell, improve, manage, develop, otherwise exchange, lease, mortgage, dispose of, turn to account or deal in all or any part of the property and rights of the company.

Although a trading company has an implied power to deal with its property for the purpose of its business, it is, in practice, found highly desirable to have an explicit power on such matters and so preclude all question and doubt. (c)

In practice it has been found desirable to have the following clauses also :—

(13) explicit power *to pledge the uncalled capital* of the company as security for a loan.

Although by the above clause 8, a company may have power to borrow money by the issue of debenture, debenture-stock or otherwise, yet it has been held doubtful whether a company can hypothecate its uncalled capital without an explicit power.

(14) A clause expressly empowering the company to deal in Government Promissory Notes and Securities, Port Trust Debentures, Corporation Securities, etc.

(15) A power to enter into any arrangement with any Government or Feudatory State that may seem expedient.

(16) A power to appear before any Court and to *appoint legal practitioners* for the company to appear before the Court and to defend, compound, or refer to arbitration, such cases.

And a concluding clause :—

(z) *In re Peruvian Railway Co.*, L.C 2 Ch. 623.

(a) See *Cotton* v. *Imperial & Co.*, (1892) 3 Ch. 454 ; *Grant* v. *United Switchback* Co., 40 Ch D. 135.

(b) *Munt* v. *Shrewsbury & Rail. Co.*, 14 Beav. 1 ; *Simpson* v. *Dennison*, 10 Hare 51 ; *Vane* v. *East Lanes. Railway Co.*, 31., & J. 50.

(c) *Kingsbury Collieries*, (1907) 2 Ch 859.

(17) To do such other acts as may be deemed expedient and conducive to the attainment of the objects of the company

Statutory powers

Besides the powers given to a company by the Memorandum of Association, it has some powers expressly given by the Statute which need not be stated in a memorandum. Of these the following may be mentioned :—

(1) Power under section 31 of the Act *to keep a register of members*, which by section 40 is made *prima facie evidence* of any matters directed or authorised by the Act to be inserted therein.

(2) Power under sec. 42 and 42 A to keep a *British register* and a *Burma Register.*

(3) Power under section 23 to have a *common seal* and by sec. 91 as to official seals for foreign purposes.

(4) Power under sec. 90 to *appoint attorney* to execute deeds etc.

(5) Power under sec. 88 *to contract without seal.*

(6) Power under sec. 11 *to change the name* of the company in manners specified.

(7) Power under sec. 50 to increase, consolidate, convert paid-up *shares into stock* and to re-convert them to shares or *sub-divide shares.*

(8) Powers under sec. 153, sub-section 6 to *re-organise capital.*

(9) Power under sec. 55 sub-sec. 2, *to reduce its capital* in various ways.

(10) Power under sec. 20 to *alter Articles.*

(11) Power unde sec. 105 to pay, in certain cases, *commission for taking, under-writing or placing shares, if permitted by the Articles.*

POWERS OF COMPANY

A company has power—

General summary of the powers of a company.

(i) to do whatever it is necessary to do with a view to the attainment of the objects stated in its Memorandum of Association, and also whatever may fairly be regarded as incidental to and consequential on the stated objects.

(ii) to do whatever else it is legally authorised to do by the other clauses of its Memorandum,

(iii) to do such other things as it is allowed to do by the Act or by any other Statute.

Acts *ultra vires*— Liability of directors.

Acts beyond the scope of the objects of the company as stated in the Memorandum of Association and those for which no power is given either by the Memorandum or by the Act are *ultra vires* and altogether void so far as the company is concerned (d). Such acts done by directors or other persons cannot be authorised or ratified by the

(d) *Ashbury &c. Railway Co. v. Riche'* L.R. 7 H.L. 653 at p. 668 ; *Attorney General v. G. E. Railway Co.*, L. R. 5 A. C. 473 ; *Shamnugger Jute Factory Co. v. Ram Narain Chatterjee*, I.L.R. 14 Cal. 189.

share-holders. If any liability is incurred by such acts, it is personally *enforceable* against the directors or other persons purporting to act on behalf of the company. Promoters and directors of the company acting on its behalf before its incorporation cannot bind the company by their acts and are personally liable for them unless the Memorandum expressly provides for them and the company after incorporation adopts their acts. The company cannot take over their liability by ratification after incorporation unless such liability is within the powers of the company as stated in the Memorandum of Association (e). Thus, it is not competent to shareholders to ratify the action of directors who have applied the company's funds for subscribing to public funds or charitable institutions unless there is express provision in the Memorandum to that effect (f).

The limitation on the powers of a company under the Act and the Memorandum must be reasonably construed and things which may be fairly regarded as *incidental to or consequential upon* things which the Act or the Memorandum has authorised should not be declared *ultra vires* merely because power to do those acts is not expressly conferred (g). A distinction must be made between acts which are *ultra vires* the company and acts which though within the powers of the company are not within the competence of the persons who have done them. Thus where the directors have no power under the Articles to sell any property of the company, though, under the Memorandum the company has the power to sell such property, a sale by the directors will be *ultra vires* the directors, but not *ultra vires* the company. Such acts by directors or others in excess of the powers of the company do not in themselves bind the company. But the company can *ex poste facto* ratify acts done on its behalf by the directors where the act ratified is not *ultra vires* the company. It would seem to follow therefore that if the directors have done something which is not permitted by the Articles, the company can by a subsequent special resolution ratify the act and alter the Articles with retrospective effect (see sec. 20), provided that the act in question is not *ultra vires* the company, in which case such ratification is impossible.

It is possible that where an act is done which is beyond the competence of the company under the Memorandum, an amendment of the Momerandum with the sanction of the High Court under sec. 12 will have the effect of validating such act if the change in the Memorandum is made expressly retrospective in operation.

CHANGE OF OBJECTS.

Change of objects in the Memorandum.

The *objects of a company cannot be changed* in any way except as provided by sec. 12 of the Act, which authorises a company to change its object by *special resolution* (see sec. 81) for the following *purposes* :—

(e) *Kelner* v. *Baxter*, L. R. 2, C. P. 174.

(f) *Tomakins* v. *South Eastern Railway*, 35 Ch. D. 675.

(g) *Per* Selbrone, L. C. in *Attorney General* v. *G. C. R. Co.*, supra, followed in *Shamnugger Jute Factory Co., Ltd.*, supra, in which Wilson and Porter, JJ. held that the acquisition by the company of land on the other side of the river to prevent a rival jute mill being set up there and interfering with the mill's supply of labour was incidental to the power given by the Memorandum to purchase land for the manufacture of jute.

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

(*b*) To attain its main purpose by new or improved means ;

(*c*) To enlarge or change the local area of its operation ;

(*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.

(*f*) To sell or dispose of the whole or any part of the undertaking of the company.

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

Procedure after passing the special resolution to change objects in Memorandum

After a special resolution for changing the Memorandum has been duly passed by the company, the change must be *confirmed by the Court* on a petition by the company (h) [sec. 12 (2)] before it can become effective. Before confirming such resolution the Court should be satisfied (1) that due *notices have been given* to every person likely to be affected by the change, (2) that the *consent of every objecting creditor* has been obtained or his debt has been discharged (sec. 12). The Court has ample discretionary powers to *confirm the change wholly or in part and on such terms* as it thinks fit with reference to the interests of the members of the company and its creditors (sec. 13-14).

Filing with Registrar.

When the alteration has been confirmed by the Court, a certified copy of the order should be *filed with the Register* (*vide* sec. 15 sub-sec. 1) within *three months* from the date of order. The Registrar shall certify the registration and *from the date of such certificate* the change becomes effective and the Memorandum, so altered, becomes the Memorandum of the company. If the order of the Court for the alteration is not filed within three months from the date of the order, the order will become *null and void* (*vide* sec. 16). But the Court may extend the time to any period it thinks proper (*vide* sec. 16). A filing fee of Rs. 3/- is required to be paid at the time of filing the copy of the order. (Table B cl. 7).

Limits to the power of amendment.

The power of the company and the Court to alter the Memorandum is *strictly limited by the words of sec. 12* and no amendment can be made which is not within the words of the section. Thus where the Memorandum of Association provided for the appointment of a particular person as agent and secretary to a Bank, and the company by a special resolution sought to amend the Memorandum by omitting the clause, the Madras High Court held that the Court had no power to confirm the amendment as the change contemplated was not one relating to the

(h) All such petitions are made to the Judge sitting in Chambers in Calcutta, Bombay and Madras. In Burma it is made before the Judge taking miscellaneous mattars. *Vide* Rules of the High Courts.

objects of the company which could be made under sec. 12 sub-sec. (1) cl. (a) of the Act. In this case their lordships declined to confirm the change also on the further ground that, in the circumstances, the alteration was not in the interest of the company. (i) This case is no longer good law after the amendment of 1936.

The *amending Act of 1936* now adds a proviso to section 10 which expressly provides that a provision in the Memorandum relating to the appointment of a manager or managing agent and other matters of a like nature incidental or subsidiary to the main objects of the company are not conditions of the Memorandum which cannot be altered except under section 12.

This proviso makes it clear that a clause in the memorandum relating to the appointment of a manager or managing agent can be altered by the company by its own resolution without recourse to Court. "Other matters of a like nature incidental or subsidiary to the main objects of the company" is an expression which extends the powers of the company to alter its memorandum in other matters also to an extent the exact limits of which it is hardly possible to define accurately. It would depend on what are to be regarded as the main objects and what as incidental or subsidiary.

The Act of 1936 following the English Act of 1929 adds items (f) and (g) as purposes for which the memorandum may be altered subject to confirmation by the Court : *viz.* (1) to sell or dispose of the whole or any part of the undertaking of the Company and (2) to amalgamate with any other company or body of persons. Where these purposes are not stated in the memorandum, the company cannot do either of these things, but where these objects are not stated in the memorandum they can now be included by amendment of the memorandum under this section.

Provisions of the memorandum can also be changed in any manner desired as part of a scheme for amalgamation under sec 153. [Sec Chapter XVIII]

(4) LIMITATION OF LIABILITY.

As there are three kinds of companies envisaged by this Act under sections 6, 7 and 8, it is necessary to mention in the Memorandum of Association whether the liability of members is *limited by shares* or *limited by guarantee* or whether the *liability is unlimited.* When the liability is limited by shares, the liability of a member in that case does not extend beyond the value of the share or shares subscribed by him even in winding-up (*vide* secs. 156, 157, 158). As to the other two forms of company mentioned above, secs. 7 and 8 of the Act provide as follows :—

7. In the case of a company limited by guarantee—

(1) the memorandum shall state—

(i) the name of the company, with "Limited" as the last word in its name ;

(ii) the province in which the registered office of the company is to be situate ;

(iii) the objects of the company ;

(iv) that the liability of the members is limited ;

(i) *Venkatarama Aiyer* v. *Coimbatore Mercantile Bank*, (1923) M. W. N. 568 ; 74 I. C. 966.

(v) 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 afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount ;

(2) if the company has a share capital--

(i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount ;

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

(iii) each subcriber shall write opposite to his name the number of shares he takes.

8. In the case of an unlimited company —

(1) the memorandum shall state—

(i) the name of company ;

(ii) the province in which the registered office of the company is to be situate ;

(iii) the objects of the company ;

(2) if the company has a share capital—

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

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

Companies limited by guarantee are generally formed for purposes other than making a profit, *e.g.* social or athletic clubs, societies for the protection of a particular trade etc. The members of such companies guarantee that in the event of liquidation of a company, each member will contribute to the assets of the company up to a fixed amount. This amount is fixed per member, whatever interest he may have in the company, *i.e.* a member having more shares than another does not have to contribute more than the amount fixed per member As the total number of members is variable inasmuch as the members may cease to remain in the company, this additional security of creditors is also variable—unless the Memorandum provides for membership continuing until a fresh member takes the place of the retiring member. The amount of guarantee *cannot be regarded as the capital* of the company and cannot therefore be charged or mortgaged for debentures. In the case of a company limited by guarantee and not having a share capital, any provision in the Memorandum or Articles or in any resolution purporting to give any person a right to participate in the divisible profits otherwise than as a member shall be void.

A company limited by guarantee with a share capital must state in the Memorandum the amount of capital with which it proposes to be registered and is therefore subject to the provisions in the Act, regarding increase or reduction of capital. "The members of such a company would therefore have their liability increased by the amount of their guarantee, but would not be able to reduce the capital without the consent of the Court.

Unlimited liability companies may also be formed with or without a share capital. The Memorandum must state either the number of members with which it proposes to be incorporated or the amount of share capital. In the event

of liquidation, the members will be liable to calls, until the whole of the company's obligations is met. The *differences between a partnership firm and an unlimited company* are chiefly the following :—

(1) The company is a legal person while the firm is not.

(2) The calls on the members in the event of liquidation are payable *pro rata* i.e. according to their interest in the company and no single member can be called upon to pay the whole of the debts of the concern as is possible in a partnership company, where debt can be proved against any one or more of the partners.

(3) The liability of a member of an unlimited company ends at the expiration of one year after he ceases to be a member, whereas the partners of a firm are liable for debts until these are barred by limitation.

(4) There is no numerical limitation to the number of persons, who may associate to carry on business as in the case of a partnership, where more than twenty persons would constitute an illegal body.

As regards other matters, *e.g.* the powers of directors and proceedings at meetings, alterations of Articles etc., an unlimited company is subject to all such clauses of the Act as are applicable to a company limited by shares.

Although there are very few companies with unlimited liability registered in India, an unlimited company with a share capital may conceivably be formed in preference to a limited liability company, where the promoters find it easier to raise working capital by borrowing on their personal liability due perhaps to their high financial standing, than on the security that can be offered by a limited liability company with a capital not intended to be made too large, especially because the personal factor is there and liability is unlimited. The advantages enumerated above are there with an added facility to raise working capital, keeping the subscribed capital within bounds in order that dividends may be substantial.

Under Section 67, an unlimited company is empowerd to re-register itself as a limited liability company provided that debts, liabilities, obligations or contracts will not be affected thereby. Further under Section 68, it may also increase the nominal value of its shares to the intent that the increased amount will not be called except in the event of a winding up or it may provide that a specified portion of the uncalled capital shall not be called up except in a winding up.

(5) CAPITAL.

The capital clause in a memorandum states the nominal capital of the company, the number of shares into which it is divided and the amount of the value of each share.

In the Memorandum of many companies provision is made dividing original capital into several classes of shares stating special rights, privileges and conditions. This is done for giving extra protection to the holders of shares against any alteration of their status. It is, however, *not essential to specify the division of shares* into several classes and rights attached thereto *in the Memorandum* for all this can be properly done by the Articles of Association of the company. There is nothing wrong in the insertion in the Memorandum of such additional

Specification of classes of shares in the Memorandum with rights and privileges attached to such shares.

provisions, but it should be borne in mind that once inserted they become conditions of the company's constitution within the meaning of sec. 10 of the Act, and such a condition cannot be altered except under the provisions of the Act.

The Memorandum of Association can be altered under sec. 12 and it is doubtful whether the alteration of the Memorandum so as to affect the classification of shares or the rights of the different classes of shareholders stated in the Memorandum falls within the scope of sec 12 The provisions relating to capital can be affected by subsequent acts of the company under secs. 50, 55, and 153. The distribution of the share capital between different classes of shares and alteration of the incidents of different classes of shares can now only be made under sec. 153 by a resolution, confirmed by the Court, which, if the resolution seeks to interfere with any rights or privileges of any special class of shareholders, must be passed first of all by the requisite majority at a meeting of that class of shareholders under sec 153. [See P 36, 38 in fra] In the case of unlimited companies registered under the Act of 1857 and 1860 any regulation relating to the amount of capital or its distribution into shares can be altered by a special resolution even if it is set out in the Memorandum of Association [see sec 20 sub-sec (2)]

The Memorandum may therefore simply state that "the capital of the company is Rs.. ... .divided into . ... .shares of Rs ...each." But where from the very inception of the company, the subscribers desire to divide the capital into sevaral classes of shares both as regards the value of the share and the privileges attached thereto, the memorandum may state "the capital of the company is Rs.. .. .divided into. ..... preference shares.....ordinary shares and. . deferred shares of Rs .....Rs ..... ,and Rs .. . .,each respectively." Or it may state "the capital of the company is Rs.....divided into.. .. ..shares of Rs. . . ...each. The shares in the orginal capital or any increased capital may be divided into several classes and there may be attached thereto respectively any preferential or other special rights, privileges conditions or restrictions." This last form is wider, as, under it, the company by Articles of Association or by special resolution may divide the shares into several classes with special rights according to necessity without entering into any binding contract in the Memorandum of Association. (j)

It is prudent to place by the Memorandum of Association *as little restraint as possible* upon the company's powers in respect of the regulation of its capital. Additional provisions with regard to capital are best set out in the Articles which can be altered with greater ease to adapt it to the changing needs of the company.

The promoters and subscribers are quite at *liberty to fix the nominal capital* of the company at any amount. It may be as large or as small as they choose. The material consideration in fixing the capital is, what funds the company will require for its work. The promoters and subscribers are to determine the amount of shares and their value.

In deciding on the amount of share capital regard should be had

(j) For further considerations relating to the capital of a company see post Chapter VII.

to the *possible needs of the company*, but it should be remembered that the fee for registration of a company is payble *ad valorem* on the value of the authorised capital. A needlessly high figure should therefore be avoided.

As to alteration of share capital see Chapter VII.

(6) ASSOCIATION.

This is the last clause of the Memorandum of Association, but it has not been provided in the body of the Act. It has been given in the statutory forms prescribed in the Third Schedule of the Act which is a part of the law. By this clause the subscribers declare that they desire to be formed into a company and agree to take shares set forth against their names. After this declaration, the names, addresses, occupations and the number of shares subscribed by each subscriber appear in tabular form.

Form and Subscription of Memorandum.

This is to be done under the provisions of section 9 of the Act.

Under the amendment of 1936 the Memorandum, like the Articles is now required to be (a) *printed*, (b) divided into *paragraphs numbered* consecutively, and (c) *signed* by each subscriber *with address and description* in the presence of at least one witness.

The Memorandum must be subscribed by at least *seven* persons in the case of a public limited company and not less than *two* persons in the case of a private company *(vide* sec. 5)

Restriction as regards the number of subscribers of a company

A subscriber generally subscribes with his own hand but he can do so by the hand of an attorney duly empowered for the purpose. In the subscription, a subscriber must write at least *his name* and *the number of shares* he subscribes *by his own hand* or by the hand of his authorised agent, but his address and occupation may be written by any other person. It is preferable to have them also by his own hand to avoid practical difficulties which sometimes occur. It is enough if there is the requisite number of shareholders signing the Memorandum. It is not necessary even that they should be independent persons or really represent separate interests. *In Salomon* v. *Salomon* (k) in which the incorporation was challenged on the ground that it was a one-man company and that the other signatories were merely nominal shareholders, Lord Herschell observed that it made no difference if the shareholders other than the appellant were mere dummies, his nominees and held the shares in trust for him.

It is common sense that the seven signatories should each be a holder of at least one share. The wording of sec. 5 however makes it possible to argue that a Memorandum signed by five persons holding one share jointly and two other persons holding one share each is one that satisfies the requirements of the law, there being no proviso in this section corresponding to the proviso in sec. 2 sub. sec (13) that several persons jointly holding a share are to be deemed as one person. This question may arise not only in connection with the subscription to the Memoran-

(k) 1897 A.C. 22.

dum of a public company but also in considering whether a public company has ceased to exist by reason of the number of its members being reduced to less than seven. The policy of the law seems to be clear, but perhaps the addition of a proviso similar to that in sec 2, cl. (13) is desirable.

In subscribing a Memorandum care should be taken to write clearly. The full name, address and occupation of the subscriber should be written. Otherwise the Registrar may return the documents on the ground that he could not read the signatures or that certain requisite particulars had not been clearly expressed.

The Memorandum of Association embodies *a contract between the persons subscribing* to it. In order to make it valid therefore the subscribers must be persons having *legal capacity* to contract. A lunatic, an idiot or a person of unsound mind is not therefore competent to subscribe, nor is a minor so competent under the Indian law, under which all contracts of minors are void.(l) Married women are competent signatories even in England, and certainly in India where there are no disabilities of married women. A bankrupt and an alien(m) can subscribe. An incorporated company with power under its Memorandum can be a subscriber. Several persons jointly may subscribe for one or more shares. In such cases the Articles usually provide that the joint shareholders would be represented by the person named first in the share register. A partnership firm as such cannot subscribe, though the partners may jointly subscribe as individuals.

Who can be subscribers?

If the Memorandum is not subscribed by the requisite number of persons legally competent to subscribe or if there is such irregularity in the subscription as in effect to cancel the signature, the Registrar will refuse to register the company. For this purpose the Registrar has power to hold a summary enquiry(n). If however a company has been registered and a certificate of incorporation granted, under sec. 24 this is conclusive evidence of the valid registration of the company and questions about irregularities or illegalities in the snbscription or

(l) *Mohori Bibee* v. *Dharmadas*, L. R. 30 I A. 114. Under English law it might be different. In *Lazon & Co.*, (1892) 3 Ch. 555 a minor was held to be a 'person' and as such a competent signatory. This decision is doubtful and is certainly not good law for India. *Per* Lord Macnaghten in *Mousa Golam Ariff* v. *Ebrahim Golam Ariff*, L.R. 39 I.A 237 : I.L.R 40 Cal. I.

(m) *Princess of Reuss* v *Bos.* L.R 5 H.L 176. *In re General &c. Co*, 5 Ch. App. 363.

(n) See sec. 137. The power of the Registrar is however limited merely to an enquiry for seeing that the provisions of the Act have been complied with, such as for instance whether there is the requisite number of signatories, whether the objects are lawful (sec 5) whether the company has complied with the requirements of secs. 5 to 8, and whether the name closely resembles the name of an existing company. (Buckley *Companies Acts*, p. 29). Having regard to the decision in *Peel's case* and other cases in the next note, regarding the conclusiveness of the Registrar's certificate, it would seem to follow that the Registrar is bound to be satisfied upon careful enquiry that the preliminary requisitites of registration have been satisfied. In *Ex parte Bowen* (1914) 3 K.B. 1161 the court issued a mandamus on the Registrar to register the company where registration had been refused on grounds other than the above.

other preliminaries cannot be investigated by the Court [sec. 24 *q. v.*](o).

Number of shares that should be subscribed

Each subscriber must subscribe at least one share but he may subscribe any number of shares he likes. If the Articles of Association provide the holding of some shares as the minimum share qualification for a director it is desirable that those of the subscribers, who are to be directors, should enter the full amount of the share qualification against their signature and thus avoid the necessity of filing a separate contract in writing to take the qulification shares and to pay for them (*vide* sec. 84, sub-sec. 1, clause ii).

In a Memorandum there should not be too many subscribers, because if any correction is made either in the Memorandum or in the Articles of Association, it would require to be initialled by all the subscribers and it may be inconvenient to procure initials or signatures of all of them within a short time, if the number of subscribers be too many.

The Memorandum shall be signed by each subscriber giving his address and description in the presence of *at least one witness* who shall attest the signature (*vide* sec. 9). A subscriber should not attest signatures of others. A secretary or a manager, named in the Articles but not a subscriber, can be a witness. A witness must be some person "who stands by but is not a party to the transcation."(p) A single man can attest all the signatures and in such case he may sign, noting "witness to the above signatures" or the signature of each subscriber may be attested by one or several persons, by noting the names of persons whose signatures he or they attest. The witness or witnesses must give his or their addresses along with signatures.

Correction of mistake.

If there has been any correction in the Memorandum or Articles of Association, the witness should state the fact that the correction was made before the deed was executed. (q)

The date of the signature should appear at the bottom of the signature as in the case of all other documents.

Besides the statutory forms as given in Schedule III of the Act a form of a Memorandum of Association is given in Form No. 3 in Appendix B. This form may be adopted as a specimen in drafting a Memorandum of Association.

(o) *Peel's case* (*per* Lord Cairns, L C) L R 2 Ch 674 in which alterations had been made in the Memorandum after signature so as to annihilate the original signature. *Oakes* v. *Turquand*, L R. 2 H.L. 325 ; *Salomon* v. *Salomon & Co*. (1897) A.C. 22 where the company was formed for an illegal purpose stated in the Memorandum. *Laxon & Co.*, supra. *In re National Debenture &c* (1891) 2 Ch. 505 *contra* is no authority (*per* Lord Macnaghten in *Moosa Golam Ariff*, L.R. 39 I.A 237). *Hammond* v. *Prentice*, (1920) I Ch. 201.

(p) Per Lord Selborne L.C. *Seal* v. *Claridge*, 7 Q.B.D. 516.

(q) Gore Brown's Hand Book on Joint Stock Companies, 34th Edition, page 33.

CHAPTER IV.
ARTICLES OF ASSOCIATION

The Articles of Association of a company are generally filed with the Registrar along with the Memorandum of Association for registration (*vide* sec. 17). They contain *the regulations of the company* for the conduct and management of its business. When separate Articles of Association are not filed for registration with the Memorandum of Association, Table A of the Act would be taken to have been adopted as Articles of Association (*vide* sec. 18).

Relation between the Articles and the Memorandum.

The Articles of Association of a company are subordinate to and *controlled by the Memorandum* of Association. The Memorandum contains the conditions upon which a company is granted incorporation, while Articles contain the internal regulations of the company. As Lord Cairns L. C remarked, the Memorandum is, as it were, the area beyond which the action of a company cannot go ; inside that area the shareholders may make such regulations for their own government as they think fit." (r) The Memorandum of Association is an unalterable document except in so far as is provided by the Act (sec. 12), while the Articles of Association can be changed as many times as the shareholders may choose by special resolution (*vide* sec. 20). The *power to change any Article is inherent* in the company and cannot be taken away unless there is anything in the Act or in the Memorandum forbidding such change It is not even open to the company to deprive itself of this power by any stipulation (s) either as between the company and its shareholders or as between the company and a stranger. (t)

Difference between the Articles of a private and of a public company

The Articles of Association of a public and of a private company cannot be on the same lines, as the Articles of a private company must restrict to some extent the mode of transferring shares (for details *vide* Chapter XIX).

General instructions in framing Articles of Association

There are three ways in which the company can provide itself with its Articles of Association ; namely (1) by fully *adopting Table A* of the Act , (2) *adopting* suitable *parts of* Table A with a few special Articles containing the desired modifications, or (3) wholly excluding *Table A* and framing new Articles altogether.

Of the three courses the adoption of Table A without qualification is generally attractive on account of the saving of expense and labour in the preparation and printing of the Articles, which in the case of small companies is a matter of considerable importance But on the other hand, Table A which has been framed as a general body of regulations applicable to all companies, is often

(r) *Ashbury* v. *Riche* L R 7 H.L. 653

(s) *Walker* v. *London Tramways Co.*, 12 Ch.D. 705 *Malleson* v. *National Insurance Co.*, (1894) 1 Ch 230 , *Sidebottom* v. *Kershaw*, (1920) 1 Ch. 154 ; *Dafen Tin Plate Co* (1920) 2 Ch 124

(t) *Allenby. Gold Reefs*, (1900) 1 Ch 656 , *Punt* v. *Symons & Co.*, (1903) 2 Ch 506 ; *Peveril Gold Mines*, (1898) 1 Ch. 122 ; *Payne* v. *Cork*, (1900) 1 Ch. 301; *British Equitable Ass. Co* . v. *Baily*, (1906) A.C.35.

found to be unsuitable in many cases ; for every company requires some special provisions with regard to its special circumstances. It is always necessary, therefore, even if Table A is adopted, to adopt some further Articles excluding some parts of Table A and adding other essential Articles Even this course, while it is undoubtedly cheaper than framing totally new Articles, is found in practice to lead to difficulties, as the Articles so framed partially with reference to Table A and partially by new rules lack the essential characteristics of homogeneity and organic unity and not seldom lead to unsuspected conflicts between the two parts On the whole, as Sir F, B Palmer points out, it is advisable and more economical in the long run to frame a complete set of Articles in the place of Table A. No doubt Table A should be taken as a valuable model to follow and, as regards a large part, the new Articles would perhaps simply reproduce paragraphs from Table A, but if the whole thing is recast and drawn up as one complete whole it would lead to greater efficiency and clearness

1. *Adoption of Table A* : No extra labour in framing the Articles and money to print them are required when Table A is adopted. Only mention of the fact that "Table A is adopted for Articles of Association" on the back of the Memorandum is quite sufficient. The Articles thus adopted can subsequently be thoroughly changed by special resolution under the provisions of section 20 of the Act.

2. *Adoption of suitable parts of Table A of the Act, with a few special Articles containing the desired modification* :—In such cases, the Articles commence with a statement to the effect—"The regulations contained in Table A in the first Schedule to the Indian Companies Act VII of 1913 shall be the Articles of Association of the Company except in so far as they are modified by the following provisions and clauses." (For form of such Articles, *vide* Form 4 in Appendix B).

3. *Exclusion of Table A* :—Sufficient experience and foresight are required in framing Articles of Association. Though Table A is excluded yet it should be borne in mind that the Legislature took great care and precaution in framing the said Table in conformity with the provisions of the Act.

It is essential to have a clause in the Articles, which is usually made the first clause, expressly excluding the application of Table A by some such words as the following, "Table A of the Indian Companies Act shall not be applicable to this company but in lieu thereof the following shall be the Articles of Association of the company." In the absence of such a clause, Table A would apply to the company under sec. 18, except in so far as the provisions of Table A are inconsistent with the new Articles adopted. (For form *vide* Form No. 5 in Appendix B).

Compulsory Clauses.

Under sec. 17 of the Act *as amended in 1936* some of the articles in Table A have been made compulsory. These are art.—56 (regarding the manner of voting on resolution in the general meeting), art. 66 (regarding the deposit of the proxy form), art. 71 (regarding the powers of directors), articles 78-82 (regarding the rotation of directors). articles 95 and 97 (regarding declaration of devidends,)

articles 105-107 (regarding accounts), articles 112-116 (regarding notices).

Out of these art. 78-82 are not required in a private company which is not a subsidiary company of a public company and art. 107 is to be deemed to require that the reason why only a portion instead of the whole of any item of expenditure is included in any year must be stated in the profit and loss account.

These articles or articles to the same effect are required to be in any articles of the company and, if not included, they are to be deemed to be included therein.

Sections of the statute required to be observed in framing Articles.

There are numerous sections in the Act, containing a clause "if authorised by the Articles." In drafting Articles, care should be taken that those powers are given in the Articles, as otherwise the company will not be entitled to exercise those powers till they have been acquired by adopting appropriate new sections in the Articles by special resolution under sec. 81. (u)

Statutory Limitations and Duties.

The powers that cannot be given by the Articles.

The Articles cannot give the company any of the following powers which are excluded by the Act,

(*a*) To *buy its own shares* except with a view to consequent reduction of the capital (sec. 55).

(*b*) To *pay dividend out of capital* except by way of interest subject to conditions and limitations laid down in sec. 107. (v)

(*c*) To *extend the objects of the company as stated* in the memorandum by special resolution except as provided by sec. 12 of the Act.

(*d*) To *prohibit* members from *exercising* any *statutory right* such as to apply for winding up order etc.

(*e*) To *exercise* any *power* in *contravention* of the Memorandum.

(*f*) To *vary any right* given by the Act, or the general law.

Statutory duties of companies.

Irrespective of the regulations contained in the Articles of Association, the company has some statutory duties, which are binding. They are as follows :—

(u) Of the numerous sections in the Act which thus refer to the Articles of Association, by way of illustration, the following may be mentioned :—Sections 41, 43, 45, 46, 49, 50, 66, 71, 83-B, 86B, 91, 105, 105B, 107, (Sub-sec. 1), 125 (Sub-sec. 1), and 154.

(v) Dividends are payable only on profits and not out of capital, *In re Oxford Benefit Building Society*, 35 Ch. D. 502 ; *Leed Estate* v. *Sepherd*, 36 Ch. D.807 ; *Re Sharpe*, (1892) 1 Ch. 154 Interest on capital employed in large construction works not likely to yield profit may be paid under the Articles under section 107. Every other payment to shareholders out of capital by way of dividend is *ultra vires* as it amounts to reduction of capital which can only be made under section 55. So such payment is *ultra vires* even if provided by Memorandum. *Trevor* v. *Whitworth*, 12 A.C. 409.

1. To supply to members, on demand, *printed copies* of Memorandum and Articles of Association and of any *special resolution* where articles are not registered. (secs. 25 and 82).

2. To make and file *returns of allotments* to the Registrar within *one month* from the date of allotment or within such extended time allowed by the Registrar [*vide* sec. 104].

3 To file *contracts* and make *returns* in the case of *shares allotted as fully or partly paid-up*, otherwise than in cash within *a month* from the date of allotment of such shares [sec. 104 cl. (*b*)].

4. To file the *prospectus*, if any, with the Registrar or a *statement in lieu thereof*. (secs. 92 and 98).

5. To comply with sec. 93 of the Act in making and issuing a prospectus.

6. To comply with the provisions of secs. 101 and 103 and *refrain from allotting shares or commencing business* until the requirements of those sections have been satisfied.

7. To keep a *register of members* at the registered office (sec. 31) which should be kept open for inspection during business hours (sec. 36).

8. To make *annual returns of its members, assets and liabilities etc.* and to *file* them with the Registrar (sec. 32).

9. To submit *notices of increase of capital* and *consolidation* of shares etc. to the Registrar (secs. 51, 52 and 53).

10. To have a *registered office* (sec. 72) and to *notify* to the Registrar its *situation* and *change of situation.*

11. To put up the *name* of the company *outside its office* and place of business, and to state it in all its *business publications* (sec. 73).

12. To keep a *register of mortgages and charges* at the registered office open to inspection by shareholders, creditors and the public (secs. 123 and 124).

13. To register with the Registrar of Joint Stock Companies *all mortgages and charges* to which sec. 109 applies.

14. To hold a *statutory meeting* within *six months* from the date of *commencement of business* (sec. 77).

15. To hold an *annual general meeting* every year (sec. 76).

16. To *register special resolutions* with the Registrar (sec. 82).

17. *Not to carry on any business* after the number of shareholders are reduced to less than *seven* in case of public companies and to less than *two* in case of a private company (see. 147).

18. To keep at the registered office a *register of directors* and to send a copy to the Registrar and to *notify changes of the directors and managers* (sec. 87).

19. To have at least *three directors* for a public Company ro

a private company which is subsidiary to a public company. (w) (sec. 83A) and to disclose the interest of every director on any contract (sec. 91A).

20. To comply with secs. 144 and 145 as *to audit.*

Any violation of the statutory duties as given above renders the company as well as its officers and directors liable to heavy penalties.

Form of Articles

Under section 19 of the Act, the Articles shall

(*a*) be *printed*

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

(*c*) be *signed by each subscriber* of the Memorandum of Association in the presence of at least *one witness* who must attest to the signatures.

Heads of Articles

Distribution of heads of the Articles.

The following are the heads under which the Articles of Association of a company may conveniently be divided.—

(I) The total or partial exclusion of Table A.
(II) The adoption of preliminary agreements, if any
(III) Capital.
(IV) Shares,—calls, lien, transfer, increase, consolidation and reduction.
(V) General Meetings.
(VI) Directors.
(VII) Managing Agents &c. if any.
(VIII) Dividend and Profit.
(IX) Books and Accounts.
(X) Audit.
(XI) Common Seal.
(XII) Notices.
(XIII) Winding-up.

The Articles should contain a statement of the *conditions* upon the fulfilment of which *business may be commenced* (sec. 103). (x)

This is not applicable to private companies, (see sec. 103, sub-sec. 6).

There must also be some provision for the payment of preliminary expenses.

The fee for filing the Articles of Association with the Registrar is Rs. 3/- as is the case with all other documents required to be filed with the Registrar.

(w) This is the minimum number required by the Act. This is subject to any provisions in the Articles of Association which may fix a higher minimum in which case the company cannot function if the number of directors is reduced to less than the number so fixed

(x) For conditions see Chapter V.

Change of Articles

Under the provisions of sec. 20, the whole or any portion of the Articles of Association may be changed or any portion may be added to it *by special resolution* subject to the provisions of Memorandum or the Articles of Association.

Special resolution

The special resolution is required to be passed in accordance with the provisions of sec. 81 (See Chapter IX). By the *amendment of 1936* the special resolution is not *now* required to be passed in two meetings, but at one and the same meeting by a majority of not less than *three-fourths* of the numbers entitled to vote who are present in person or by proxy (as in the case of an extra-ordinary resolution) provided that the general meeting at which the resolution is passed has been called *on not less than 21 days notice* specifying the *intention to propose the resolution as a special resolution.* (y) The amendment however provides that if *all* members entitled to vote are present a special resolution may be proposed and passed even without the 21 days notice.

Where change not binding.

The new sec. 20A introduced by the *amendment of 1936* provides that a member shall not be bound by an alteration either in the memorandum or the articles made 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 or in any way *increases his liability* to contribute to the share capital or otherwise pay money to the company, unless the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Alteration of special privileges

Under sec, 54 now repealed, no preference or other special privilege attaching to any shares could be affected except by the vote of a majority of shareholders holding not less than three-fourths of the shares of that class. That section however was limited to cases where any preference or special privileges *provided by the Memorandum* were sought to be altered. It did not prevent the alteration of the Articles without affecting the Memorandum even though special privileges *attached by the Articles* to a certain class of shares were sought to be affected. Articles can always be altered by special resolution in the ordinary way even though the change affects any special rights of a class of shareholders.(z) See 54 has now been repealed and a clause added to sec. 153 by which reorganisation of capital including alteration of special privileges can now be made under sec 153. That has not made any material change in the law, as under section 153 members having special rights form a special class and any change affecting their rights has to be passed by the requisite majority at a meeting *of that class* of members representing three fourth of the capital of that class before being sanctioned by the Court.

Though under sec. 153 resolutions affecting the rights of a class must be passed at a meeting of that class, where such a resolution

(y) Non specification of object in the notice is fatal to its validity. *See Gulab Singh* v *P. Z. Bank* A I. R. 1940 Lah. 243. Now however, if all members agree the resolution would be valid.

(z) *Australian &c. Co.*, (1910) 1 Ch. 414.

is passed at a meeting at which other classes of shareholders were also present but notes were taken only of members of the affected class, the House of Lords held that in the absence of any objection by affected members the resolution was good and was not invalidated by the presence of other members (a)

Sec 66 A also provides for certain safeguards to members whose special privileges are sought to be affected by a resolution of the company. (see infra)

On the passing of the special resolution a copy of such resolution duly certified under the signature of an officer of the company is required to be *filed with the Registrar and annexed to each copy of Articles* issued after the date of the passing of the said resolution (*vide* sec. 82 sub-sec. 2). A company which does not register a separate set of Articles but adopts Table A should forward a copy of such special resolution at the request of any member on payment of a fee, not exceeding Re. 1/-, as may be provided (*vide* sec. 82 sub sec, 3).

Filing with Registrar

When any addition or alteration is made in the Articles, such addition or alteration shall be as valid *as if originally contained in the Articles* and be subject in like manner to alteration by special resolution. But contractual rights of *strangers* against the company cannot be affected by any change in the Articles without their consent (b).

Under the new Section 25A, every copy of the Memorandum or Articles of Association issued after any alteration has been effected therein must be issued in accordance with the alteration failing which both the company and every officer who is knowingly in default will be liable to a fine of Rs. 10/- for every copy issued without such alteration. When any alteration takes place, it is therefore advisable to bring all copies of articles up to date by affixing correction slips thereto.

Value and Effect of Articles.

The Memorandum and the Articles of Association, when registered, bind the company and its members to the same extent as if each member had signed and sealed them. (*vide* sec. 21).

Memorandum and Articles a contract.

This section proceeds on the principle that the Memorandum and the Articles are the basis on which the company and the members enter into a contract, which is made as soon as a member signs the Memorandum or applies for a share and an allotment is made thereon The effect of section 21 is that the Memorandum and the Articles are incorporated by implication in the argeement between the company and the members

(i) between members and company.

Questions of some nicety have arisen as to the exact scope of this section. It is settled now that the Articles are to be understood as creating a contract between each member as such and the company, so that as between a member and the company the terms are binding. (z1) But the Articles have been held to bind a member *as such* but not in an independent capacity e. g that of director (z 2)

(a) *Carruth* v. *Imperial Chemical Industries* (1937) 2 A. E R. 422.
(b) *Southern Foundries Ltd*, v *Shirlaw* (1940) 2 A. E. R 445 (H. L)
(z1) *Bradford Bank* v. *Briggs*, 12 App Case 29, *Welton* v *Saffery*, (1897) A C 31 5
(z2) *Beattie* v. E F. *Beattie & Co.*, (1938) 3 A. E. R.

So the company may sue any shareholder and any shareholder may sue the company for enforcement of the terms of the Articles. (a)

(a) *quaere* if between members *inter se.*

A more difficult question arises as to whether the Articles constitute a contract as between members *inter se* so as to entitle any member to sue any other member for enforcement of the latter's obligation under the Articles. A number of decisions lay down that the Articles also constitute an agreement *inter socios* and are enforceable as covenants between the parties. (b)

Lord Hershell in *Welton* v *Saffery*, (1897) A. C 315 somewhat qualified this statement of the law and observed "It is quite true that the Articles constitute a contract between each member and the company and there is no contract in terms between the individual members of the company ; but the Articles do, nonetheless, in my opinion, regulate their rights *inter se.*" It is the company which has the right to sue any individual member in case of breach of Articles and not another individual member, except in exceptional cases. (c)

Not between company and strangers.

The Articles are not binding on the company under this section in relations between the company and strangers or even between the company and persons who are its members where a right is claimed by such person not *qua* member but in some other capacity In this respect the Articles of a company differ from a Statute imposing duties on a corporate body. If a Statute constituting a corporation such as the Municipality or a University lays down that the corporation shall give certain privileges to a person, that duty becomes binding on the corporation and the person to whom the right is given can sue on such provision of the Statute. The Articles have no such statutory force and their obligatoriness arises only from the implied contract between the company and its members Third persons who are not parties to the contract can neither sue on a right provided for in the Articles nor be sued on any obligation imposed by it. To bind the company there must further be a contract. Very often Articles of Association contemplate that a contract in terms specified should be entered into with a person for his employment as solicitor, manager, etc. Such a provision in the Articles does not in itself create any right and obligations. It must be followed by an agreement with him (d).

But sometimes where a provision for contract is made in the Articles and no subsequent contract is actually executed, but the parties act as if the contract had been made, the Courts have proceeded to treat the contract as having been made. "The Articles" said Lord Esher "do not themselves constitute the contract

(a) *Macdougall* v. *Gardiner*, 1 C D. 13 , *Pender* v. *Lushington* 6 C. D 70 , *Imperial Hydropathic Co* . 23 C. D 1 , *Harben* v *Phillips*, 23 C. D. 15 , *Johnson* v. *Lyttle's Iron Agency*, 5 C D. 687 , *Crum* v. *Oakbank Oil Co.*, 8 A. C. 65 ; *Wood* v. *Odessa Waterworks*, 42 C. D 636 ; (which was a suit for an injunction on the company to restrain it from violating the Articles)

(b) *Eley* v. *Positive & Co* , 1 Ex. D. 88 ; *Browne* v *Trinidad*, 37 C. D 1 ; *Imperial Hydropathic Co.*, supra , *Wood* v. *Odessa Waterworks*, supra.

(c) *Macdougall* v *Gardiner*, supra , *Foss* v. *Harbottle*, 2. Hare 461 ; *Burland* v *Earle* (1902) A. C. 83.

(d) *Eley* v *Positive & Co* , 1 Ex D. 88 , *Browne* u. *Trinidad*, 37 C D 1 ; *Surendra & Co* , v. *Punjab Tannery*, 68 I. C. 787. See however A. I R 1940 Lah 243 where a member is to be Managing Director under the Articles.

but from them you get the terms of the contract deducible from the conduct of the parties "(e)

On the question as to how far rights created by contract can be modified by special resolution see *Domain's case*, 3 Ch D 21, *Argus L. A. Co.*, 39 C. D. 371; *Punt* v. *Symon*, (1903) 2 Ch. 506 and the recent decision of the House of Lords in *Southern Foundries Ld* v *Shirlaw* (1940) 1 A. E R 445

Articles binding as incorporated in a contract

Apart from the obligations of the Memorandum and the Articles under sec. 21, there may be other ways in which its terms may become binding by being incorporated in a contract This often follows from the principle that any person dealing with the company is taken to have notice of the Memorandum and the Articles (sec 248), the terms to the Memorandum and the Articles thus becoming a part of any contract made by such person with the company

CHAPTER V.

PRELIMINARY CLAUSES OF THE ARTICLES OF ASSOCIATION

The chief preliminary clauses of the Articles fall under six heads. viz. :—

(a) total or partial exclusion of Table A :

(b) definitions of expressions ;

(c) preliminary agreement if any ;

(d) objects of the company ;

(e) restriction of shareholders' and other persons' powers to enter into the property, business and accounts of the company :and

(f) preliminary expenses.

Exclusion of Table A.

If it is intended that *Table A should not apply* at all to the company, it is absolutely necessary to have a *definite clause excluding the application of Table A.* In the absence of such a clause the mere fact that a different set of Articles has been registered would not make Table A inapplicable ; for regulations in Table A also apply to companies which register Articles in so far as the Articles do not exclude or modify the regulations in Table A. In many cases, it is found convenient not to abrogate Table A altogether but only to modify it by the Articles. In such cases the Articles should *distinctly mention the clauses or parts of clauses in Table A, which are not to apply* to the company.

Compulsory clauses

Under the *amendment of 1936*, sec. 17 subsec. (2) provides that some Articles of Table A are compulsory and cannot be abrogated by any company. The new section is as follows :—

(e) *Swedney* v *Port Darwin & Co.*, 1 Meg 385 ; *In re International Cable Co.*, (1892) 66 L T. 254, *Ex parte Beckwith*, (1898) 1 Ch. 324 ; *Isaac's Case*, (1909) 2 Ch 158 ; *Salisbury Jones's Case* (1904) 3 Ch. 356, (1906) A. C. 35. see *Gulab* v *P.Z. Bank* A I R 1940 Lah 243

"(1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule, and shall in any event be deemed to contain regulations identical with or to the same effect as regulation 56, regulation 69, regulation 71, regulations 78, 79, 80, 81, 82, regulation 95, regulation 97, regulation 105, regulation 107 and regulations 112, 113, 114, 115, and 116 contained in that Table.

Provided that regulations 78, 79, 80, 81, and 82 shall not be deemed to be included in the articles of any private company except a private company which is the subsidiary company of a public company.

Provided further that regulation 107 shall be deemed to require that statement of the reasons why, of the whole amount of any item of expenditure which may in fairness be distributed over several years, only a portion therof is charged against the income of the year, shall be shown in the profit and loss account, unless the company in general meeting shall determine otherwise.

(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration."

Definitions of Expresssions

There are many legal and technical terms which are frequently used in the Articles of Association. These terms are generally defined in the Articles of Association. Many words generally used in the Articles are explained by sec. 2 of Act and in defining the expressions it is desirable to follow the definitions of that section in the Act. Besides, it may be deemed expedient to explain some terms which are not contained in the section and some terms defined there may also be left out.

Preliminary Agreements

The promoters of a company may make *preliminary agreements for taking over a going concern, or for securing the services* of a person or persons to work as the manager, managing agent or secretary of the company or for other purposes. It is usual in such cases, for securing the position of persons concerned and it is *essential in the*

case of taking over a going concern, to have *agreements drawn* up before incorporation of the company, setting forth the terms on which the concern is taken over or the services secured. The existence of these agreements is generally referred to in the Memorandum and the Articles of Association and must be set out in the prospectus [sec. 93 subsec. 1 cl. (1)] for public information as well as to secure the interests of the parties concerned.

"A contract made before the incorporation of the company by some person professing to act on its behalf cannot be ratified by the company after its incorporation." (f) The agreement entered into by the company after incorporation is not a ratification of the agreement of the promoters but an original contract, although the company may be bound under its Articles to enter into the contract.

It is necessary formally to execute *a new contract in the terms of the pre-incorporation* contract, as "merely taking the benefit of a pre-incorporation contract does not bind the company to fulfil the obligation of that contract." But if the contract as set out in the Articles has been acted upon by the parties it would be deemed to have been executed even though no separate agreement has been made. See *supra* p. 40. It should be noted that a company cannot make a binding contract until it is entitled to commence business, as 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" (sec. 103). No one can sue the company in respect of a pre-incorporation contract, or a contract entered into before the comencement of business by the promoters or directors, though, of course, the promoters or directors will be personally liable, so far as possible, for the agreements.

No *ultra vires* contract can be entered upon "as a contract *ultra vires* the company is wholly void and cannot be enforced."(g) So, in entering into a contract either before or after the incorporation of the company, it must be seen whether it has been authorised by the objects stated in the Memorandum of Association. Pre-incorporation contracts are often referred to in the Memorandum or in the Articles and it is always safe to have such reference to avoid doubts about the power of the company to enter into such contracts. Pre-incorporation contracts can be made by the promoters of the company, and, after incorporation, the directors, managers, managing agents or secretary, duly empowered, may make contracts on behalf of the company. Forms Nos. 6 and 7 in Appendix B may give an idea as to the form of contract for taking over a going concern by a company.

The clause, when inserted in the Articles of Association, may be put in the following form :—

(f) *Kelner v Baxter*, L. R. 2 C. P 174, *Natal Land Co.*, (1904) A. C. 120. *North Sydney Investment Co*.(1809) A. C. 16 ch. D 125 *Vide* Palmer's Compnny Law,9th Edition.P 253. *Baraset etc Ry Co & District Board* I. L. R. (1944) 2Cal 101

(g) *Vidr* Palmer's Company Law,9th Edition.P 253

"The company shall, as speedily as possible after the incorporation of the company, enter into an agreement with A.-B. in the terms of the agreement referred to in the Memorandum of Association with such (if any) modifications or alterations as may be agreed upon whether before or after the execution thereof, and shall carry the same into effect and execute and obtain the execution of all the deeda and documents requisite for vesting in the company the properties thereby agreed to be sold and purchased. It is hereby expressly declared that the validity of the said agreement shall not be impeached on the ground that any of the vendors, as a promoter, director or otherwise stands in a fiduciary relation to the company and every person who shall at any time become a member of the company shall be deemed to approve and confirm the said agreemet."

The second portion of the above paragraph commencing from "it is hereby expressly" to "and confirm the said agreement," shall be required to be inserted when the vendor is a signatory to the Memorandum or a director of the company, for, in that case, apart from such an express provision, directors cannot, generally speaking benefit by contracts with the company (sec.91A).

The clause appointing managers, secretary or managing agents may also be made in the same terms *mutatis mutandis*.

Contracts for Purchase

Pre-incorporation contracts for the purchase of property by the company are dealt with extensively in Palmer's Company Precedents. There are three principal ways in which such contracts may be effected:—

I. An agreement may be made with the vendor of the one part, and a person acting as a trustee or an agent of the other part, by which the property is conveyed to the trustee or agent. Shortly after incorporation of the company, the directors may pass a resolution adopting the agreement, which adoption is effected by a supplemental agreemen with the trustee or agent. No effectual ratification is possible without this agreement inasmuch as the company was not in existence when the preliminary agreement was made. This plan is preferable in case it is thought advisable to have the vendor bound to sell on specified terms, before launching into expenses of forming a company. See Form 7 in Appendix B.

II. To avoid the supplemental agreement as indicated above, a draft agreement may be prepared as between the vendor and a person acting as agent for the intended company, which is however executed immediately after the incorporation of the company is effected. Subsequently, the directors may pass a resolution ratifying the agreement on behalf of the company and a seal may be affixed to a memorandum on or below the agreement. This would be an effective and valid contract, without the necessity of a supplementary agreement.

III. The third plan is to prepare a draft agreement between the vendor and the company itself and to include a clause in the Articles, declaring that the company shall forthwith execute the agreement or giving a general power to the directors to purchase the property on such terms and conditions as they think fit. After incorporation, the first meeting of the directors passes a resolution adopting the agreement which is thereafter executed by them on behalf of the company.

Objects.

This part of the Articles of Association is not so very important, as the Memorandum of Association deals elaborately with this matter. However, a clause is sometimes found in the Articles explaining the nature of business the company proposes to do.

Restrictions on Shareholders.

To avoid the troubles of interruption in the working of the company and to protect the business secrets of the company, a clause is sometimes incorporated in the Articles restricting the rights of shareholders in terms like the following: "No shareholder or other person shall be entitled to enter the property of the company or to inspect or examine the company's books of accounts without the permission of the directors of the company for the time being or to require the discovery of or any information respecting any detail of the company's trading or any matter which is or may be in the nature of a trade or business secret, which may relate to the conduct of the business of the company and which, in the opinion of the directors, will be inexpedient in the interest of the members of the company to communicate."

Restrictions on shareholder's and other person's right to enter into the property, business and to look into accounts of the company

It should be remembered however that the Act provides for the right of inspection by members of certain books of the company and they are also entitled to make extracts and take copies. Thus sec. 36 of the Act provides that the register of members and the index of members shall be open to such inspection subject to reasonable restrictions provided that *not less than two hours each day is allowed* for inspection. The members are entitled to make extracts from such register and to require a copy on payment of cost which the company is bound to supply within 10 days, a penalty for non-compliance being a fine, it may be a daily fine. So also under the new sec. 87 the register of directors, managers and managing agents required to be kept under that section, shall be open to inspection by members subject to similar restrictions.

Members statutory right of inspection

Under sec. 130 the books of account which are required to be kept under that section shall be open to *inspection by directors* during

business hours and for default in complying with this provision the managing agent or the directors responsible for default are liable to a fine. Care should be taken to see that the restrictions imposed by the articles do not contravene these sections.

Preliminary Expenses

Section 93 clause (i) of the Act provides that "the amount or the estimated amount of the preliminary expenses" should be given in the prospectus. The maximum amount which can be spent on this head is often declared by the Articles of Association also.

Amount that can be spent as preliminary expenses

What sum may be spent as preliminary expenses is to be settled by the subscribers or the directors. The law provides only that the estimated amount shall be declared to the public before they subscribe to the share capital of the company. There is nothing in the law as to what portion of the capital can be spent for preliminary expenses. In settling the preliminary expenses, however, it should be borne in mind that a *large sum* from the capital *should not be spent* on this head. Any extravagance in the matter of preliminary expenses is not only bad business, but it is also not likely to promote confidence in intending subscribers.

The expenses on this head can be adjusted from profits in several years. There is no legal bar against the declaration of dividend or the transfer of money to the reserve fund before the priliminary expenses have been adjusted out of the profits of the company. (i) It is not, however, prudent or desirable to declare any dividend until the expenses from the capital fund such as preliminary expenses, commission on sale of shares etc., have been adjusted.

What are preliminary expenses ?

By preliminary expenses are understood all expenses incurred for the starting of the company before the company is authorised under the law to incur those expenses. There can therefore be no hard and fast rule as to what items can be charged to the preliminary expenses and up to what time. Generally, the preliminary expenses account is kept open until the date of commencement of business, as, afterwards, the expenses can fairly be charged under heads of expenditure such as stationery, printing charges, advertisement etc., and there can hardly be any further items of preliminary expenses.

Items of preliminary expenses

The following are expenses which can be shown in the preliminary expenses account, but the list must not be considered exhaustive :—(j)

(i) In Form F in Schedule III to the Act, "Preliminary Expenses" have been shown as one of the heads on the assets side This indicates that such expenses do not go into the Profit and Loss a/c except such portion of it as is written off for the year

(j) Gore Brown's Handbook on Joint-Stock Companies, 31th Edition, page 157

(1) The cost of preparing, settling and printing the Memorandum and Articles of Association.

(2) The cost of registering the company and the various documents required by the Act, including stamp duties and fees.

(3) The cost of preparing, printing and circulating or advertising the propectus.

(4) The cost of preparation and execution of all preliminary agreements including the stamp duty thereon.

(5) The fee, if any, paid to brokers or estimators or specialists for allowing their names to be advertised on the prospectus and also for any work done by them in the preliminary stages of the company.

(6) Law costs in connection with the formation and registration of the company and the preparation and issue of the prospectus.

(7) The cost of preparation and printing of the debentures and the debenture trust deed, if any, including the stamp duty.

(8) The cost of preparing, printing and stamping letters of allotment and share certificates.

(9) The cost of preparing and making the original books and seal of the company.

(10) The travelling expenses and allowances, if any, for formation, floatation and registration of the company.

(11) Fees, if any, paid to promoters—this must be specially stated in the prospectus. (k)

The effect of a provision in the Articles of Association for the payment of preliminary expenses is only to authorise the directors to pay them, so that they may pay them without incurring any personal liability. But the promoters cannot recover any sum spent by them for the promotion of the company or any sum payable in respect of their services in the promotion unless they prove a contract on the part of the company to pay it. (1)

The *commission on sale of shares* should not be charged to the preliminary expenses account.

Commencement of Business.

The Statute, by sec. 103, provides some limitations as regards commencement of business. Any violation of those regulations involves heavy penalties ro the defaulters.

The section runs as follows —

(1) A company shall not commence any business or exercise any borrowing power unless :—

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less on the whole than the minimum subscription ; and

(k) See *post* under Prospectus in Chapter VI

(l) *Rotherham Alum & Co.*, 25 Ch. D 103 . See also *Englefield & Co'*, 8. C. D. 388 , *English & Colonial Produce Co* ,(1906) 3 Ch 435, in which an exception was made in favour of registation fees paid by promoters But this has been overruled by *National Mail Coach Co* (1908 2 Ch 515

(*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 or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash , and

( ) there has been filed with the Registrar a duly verified declaration by the secretary or one of the directors in the prescribed form, that the aforesaid conditions have been complied with, and

(*d*) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the Registrar a statement in lieu of prospectus

(2) The Registrar shall, on the filing of a duly verified declaration, in accordance with the provisions of this section, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled

Provided that, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the Registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him

(3) 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

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures

(5) 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 liable to a fine not exceeding five hundred rupees for every day during which the contravention continues.

(6) *Nothing in this section shall apply to a private company,* or to a company registered before the commencement of this Act which does not issue a prospectus inviting the public to subscribe for its shares, or in so far as its provisions relate to shares, to a company limited by guarantee and not having a share capital.

Minimum Subscription

The minimum subscription on which the company may proceed to the commencement of business *has to be fixed by the company with reference to the probable requirements of the company.* The *amendment of 1936* however provides as follows by sec. 101 sub sec. (2) :

"The matters for which provision for the raising of a minimum amount of share capital must be made by the directors are the following namely :—

(a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue ;

(b) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for or of his procuring or

agreeing to procure subscriptions for any shares in the company ;

(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters, and

(d) working capital."

So that the minimum subscription stated in the prospectus must now make provision for all these items.

Obligations before certificate for commencement of business is prayed for

In order to qualify for the commencement of business the following preliminaries must be satisfied :—

(*a*) At least the *minimum share capital* upon which the company may make the first allotment has been *subscribed* and *allotted* and the *application money paid in cash.* (m)

(*b*) The directors have *paid the application and the allotment money on their qualifying shares in cash.*

(*c*) A *declaration* to the effect that the *minimum shares* upon which the company may proceed to allotment have been *subscribed and paid in cash,* and that the *directors have paid* the application and the allotment *money on their qualifying shares* has been filed with the Registrar.

Forms Nos. XIII and XIV Appendix A are the forms required for such declaration.

A fee of Rs. 3/- is required to file this declaration.

Certificate for Commencement

When these preliminaries have been complied with, the Registrar grants *a formal certificate* to the effect that the company is entitled to commence business (sec. 10 sub-sec. 2). The Registrar in granting a certificate is merely doing a ministerial duty and is not entitled to refuse a certificate, provided that the formal requirements have been complied with. (n) This certificate is conclusive on the company's right to commence business and the Court cannot, after this, investigate the question as to whether the certificate was properly given. (o) But the certificate is not a necessary preliminary to commencement of business. So where all the conditions specified in the section have been satisfied, but no certificate has been actually issued, the company does not incur any liability by doing any business before the issue of the certificate though it is not safe to do so. In such a case the Court would only be entitled to go into the question as to whether the conditions have been fulfilled, as it could not have done if the certificate had been already issued.

Time limit for commencement of business

No certificate for commencement of business is allowed till the first return of allotment has been filed. (p) At any time after the *filing of the first allotment* but within *one year* from the date of incorporation, the permission for commencement of buisness may be prayed for. If the company

(m) See *post* under Allotment in Chapter VIII

(n) Palmer's Company Law, 9th Ed p 59.

(o) This is clearly the meaning of the word "conclusive" ; see *Hadleigh Castle,* (1900) 2 Ch 419 , *Arnot* v *United African Lands,* (1901) 1 Ch. 518.

(p) Sec 104 of the Act.

cannot commence business *within one year* from the date of incorporation, then it may be wound up by the Court on the prayer of any of its shareholders (*vide* sec. 162, sub-sec. iii).

Business not permitted before commencement of business

A company is not entitled to exercise borrowing power or to take up its regular business until the conditions for commencement of business have been satisfied. But apparently [*vide* sec. 104 sub-sec. (3)] the company can enter into contract, the effect of which would only be "provisional", that is, they would be treated, whether the condition is expressly stated or not, as being binding, only in the event of the company becoming entitled to commence business by obtaining the certificate. Such contracts bind no body if the company never obtains the certificate for the commencement of business.(q) On the granting of the certificate the liability of the company commences as from that date. This does not prevent a company from accepting share applications, which are as good as a contract when accepted, and to allot them or to pay commission on sale of such shares or to make the preliminary expenses. This cannot be regarded as commencing business under the section.

Penalty for commencing business without complying with condition

If a company commences business or exercises borrowing power before the condition for commencement of business has been satisfied the defaulting officer may be liable to a fine up to rupees five hundred per day. Such persons include directors, managers and other executive officers.(ql)

This section will not apply to a private company as such companies are entitled to commence business immediately after incorporation.

CHAPTER VI.

COMPANY PROMOTION-PROSPECTUS

Promoters.

Who is a promoter.

The word Promoter is not a term of art, but of business "usefully summing up in a single word a number of business operations familiar to the commercial world by which a company is generally brought into existence."(r)

Therefore "a person who originates a scheme for the formation of the company, has the Memorandum and the Articles prepared executed

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(q) *Otto Electrical Manufacturting Co* ,, (1906) 2 Ch. 390 , *Clinton's Case.* (1908) 2 Ch. 515.

(ql) *Benton* v' *Beavan* (1908) 2 Ch 240

(r) Bowen L. J. in *Whaley Bridge Co.* v. *Green*, 5 Q B. D. at p. 111. For other cases on the question as to what constitutes a promoter, see *Bagnall* v, *Carlton*, 6 Ch, D. 371 ; *Emma Silver Mining Co* v *Lewis* 4 C P D 396, *Emma Silver Mining Co.* ŕ *Grant*, 11 Ch D. 936 ; *Baker* v, *Plamtt*. 5 C. B 262 ; *Olympia Ld.* (1898) 2 Ch. 181 ; *Leeds & Hanley Theatres*, (1902)2 Ch. 809 , Palmer's Comp. Precedents, Vol. 1, p. 111 *et seq.*

and registered and finds the first directors, settles the terms of the preliminary contracts and prospectus (if any) and makes arrangements for advertising and circulating the prospectus and placing the capital, is a Promoter in the fullest sense." (s) A person, who has not done all these things but has done a substantial part of them *so that he may be regarded as having an effective hand in the formation or floatation* of a company, is also a Promoter.

Vendor.

A mere vendor of property to the company is not necessarily a Promoter, but he frequently becomes a Promoter by taking an active part in the formation of the company. So too a person who floats or assists in floating the company may become a promoter

Agents, servants etc

Generally speaking, a person, who acts as agent or servant of another and works as such to assist in the formation or flotation of the company, such as the solicitor, the printer, the advertising agent, the more broker or under-writer, or accountant, is not a Promoter But where such a person acts on condition of taking a share in the Promoter's remuneration or has some voice or control in the floating of the company (t) he becomes a Promoter The question as to whether a person is a Promoter or not is a question of fact to be determined with reference to the facts of each case. The test seems to be whether the person in question took an effective share in bringing the company into existence and moulding and shaping it.

Function of Promoter.

The Promoter is necessary for the purpose of bringing a company into existence. It is not necessary that he should do the work of promoting companies as a business nor that he should receive any remuneration as Promoter. There may be a Promoter *pro hac vice* who engages in the work only for the particular case, for enlarging his private business perhaps, or carrying into effect a scheme of his own. It is he who brings together the persons, who should agree to start the company and takes the preliminary steps to get the company incorporated. As the company or its directors or its secretary do not exist before the incorporation, there must be some person or persons who must do all the work leading up to the incorporation. Such a person is a Promoter. It is not necessary that he should be either a subscriber or even a shareholder of the company. The Promoters have to determine the line onwhich the company is to be formed and generally to get the Memorandum and the Articles prepared, to frame the prospectus, to select and procure the consent of the first directors, to arrange the preliminary contracts such as those for the acquisition of a business or property, for procuring the services of experts or manager etc., and, generally speaking, also to arrange for the sale of shares by getting it underwritten or otherwise.

Fiduciary position of Promoters.

The Promoters of a company stand *"in a fiduciary position towards the company.* They have in their hands the creation and moulding of the company, they have the power of defining how and when and under what supervision it shall start into existence as a trading corporation." (u) It has been said that he is accountable to the company just like an agent or a trustee. (v) But probably, as Lord Wrenbury points

(s) Palmer's Com Precedent, Vol. 1 p. 114.
(t) See *Lydney & Wigpool* v. *Bird*, 33 C.D. 85 ; Palmer's Com. Precdent, Vol. I. P. 115,
(u) Per Lord Cairns in *Erlanger* v. *New Sombrero*, 3 App. Case. 1236,
(v) *Lydney Co*, v. *Bird*, supra ; *Manu* v. *Edinburgh Tramways*, 1893 A.C. 69,

out, the case is a stronger one of fiduciary relationship than that one of the trustee or the agent, as the Promoters bring the company into existence, while the trustee or the agent is appointed by the author of the trust or the principal. So in any case the equitable principles applicable to persons standing in a fiduciary position would as a rule apply to a Promoter of companies.

A Promoter *can take remuneration* for his work, as the work is undoubtedly of an onerous character. The remuneration is usually settled, by the Promoters themselves and so long as it is expressed, no one could have any reasonable objection to it; because in that case they would have come to be shareholders of the company with their eyes open and a full knowledge of the conditions on which the Promoters have given their services. There are different ways in which the remuneration may be taken, such as (1) taking a Promoter's commission from the vendor of a business or property to the company, (2) selling to the company at a profit the property purchased by the Promoter before he became one, (3) a commission on the shares sold or on the nominal amount of the capital, (4) the grant of deferred shares or (5) an option to purchase a certain number of shares at par, or (6) a lump sum for the services.

Promoter's remuneration.

But being in a fiduciary position, a Promoter *cannot make any secret profit* at the expense of the company. If he does so, the company may recover the amount of such secret profit on the principle of a constructive trust. (w) He must *disclose to the company* whatever benefit he proposes to make on any transaction. But a *mere disclosure of a profit to the directors* is not enough, for the directors may very easily be creatures of the Promoters. Before Promoters can have the benefit by reason of a full disclosure to the directors, they must provide the company with an independent body of directors and the directors must have exercised an independent judgment upon the contract proposed for their acceptance. (x)

Secret profits and duty of disclosure.

A Promoter may sell to to the company at a profit the property which he has purchased before becoming a Promoter, but once he has become a promoter, he must give to the company the entire benefit of any subsequent contract for the acquisition of any property which the company subsequently buys. Even where he has purchased the property prior to his becoming a Promoter he cannot re-sell at a profit unless he had made a full disclosure of all material facts to the company. The position is not changed if the property or the beneficial interest in a contract which really belongs to the Promoter appears in the name of some nominee or tool of his And generally speaking the Promoter must use his position and power fairly and reasonably and must abstain from conduct which may be impugned as constituting undue influence or fraud.

The disclosure of the interest of the Promoter may be made by a statement in the prospectus or in the Memorandum or in the Articles of Association which ordinarily is sufficient notice to shareholders. But it is not always necessary to state the interest of Promoters in these documents (see post under *Prospectus*) and fraud or misrepresentation on the part of the Promoters would nullify the effect of the implied notice in the Prospectus,

Disclosure how made.

(w) See cases cited in Palmer's Com Precedent, Vol. I, p. 123.
(x) See *Gluckstein* v. *Barnes*, (1900) A. C. 240, *Erlanger* v. *New Sombrero Co.*, *supra*. 47

the Memorandum or the Articles of Association. The disclosure may also be made by giving notice of it to the Directors provided they constitute an independent executive but not otherwise.(y)

It is generally necessary only to disclose the fact that the Promoter is making a profit but not the amount of profit that he has made. There are cases, however in which it has been held that the amount of the profit should also be disclosed. There are undoubtedly cases in which the non-disclosure of amount of the profit made would make the disclosure altogether futile If a partial disclosure has been made, putting down the amount of profits at less than the actual profit it is as good as non-disclosure (z).

Sale of property by Promoter

Where a Promoter sells property to the company without disclosing that he is selling at a profit, the company can usually *rescind the contract* and repudiate the transaction altogether.(a)

This right is irrespective of whether the property was acquired before or after the vendor became Promoter. If the Promoter has acquired the property after he became Promoter, the company may *either rescind or, retaining the advantage of the contract, recover from the Promoter the profit made by him.*(b)

Where by reason of other equities having arisen it is impossible to place the parties to the contract in the position where they stood before it, rescission will not be allowed. In such cases, the company will be allowed *damages for misfeasance,* the amount of which will represent the difference between the price paid for the property and its actual value, or what the vendor paid for it himself, provided that the vendor had purchased after becoming a Promoter. (c)

Where a secret profit has been made by the Promoter, he is a constructive trustee for the company in respect of such profit and the amount of the profit may be recovered by the company.

Liability under sec. 100.

Apart from this liability under the general law, *sec. 100 of the Act,* places the Promoter on the same footing as a director in respect of his liability *for misrepresentations in the prospectus.* The remedy for such misrepresentation, where it gives rise to a liability, is not available under sec. 100 to the company, but *only to a person who subscribes* for any share, or debentures on the faith of representations made in the prospectus.

For the purposes of this section, a Promoter has been defined as "a person who was a party to the preparation of the prospectus or the portion thereof containing the misleading or 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 a company."

A solicitor, valuer or engineer engaged as such who makes a statement referred to in the Prospectus is not therefore liable. But

(y) Palmer's Com. Precedent, Vol. I, pp. 123-127.

(z) *Gluckstein* v, *Barnes,* supra.

(a) *Leeds Theatre,* (1902) 2 Ch 809 ; *Re Darbey,* (1911) I. K. B. 95.

(b) *Bank of London* v. *Tynell,* 10 H. L. C. 26 at p. 47.

(c) See Buckley's *Companies Act,* 10th Ed . pp 199-200.

such a person may constitute himself a Promoter by an active interest in the promotion of the company.

The nature of the liability under this section and the defences to a suit under it are the same as in the case of Directors.

It sometimes happens that promoting companies or syndicates are formed under the Companies Act with the object of promoting other companies. The persons, who would otherwise have been Promoters of an intended company, become members of the Syndicate and instead of individuals being Promoters, the Syndicate or the body corporate promotes the company and is usually wound up at the completion of promotion and the remuneration derived by the Syndicate is distributed to the members thereof. The chief point to note about this kind of promotion is that the individuality of the persons who are the real promoters is merged in the corporate existence and the individual members are to a large extent free from personal liability in relation to promotion, *e. g.* liability in connection with contracts made by the Syndicate. But it must be remembered that the directors of the promoting company are liable personally for any breach of trust or fraud committed by the Syndicate, *e. g.* taking secret profits, for there is no excuse for being a party to a criminal offence.

Following Palmer (Company Precedents, Part I, 13th Edition, p.143), a few words of caution may be suggested to intending Promoters :—

(1) Where it is considered desirable to purchase a property and then resell at a profit to a company, it would be prudent not to take any steps towards the promotion of the company or to procure directors or subscribers, *until a valid contract with the vendors has been completed and money paid* before the date of the prospectus, especially in view of the provisions of sections 93(f) (ff)and(g) and 94 of the Act.

(2) It would be *indiscreet to try to grasp too much profit*, which would in all probability bring about the failure of the enterprise and consequent enquiries about the *bona fides* of the promoters.

(3) It is advisable to provide the company with *an independent board of directors* and to be careful that *due disclosure* is made to them and to the company. By the term "independent director" it is meant to convey that the directors should not be interested in the promotion *e. g.* by receiving vendor's shares or being qualified by the Promoters.

(4) Where there is or may be any doubt as to the independence of the executive, full disclosure ought to be made of all the variety of matters, which *prima facie* should be disclosed to an independent executive.

(5) The Memorandum and the Articles of Association should contain all requisite *provisions for the protection of promoters*, without giving occasion for undue criticisms of subscribers.

(6) One ought to be careful that the *prospectus* or the statement in lieu of prospectus is *fairly and honestly framed.*

(7) Particular care should be taken to comply with sections 93 and 94 of the Act.

(8) In view of the restrictive clauses in section 105 regarding the

payment of commissions and discounts it is advisable for a promoter not to be a party to the payment out of the purchase money of any commission for subscribing or procuring the subscription of shares.

PROSPECTUS

After a company which is not a private company is registered it issues a prospectus inviting the public to subscribe to its shares. If no invitation to the public to subscribe to its shares is made a statement in lieu of the prospectus has to be filed with the Registrar before allotment [sec. 98 (1) and sec. 102].

The law attaches considerable importance to the prospectus as it is the basis of the contract between the company and shareholders who buy shares in response to it. The provisions of the law with regard to the prospectus proceed on the principle that the company must place by means of its prospectus *as full information as possible before intending subscribers* on matters which are relevant to enable them to form a judgment about the prospects of the company.(d) Directors are personally responsible for misrepresentation in the prospectus. The company also may be sued for fraudulent misrepresentation in the prospectus. A shareholder has the option of suing for damages and cancelling the purchase of share or both.

Fraudulent misrepresentation.

Drawing up a prospectus is a delicate task involving great skill and care. It is designed for the purpose of inviting persons to buy shares in the company and ought to be so drawn up as to present the prospect of the company in as attractive a form as possible. At the same time *nothing should be said* in it which may be *untrue* in fact or which the directors issuing it *do not believe to be true.* A misrepresentation in the prospectus made with intent to deceive would amount to fraud, for which any person who purchases shares on the basis of it may sue for damages. The contract for purchase of shares can also be avoided for misrepresentation in material particulars whether fraudulent or otherwise. And, under sec. 100, directors, promoters and other persons responsible for the issue of prospectus are liable to be sued in damages (See *infra* pp. 62*et seq.*].

Why Prospectus is required to be issued

Effect of misrepresentation.

By sec. 2 sub-sec. 14 of the Statute, "a prospectus means any *prospectus, notice, circular, advertisement,* or other *invitation, offering to the public for subscription or purchase* any shares or debentures of the company ;" but under the amendment of 1936, it does "not include any trade advertisement which shows on the face of it that a formal prospectus has been prepared and filed." The essence of a prospectus is an invitation to subscribers to the shares of the company. Where a document is not an invitation to subscribe shares, it does not become a prospectus. On the other hand, a private letter inviting shares is not a prospectus. It is clear that unless a document is a general invitation to the public. (although

Definition of prospectus

(d) See *per* Kindersley. V.C., in *New Brunswick Co. v, Muggeridge* 1 Dr. & Sm 363, 381.

it may have been addressed to an individual) it will not be a prospectus. In some cases in England it has been held that a circular offering shares to existing shareholders is not an invitation to the public, and therefore not a prospectus.(e) The authority of these cases was some what shaken by some of the judgments of the House of Lords in the recent case of *Nash* v. *Lynd.*(f) But under the present law which by the new sec. 105C requires new shares issued by the Directors to be offered to existing shareholders by a specific notice prescribed there. such a notice could not be deemed to be an invitation to the public and thus not a prospecuts as has been expressly declared by sec.93(3).

In a Calcutta case an advertisement notifying that shares are "available for sale according to the terms of the prospectus of the company" and specifying the amounts payable on application, allotment and on calls was held to be a prospectus because it was an invitation to subscribe for share, in spite of the reference to a prospectus on the basis of which shares were issued.(g) This decision goes further than any other decided cases and is not good law after the amendment of sec 2 (14) by the Act of 1939.

Section 98A in the amended Act gives an important extension to the above description of a prospectus and includes in its definition any document offering shares or debentures for sale ostensibly issued, not by the company, but by a holder of such shares or debentures.

Sec. 98A.

This section is directed against the evasion of the stringent provisions of the law regarding prospectus by ostensibly allotting or agreeing to allot shares to a specific private person, (which could be done without a prospectus) so that the allottee may thereafter sell those shares to the public immediately afterwards. In such a case, as the original allotment by the company was not made by an offer to the public, sections 92 to 98 would not apply and as the original allottee who later sells to the public is not the company or its directors, he too is not hit by these sections. Sec 98A has been enacted to meet such cases.

Its chief provision is that where shares and debentures are actually offered for sale to the public, the requirements of the law regarding a prospectus should apply to such offers for sale. Any document by which such shares are offered to the public shall be deemed to be a prospectus and be subject to all rules regarding prospectuses, *though such document is issued not by the company but by an ostensible allotee.*

In order to make this section applicable the shares or debentures ostensively allotted or agreed to be allotted to particular persons and not offered to the public, must have been allotted by the company *with a view to these shares or debentures or any of them being offered for sale to the public.* In the absence of any such *intention on the part of the company* of ultimate sale to the public, the section would not apply.

(e) *Burrows* v *Matabele & C. Co.* (1901) 2 Ch. D. 27 ; *Booth* v. *New Afrikander & Co.*, (1903) 1 Ch. 295.

(f) (1903) A.C. 158 on appeal from (1928) 2 K.B. 93 For other cases on the subject see *Sherwell* v. *Combined Syndicate,* (1907) W.N. 110 ; *South of England &c.* 1 Ch. 573 ; see Buckley, P. 181

(g) *Pramatha* v, *Kali Kumar,* 52 Cal. 440 ; 29 C.W.N. 523.

But,
(a) where an offer of the shares or debentures for sale to the public is made *within six months* after the allotment or agreement to allot, or

(b) at the date when the shares or debentures are offered to the public (even after six months) *the full amount of the consideration to be received by the company has not been so received*, these circumstances would raise a presumption, unless rebutted by evidence, that the shares or debentures were allotted or agreed to be allotted with a view to their sale to the public.

Thus if A. Co., allots or enters into an agreement to allot all its issued shares to X on the 1st January and on the 1st June of the same year X offers the shares for sale to the public by an advertisement, it will be presumed that the allotment or agreement to allot shares to X was made by the company *with a view to sale to the public*, even though X may have paid the full consideration for the shares to the company before offering them to the public. So too if the shares are offered to the public in August of the same year, but even then the full consideration for the shares has not been paid to A. Co. by X, the same presumption would arise :

Unless this presumption is rebutted the advertisement by X to sell the shares to the public would be deemed to be a prospectus and be subject to all requirements of sec. 93 to 97 and attract the liability under section 100, with *the further requirement* that such advertisement must state in addition to the particulars under sec. 93 the following particulars.

(a) the net amount of the consideration received or to be received by the company in respect of the share or debentures ;
(b) the place and the time at which the contract for allotment may be examined.

It will be noticed that ordinarily a person holding shares in a company may, if he so chooses offer his holding for sale to the public by an advertisement. Such an advertisement would not be a prospectus as it is not issued by the company. But where the person selling has acquired the shares in the circumstances specified in sec. 98 A, his advertisement would be deemed to be a prospectus and he would be liable to the penalty under section 97 as if he was "a person named in a prospectus as a director of the company."

The reason for this rule is that in such a case it is really the company selling the shares to the public and the ostensible seller is merely an intermediary and the allotment to him is a subterfuge to avoid a prospectus.

Again under section 99, a company is precluded from varying the terms of any contract referred to in a Prospectus or a Statement in lieu of Prospectus except with the sanction of a general meeting.

Any document answering the above description, which may be issued to the public with the intention of inviting subscription of shares or debentures, is required to be *filed with the Registrar* for

Filing prospectus.

registration *on or before the date of its publication* under provisions of sec. 92 sub-sec. 2. The date of the publication shall be deemed to be the date that appears on the prospectus. If a prospectus is issued without a copy thereof being so filed, the company and every officer who is knowingly a party to the issue shall be liable to a fine not exceeding Rs. 50/- for every day from the date of the issue of the prospectus until a copy thereof is so filed. Very often, a notice or an advertisement in the nature of a prospectus is found in the advertisement columns of newspapers, copy of which is not generally filed with the Registrar under the provisions of the law, bearing a foot-note to the effect: "this is not an advertisement to the public for shares which are issued only on the basis of the prospectus of the company." This does not dispense with the necessity of issuing a separate prospectus. Such advertisements would now clearly amount to "trade advertisement" referred to in the new sec. 2 (14) which would not be regarded as prospectus.

Newspaper advertisements.

When a prospectus including any document coming under the above definition is intended to be published, it shall be (*a*) *dated*, (*b*) *signed* by every person who is named therein a *director* or proposed director of the company, (*c*) and *on the face of it shall state that* "a copy of this prospectus has been *filed with the Registrar* for registration", and (*d*) shall contain the specific requirements as to the particulars of the prospectus provided by sec. 93, sub-sec. (1). (See sec. 92).

Requisites of a prospectus

Section 93 requires the following *particulars to be stated*

(a) The contents of the memorandum and the particulars of the signatories including the number of shares, taken by them, the number of founders, or deferred shares, the nature of the extent and interest of such share-holders in property and profits of the company and also the number of redeemable preference shares intended to be issued with the date and method of redemption.

(b) The provisions of the articles with regard to qualification of directors as well as to the remuneration of the directors.

(c) Names, description, and addresses of directors or proposed directors and of managers or of proposed managers and managing agents or proposed managing agents and any provision in the articles or in any contract as to the appointment of managers or managing agents and the remuneration payable to them.

(d) The minimum subscription for allotment and the amount payable on application and allotment and, in the case of subsequent offer of shares, the amount offered for subscrip-

tion on each previous allotment within two preceding years and the amount actually allotted and paid on shares so allotted.

(e) The number and amount of shares and debentures issued or agreed to be issued within two preceding years otherwise than for cash and further particulars in respect of shares or debentures partly paid in cash.

(ee) Where shares and debentures are under-written the names of under-writers and the opinion of directors that the resources of the underwriters are sufficient to discharge their underwriting obligations.

(f) Names and addresses of vendors of any property purchased or proposed to be purchased which is to be paid for wholly or partly out of the proceeds of the issue offered by the prospectus, and some other particulars with regard to vendors.

(ff) Where property purchased or proposed to be purchased has been sold within two years before the issue of prospectus the price paid by the purchaser at such sale and, where the property purchased is a business, the profits from such business during each of the three years preceding the issue of the prospectus or, if it has been in existence for less than three years, of the whole time. A balance-sheet of the business concerned, made up to a date not more than 90 days before the issue of the prospectus should be appended.

(g) The amount paid or payable as purchase money in cash, shares or debentures specifying the amount paid for goodwill.

(h) Amount paid within two preceding years as commission for subscription to shares or as discount in respect of the shares issued showing separately the amount so paid to managing agent.

(i) The amount or estimate of amount of the preliminary expenses.

(k) Amount paid to any promoter within two years and the consideration for such payment.

(l) The dates of and parties to every material contract and reasonable time and place at which it can be inspected, excluding ordinary business contract or any contract other than a contract appointing or fixing the remuneration of a managing director or managing agent entered into two years before the date of the issue of the prospectus.

(m) The names and addresses of auditors.

(n) Full particulars of the nature and extent of the interest of every director in the promotion of the company or any property to be acquired by the company and similar particulars

regarding a firm where the director happens to be a partner of the firm which has such interest.

(o) Where the company has shares of more than one class, rights of voting and rights in respect of capital and dividends attached to each class of shares.

(p) Where articles impose restrictions on members in respect of right to attend, speak or vote at meetings or to transfer shares or restrictions upon the directors of the company in respect of the power of the management, the nature and extent of those interests.

(q) If any part of the sums required for purposes included in section 101 (2) (*i. e.* minimum subscription) is to be provided out of sources other than share capital, particulars of such amount and the sources thereof

Where the prospectus is issued by a company *which has been carrying on business prior to the issue thereof* the new sub-section (1A) requires the prospectus also to set out the following reports :-

(a) A *report by the auditors* of the company *with regard to profits* of the company in each of the *three years* preceding the issue and details of the financial position of the company as set out in that sub-section.

(b) If any part of the profits of the issue of shares or debentures is to be applied partly or wholly *for the purchase of a business, a report* by a registered accountant *upon the profits of the business* to be acquired for each of the three preceding years.

Sub-section (1B) states further that the details with regard to the report of any business to be purchased must be such as clearly to show the trading results and all charges and expenses incidental thereto.

When prospectus required

It will be noticed that a prospectus may be issued not only at the first commencement of the company or as an invitation *for the first issue* of shares but also *at any subsequent time* and it must be issued where any new shares not previously issued are issued. In either case the prospectus must show all the particulars provided in section 93 with the exception, in the case of a subsequent issue that the contents of the memorandum and the qualification, remuneration and interest of directors, the names descriptions and addresses of directors or proposed directors or of manager or proposed managers and the preliminary expenses are not required to be stated. [Vide Sub-section (4).] But where a new prospectus is issued upon the conversion of a private company into a public company every such particular must be stated.

Object of prospectus

The object of the statement of these particulars is that the full material particulars of the position of a company should be placed before intending subscribers before they subscribe to the shares of the company. The prospectus is the basis upon which the contract of the share-holders or debenture-holders is

founded and it really forms a material part of the contract and as, would be seen later, any material misrepresentation in the prospectus might make the contract voidable as also lead to other serious consequences. The Act, therefore, insists upon as full a disclosure of the position of the company as possible by the prospectus on the basis of which members of the public are invited to subscribe to the shares or debentures issued by the prospectus.

A prospectus may generally be framed under following heads :—

Principles for constructing a prospectus

(1) The *date of filing and a declaration* at the top of the prospectus under sec. 92, sub-sec. 4 that "a copy of this prospectus has been filed for registration with the Registrar of Joint Stock Companies."

(2) The *name* of the Company.

(3) The nominal *share capital* and in case of subsequent prospectuses the subscribed and the paid up capital also with particulars.

(4) The *amount payable on application* and *allotment* and on subsequent *calls* with the intervals in the payment thereof. A note to the effect, if any *admission fee* is required to be paid.

(5) The names, occupations and addresses of the *Directors* and other officers such as *Secretaries*, *Managers*, or *Managing Agents*, if any.

(6) The names and addresses of the *Auditors*, if any.

(7) The names and addresses of the company's *banker* or *expert*, if desired to be advertised.

(8) The situation of the *registered office*.

(9) A concise *narrative* of the circumstances in which the company is formed with the aims and objects and its *prospects of success*.

(10) Other *particulars as required by clause (d) and (e)* sec. 93, sub.sec. 1 and also the place where the application forms can be obtained and the Memorandum and the Articles or the contracts can be inspected.

(11) A copy of the *Memorandum* of Association of the company. The copy of the Memorandum may be omitted in the prospectus published as an advertisement in a newspaper (sec. 93 sub-sec, 2).

A form for a Prospectus is given in Form No. 56 in App. B.

Every material contract is required to be disclosed under cl. (1) of sub-sec. (1), sec. 93. The proviso, however, excludes all contracts entered into in the ordinary course of business to be carried on by the company and all contracts made more than two years before the issue of the Prospectus other than a contract appointing or fixing the remuneration of a managing director or a managing agent. *Material* contract is one which an intending investor ought to have an opportunity of considering. What is material and what is not depends upon the nature of the case but it is immaterial that the Director did not himself

consider it material. (i).

A verbal contract as well as a written contract has to be disclosed if it is material and executory contracts are on the same footing as executed contracts.

It is of importance to note that the prospectus is a statement by the Directors of the actual state of facts and of the prospects of the company. It is essential therefore that the Prospectus should have been *adopted by a resolution of Directors,* and no statement should appear in the Prospectus unless it is founded upon the Memorandum and the Articles or is approved by a resolution of the Directors.

Importance attached to the filing of Prospectus

The filing of a Prospectus is indispensable for the following purposes :—(1) to make the first allotment of shares, and such allotment is required to be made within 180 days from the date of the issue of the Prospectus (sec. 101, sub-sec. 4) ; (2) to commence business,—a statement in lieu of Prospectus is required to be filed when no Prospectus is issued, [*vide* clause (d), sub-sec. I of sec. 103] ; (3) to offer the shares or debentures to the public for subscription.

A Prospectus is required to be very carefully framed as the Registrar will not register a defective Prospectus and, if it is registered, the Directors will be held liable for mis-statements in the Prospectus under the provisions of sec. 100. (j)

Further under the new section 97 subsection (1) if a prospectus is issued which does not comply with the provisions of section 93 every person who is knowingly responsible for the issue of such prospectus would be liable to a daily fine up to Rs. 50/- until a regular prospectus is filed. It is provided however that a director or other person would not be liable if he proves that (a) as regards any matter not disclosed he was not cognisant thereof or (b) the non-compliance arose from honest mistake of facts on his part or (c) such non-compliance was immaterial or such as should reasonably be excused.

On the other hand formal compliance with clause (n) of section 93 disclosing full particulars of the interest of directors is required. No director is to be liable unless it is proved that he had knowledge of the matters not disclosed.

The difference between the two classes lies in the burden of proof. In all other cases the burden would be upon the person charged to show that he comes under one of the exceptions while for non-disclosure of interest the burden of proving knowledge lies upon the prosecution or upon the plaintiff as the case may be.

Effect of Misrepresentation in the Prospectus

For any misstatemtnt in the Prospectus, the allottee may be entitled to the right to *rescind* the contract and repudiate the allotment

(i *Brooms* v. *Speak,* (1903) 1 Ch. 386 ; *Shepherd* v. *Broome,* (1904) A. C. 342.
) See below.

Effect of mis-statement in Prospectus

and will also have the right to *sue for damages* or compensation those who have issued the Prospectus and others who are by Statute or common law responsible (sec. 100),. The Directors and the other persons may also be held responsible under the provisions of sec, 282 for any wilfully false or erroneous statement in the Prospectus ; but relief may be granted under the provisions of sec. 281. As regards individual responsibility of persons interested in the issue of any Prospectus, sections 97, 98A and 100 should be carefully perused.

An important head of liability of Promoters and Directors has been created by sec. 100 which reproduces the provisions of the Director's Liability Acc of 1890. By this section

Liability under sec. 100.

Directors, Promoters and every person who has authorised the issue of a prospectus is made liable to pay compensation to all *persons who subscribed for shares, or debentures on the faith of the Prospectus*, for any misleading or untrue statement.

As Cozens-Hardy, L. J.. observes in *McConnell* v. *Wright*, (1903), 1 Ch. 558, this section was enacted with the express purpose of getting rid of the decision in *Derry* v. *Peek*, 14 A. C. 337, in which the House of Lords held Directors not liable for mis-statements in the Prospectus in the absence of fraud. It establishes a *new and a more effective remedy* in favour of persons subscribing on the faith of the Prospectus in respect of mis-statements therein. *It does not take away or affect any older remedy of such person.* Where *fraud* can be established against the Directors an *action for fraud will always lie*, But even where no fraud is established this section gives a right to the subscriber to damages for mis-representation in the Prospectus. It does not take away or affect any *right of rescission* of the contract of membership, or for damages which a subscriber may have against the company or the Directors under the general law.

The section gives a new remedy in addition to common law remidies.

The benefit of this section applies only to *persons who subscribe* for any shares or debentures *on the faith of the Prospectus, i.e., apply for and accept allotment from the company*, and it does not apply to a person, who purchases the shares from persons other than the company.(k) And it applies *only where the application for share is made on the basis of the Prospectus.* It does not apply therefore where no Prospectus has been issued, or an application has been made before the issue of Prospectus. The following persons are liable under this section :—

Who can sue

Persons liable

(1) Every Director.

(2) Every person whose name is given in the Prospectus as (*a*) a Director, or, (*b*) as having agreed to become a Director, provided that such person has authorised his name to be so published.

(k) Palmer's Com. Precedent, Vol. I.p. 285 ; *Rose* v. *Estates Investment Co.*, 3 Ch App. 682 , *Henderson* v. *Lacon*, 5 Eq. 258 ; *Arnesion* v. *Smith* , 41 C. D. 348.

(3) Every Promoter.

(4) Every person who has authorised the issue of a Prospectus.

Essentials of the liability.

The last clause does not include bankers, brokers, accountants, engineers etc., who have merely consented to their name appearing as such in the Prospectus. The section itself makes a distinction between authorising the issue of a Prospectus and authorising the use of one's name in it. A Director whose name appears on the Prospectus is liable only if he authorised the use of his name as Director. Any other person is liable only if he authorised the issue of the Prospectus (l)

This section gives a right to a person subscribing to shares or debentures on the basis of statements made in the Prospectus *to claim damages personally* against Directors or other persons who are responsible, for any *loss suffered by him by reason of any false or misleading statements appearing therein.*

The right is *independent of any right* the subscriber may have *against the company.* And it is only available :—

(a) if there is *an untrue* or *misleading* statement in the Prospectus,

(b) if the subscriber has subscribed on *the faith of the Prospectus.*

(c) if he has suffered *loss,*

(d) and the loss was suffered *by reason of the untrue statement.*

The plaintiff in a suit under these sections must prove these facts as well as the fact that the person sued answers the description of *persons who are made liable under this section.* (m)

Nature of the statement.

The statement in respect of which this liability arises must be one which is made

(i) *in the Prospectus* or,

(ii) in any report or memorandum, (n)

(a) appearing *on the face* of the Prospectus or,

(b) by reference *incorporated* in the Prospectus or,

(c) *issued* with the Prospectus.

No other statement which may have induced a subscriber to subscribe can entitle him to relief under this section.

(l) Palmer's Comp Precedent, Vol. I, p. 203.

(m) Palmer's Comp. Precedents, Vol I, p. 206. With regard to the last item see *McConnell* v *Wright.* (1903) 1 Ch 546 ; *Macleay* v. *Tait,* (1806) A.C 24 The corresponding section of the English Act of 1908 referred only to 'untrue statements", but sec 100 of this refers to 'misleading or untrue statements", thus embodying the decision in *Greenwood* v. *Leather Shod Wheel Co ,* (1904), 1 Ch. 421

(n) *Re Reese River Silver Mining Co.,* 2 Ch. App. 611 ; *Attorney General* v *Ray,* 9 Ch. App 402 n. ; *British Burma Lead Co.,* 56 L.J. 815 ; *Angus* v *Clifford,* (1891) 2Ch 449. As regards the liability of Experts for false or negligent reports, see *Cann* v. *Wilson* 39 C.D. 39 ; *George* v *Skivinton,* L.R. 5 Ex, I.

The statement may be with regard to a fact or a belief. Thus the Prospectus may state as a fact that the property to be acquired by the company has a gold mine in it, or it may state that the Directors or the Promoters believe that there is a rich vein of gold in the property Both these statements might be untrue statements under the section. There is an important difference, however, between these two classes of statements Where the statement is of a fact the plaintiff has only to prove that the fact is not as stated in the Prospectus, and the defendant would then be liable unless he can bring his case under one of the various saving clauses of sub-sec 1 If, on the contrary, the statement is one of belief, anticipation or hope of the Directors the plaintiff in order to establish his case must prove that the Directors had no such belief in fact. No doubt, if reckless opinions are given, the Court will give relief if it is proved that there were no reasonable grounds of such belief But the burden of establishing the absence of belief or the absence of any reasonable ground of belief is upon the plaintiff.

This section creates a special liability of Directors and Promoters in respect of statements in the Prospectus The remedy provided by the section is damages, which are assessed on the same principle as damages in an action of deceit i. e., the plaintiff is entitled to recover only the difference between the real value of the shares and the amount paid on them (o)

As Collins, M. R., observes "this action was not for a breach of contract and no damages are allowable for loss of prospective gains" In the same case it was held that the remedy is not taken away if as a matter of fact the mis-statement complained of in the Prospectus was subsequently made good, it is enough that the statement was untrue at the date of the contract (p)

Reliefs open to innocent Directors

An innocent person named as Director is protected in two ways,—(1) he may make an effective answer by *showing one of the facts referred to in the proviso*, and (2) even where such defences are not open to him, he may still recover from other Directors the damages he has had to pay and in any case *the costs of defending a suit* under this section against him under sub-section 3.

Defences to a suit for damages under sec. 100

Defence in the suit.

The provisos establish two classes of defence which could be established by the defendants. Assuming that the untrue or misleading character of the statement has been satisfactorily proved by the plaintiff, the defendant may either (1) establish *bona fide and well-grounded belief in its truth*, or, (2) prove that *he was not responsible* for the statement and that he took sufficient care to announce the fact to the public.

The first defence is established by proving different things according as the statement is made (a) on the authority of the propounders of the prospectus themselves, (b) on the authority of experts, or (c) on the authority of public official documents.

In the first case, *i.e.*, where the statement in the prospectus *does not purport to be made on the authority of an expert* or of an official

(o) *Cockell* v. *Keswick*, (1902) 2 Ch 468; *McConnell* v. *Wright*, (1903) 1 Ch. 554; *Peek* v. *Derry*, 37 C.D 541

(p) *Broome* v. *Speak*, (1903) 1 Ch. 586; (1904) A.C. 342: *Arnison* v. *Smith*, 41 C D. 348 at p. 363; see *Peek* v *Derry*, 37 C.D. 541.

Bona fide belief in truth.

document, the Directors, Promoters, etc. who are responsible under this section must be taken to have made the statement on their own knowledge or belief. In such a case, therefore, the defendant must prove (a) that he had *reasonable grounds* for believing, and (b) that *he did actually believe* up to the time when the shares or debentures in question were allotted, *that the statement* was either *true*, or it *fairly represented the facts*.

Reasonableness of belief

The grounds of such belief must in the first place be *reasonable* and in the second place there must be *actual belief*.

As to whether the belief of the Director or Promoter was founded on reasonable grounds, it is for the Court to decide in each case whether the grounds were reasonable. The defendant has to prove the grounds of his belief (q) and it is for the Court to decide whether they were reasonable. Uncorroborated statements of a Vendor or Promoter where the statement is easily capable of verification do *not by themselves afford reasonable grounds of belief*. (r)

The untrue statement complained of must be material but the fact that a Director erroneously considered a statement to be immaterial would be no protection if as a matter of fact the statement was material. (s)

As regards the questions which the Court should consider in deciding whether there were reasonable grounds for believing a statement to be true, see Palmer's Com. Precedents, Vol. I. p. 210.

Where the prospectus states a fact as founded on the *opinion of an expert*, it is not necessary for the Director to show that he actually

Opinion of expert.

believed it to be true or had reasonable grounds for such belief. It is enough for him to show that the statement, though false or misleading, *fairly represented the opinion of the expert* or was a *correct and fair copy* of, or extract from the expert's report. Even a quotation from the expert's report

Fair representation.

may not be a fair representation of the report, if, for instance, the quotation omits important and relevant qualifications or limitations. Even if a statement is shown to be fair representation of or copy of the opinion of an expert if it is proved by the plaintiff that the person on whose authority the statement rested was not a qualified expert and that the defendant had no reasonable grounds for believing him to be a person competent to give expert opinion on the matter, it would be no protection to the Directors and they would be liable for any misrepresentation on the basis of such expert opinion. But if the alleged expert turns out to be no expert, the Director &c, may yet be free from liability if he shows that he had reasonable grounds for believing him to be a competent expert and he did so believe.

In the case of statements made on the authority of *public official report* it is similary enough to show that the statement

Official reports

in question was a *fiar representation* of the official report.

The primary fact in the second class of defences under the proviso

(q) *Aiman* v. *Oppirt*, (1901) K. B. 576.

(r) *Adams* v. *Thrift*, (1915) 1 Ch. 557 ; (1916) 2 Ch. 21.

(s) *Shephard* v. *Broome*, (1904) A. C. 342.

Non-responsibility. is that as a matter of fact the person named as Director was *not really responsible* for the untrue statement. In addition to this he must show that *he took reasonable steps to dissociate himself publicly* from the statement. Thus he may show,

(i) that (a) *he withdrew his consent* to act as Director *before the Prospectus was issued* and further (b) that the Prospectus was *issued without his authority or consent.* Both these branches of the defence must be established. If he withdrew his consent before the issue of the Prospectus, but, nevertheless, before such withdrawal he had authorised the issue of the Prospectus, this defence is not open to him ,

(ii) that though he had consented to act as Director, (a) the Prospectus *was issued without his knowledge or consent* and further (b) that on becoming aware of its issue he *forthwith gave reasonable public notice* that it was issued without his knowledge or consent, or

(iii) that after the issue of the Prospectus and before allotment he, on becoming aware of the untrue statement (a) *withdrew his consent* and (b) gave *reasonable public notice* of the *withdrawal* and the *reason therefor.*

Unless any of these defences is established the Director would be liable under this section, but only *to the extent of the* loss which the plaintiff can establish to have been caused to him by reason of the untrue or misleading statement.

Pre-existing companies. This liability arises only in respect of Prospectus, issued by a company under this Act. With regard to *companies already existing* when the Act of 1913 was passed the Director is not liable merely because he was a Director at the date of the issue of the Prospectus, even where the Prospectus was issued after the passing of the present Act. Before such a Director can be made liable for damages in respect of any untrue statement in the prospectus, *it must be established by the plaintiff that he authorised the issue of the Prospectus or had adopted or ratified it.* The main difference in the case of the two classes of companies is chiefly one of burden of proof. In the case of companies incorporated under the present Act the onus is upon the director to show that he did not authorise the issue of the Prospectus. In the case of older companies the burden is upon the the Plaintiff to show that the Director authorised the issue of or ratified or adopted the Prospectus.

Absence of authority. Where a person's name appears in the Prospectus as a Director or as having consented to become a Director if he

(a) *has not consented* to act as Director, or

(b) *has withdrawn such consent* before the issue of the Prospectus and has not authorised the issue thereof, he may nevertheless be liable under this section unless he has taken the further steps to *notify*

the fact to the public under the proviso to sub-sec. (*1*).

Must be notified

In such a case, however, he is entitled to *recover the amount of the damages* he has been made liable for as well as all costs and expenses *from all the other Directors* of the company *except such as fall under the same category* as himself. Even where he has successfully established his defence to an action under this section against him, he is entitled to recover *all his costs and expenses* in defending any suit or legal proceeding brought against him.

Contribution between Directors.

Director's right to contribution

The liability of Directors and others under this section is essentially one in the nature of a tort. All such persons are therefore *jointly and severally liable* to the subscriber who has been misled. The plaintiff need not therefore sue all the persons liable but may sue *any one or more* of them at his choice. The general principle of the law of torts is that there cannot be any contribution as between joint tort-feasors. Sub-section (4), however, establishes an exception to the rule in the case of liabilities under this section and provides that where any person becomes liable to pay any compensation under this section *he can recover a rateable portion of the amount by a suit against other persons* who, if sued, would have been liable for the same payment, *i. e.*, all Directors, Promoters etc., who cannot take the pleas mentioned in the proviso to sub-sec. (1).

This right is subject to the limitation that no such suit for contribution lies if the person who has become liable has been *guilty of fraudulent misrepresentation* while the others sought to be sued in contribution *have not been so guilty.*

This sub-section applies only when a person becomes liable to pay damages in *a suit under sec. 100.* Where damages are recovered against a Director by a suit in the nature of *an action of deceit* under the general law, and not by a suit under this section, for fraudulent misrepresentation in the Prospectus, *this sub-section would not apply;* and a Director against whom a decree for damages has been passed *cannot sue his co-directors* who have been equally guilty, on the principle that there can be no contribution as between joint tort-feasors.

The right of action under the section being of a tortious character, the heirs of a deceased Director are not liable unless they have benefitted by the act of the Director complained of.(t)

Liability of heirs.

Need for caution

Directors have a heavy responsibility with regard to the Prospectus and they should take very great care to see not only that they act honestly and prudently but also that no statement is made in the Prospectus which may bring

Precaution necessary in respect of Prospectus.

(t) *Geipel* v. *Peach*, (1917) 2 Ch. 108.

them within the mischief of this section. They must see in the first place that no statement is made unless each Director has reasonable grounds to believe that the statement is true and, in respect of everything purporting to be stated on the authority of an expert or an official statement, they should carefully compare the Prospectus with the authorities referred to, to see that the Prospectus gives a correct and fair representation of the document relied upon. And where the opinion of an expert is relied upon they must carefully enquire about the credentials of the expert and be satisfied that he is one whom a prudent businessman would rely upon. If a Prospectus has been issued without the authority of any particular Director, he must take prompt steps to publish the fact and if he discovers an untrue or misleading statement in a Prospectus issued with his authority he must immediately give public notice of his withdrawal of authority and the reason for such withdrawal. For further precautions to be taken by a Director, see Palmer's Comp. Precedent, Vol. 1, p. 213.

When a company does not issue a Prospectus it cannot make its first allotment of shares or apply for the permission of commencement of business without making and filing with the Registrar a statement in lieu of Prospectus under the provisions of sec. 93. The statement in lieu of Prospectus should be made in form I in Schedule II of the Act, as shown in Appendix A.

A company may issue *any number* of Prospectuses though not more than one at a time, each of which must be duly filed, and in all subsequent issues, it is required to mention the number of shares offered for subscription on each previous allotment made within the two preceding years and the amount actually allotted and paid on such shares, [*vide* clause (d) of sub-sec. 1 of sec. 93] as also the reports of auditors and qualified accountants under the new sub-section 1 A of sec. 93.

Right of issuing any number of Prospectuses.

The names of Directors, who are named in the Prospectus, are required to be filed with the Registrar as also their consent to act as such and a contract to take the qualifying shares, if not acquired by the Memorandum of Association, under the provisions of sec. 84. sub-sec. 1. But such consent or contract is not required to be filed by Directors who may be named in a Prospectus issued after the expiration of one year from the date of the commencement of business (*vide* sub-sec. 3, sec. 84).

CHAPTER VII

CAPITAL

The amount of the capital of a company must be mentioned in the Memorandum of Association. The worth of a company is measured by its capital.

Classification of capital.

A distinction must be made between the (1) *authorised capital* or the capital on the basis of which the company is granted incorporation, (2) the *subscribed capital* or that part of the capital which the Directors have issued and which has been subscribed by the shareholders and (3) the *paid up capital* or the amount actually paid on the subscribed capital.

If the authorised capital of a company is mentioned in any notice or advertisement of the company, *the subscribed and paid-up capital must also appear* along with it in those notices or advertisements (*vide* sec. *75*).

Intention of sec 75 in the Statute

The intention of the Legislature in enacting this section was to safeguard the public from over-estimating the real worth of the company. The real worth of the company is its subscribed capital and the working fund is its paid-up capital. Without a reference to these the mere mention of the authorised capital may convey an entirely wrong notion of the company's solvency. To enforce this section the Legislature has prescribed a heavy fine for any violation of these provisions.

Liability on Shares

Shareholders are seldom called upon to pay up the whole of the amount payable on their shares in a lump. The amount payable is generally spread over a number of instalments the first of which is payable with the application (this is called the *application money*), the next instalment being payable upon *allotment* and the balance in such instalments or *calls* as may be made from time to time as prescribed in the Articles of Association or prospectus.

Liability to pay calls.

When a share is subscribed and allotted, the shareholder becomes *immediately liable* to pay the whole of the amount of the shares according to calls. But very often some portion of the money so payable is not intended to be called at all. *Where any call has been made*, the shareholder is bound to pay the amount so called and is a *debtor of the company for the amount called* and the company can realise the amount by suit or otherwise like a debt. The part of the share capital which has not been called is the *uncalled capital* of the company. The shareholders are under a contingent liability to pay this money when called either during the continuance of the company or on liquidation (sec. 156) at the discretion of the Directors or the liquidator, subject to the Articles of the company. A company may by a special resolution determine that a portion of the uncalled capital shall not be called except on liquidation(sec. 69).

Uncalled capital an asset.

The uncalled share-capital of the company is thus a claim which the company has on its shareholders and this can be pledged or otherwise disposed of as an actionable claim.

The uncalled share-capital of a company represents its *reserve asset* on which the company or its liquidator may fall back in case of

need. A substantial uncalled capital therefore adds to the credit of the company and helps to give it stability. It is of the greatest importance for a company like a Bank, which has less need for liquid capital and depends more largely on its credit, to have a substantial uncalled capital. In other cases too a substantial uncalled capital helps to secure Bank facilities and other forms of credit.

Hypothecation of uncalled capital

A company, if authorised by its Memorandum or Articles of Association, may *hypothecate this uncalled capital* as security for any loan under sec. 109 of the Act. (u) but sec. 277 J. forbids the charging of unpaid capital by Banking companies.

For the procedure in hypothecating the uncalled capital *vide* Chapter XVI.

Reserve capital.

The company may by special resolution decide that part or whole of the *uncalled capital shall not be called* except upon liquidation. In that case this capital will be a *reserve liability*, and then it cannot be called up except for the purpose of winding-up the company (*vide* sec. 69) nor charged by directors.(x)

Where a company is limited by guarantee the amount of the guarantee cannot be treated as part of the capital or an asset of the company and it cannot therefore be mortgaged or charged by debentures like uncalled capital.

Alteration of Share-Capital

The capital of a company as authorised by its memorandum can only be altered within very strict limits. Such alteration may be (1) by increase of the share capital and by the issue of new shares, (2) consolidation of share capital into shares of larger value, (3) conversion of shares into stock and reconversion of stock into shares, (4) Subdivision of shares into shares of smaller value, (5) reduction of share capital, (6) re-organization of share capital by changing the classes of shares.

Some of these powers can be exercised by the company by ordinary resolution. Some others require special resolution supplemented by the sanction of the Court.

Increase of share capital. Share capital as stated in the memorandum can be increased only if the articles authorise the company to make such increase. Where the articles give the necessary authority a company can now under the amended section 50 increase its share capital by the issue of new shares by *an ordinary resolution*. If the articles do not give such power the requisite power should be taken by a special resolution so as to increase the authorised capital.

(u) See sec 109, cl (*b*), *Pyle Works*, 44 Ch D, 534; *Newton & Anglo-Australian Co.*, (1895) A C 244; Buckley's *Companies Act*. 11th ed p. 179 *et seq*. No charge can be created on reserve liability under this sec., see 44 Ch D. 534.

(x) See Buckley, *op cit*, p. 112.

Section 50, however, enables the company to increase its *authorised* capital whereas the issue of additional capital for subscription either by the public or by the existing shareholders within the authorised limit can be sanctioned by the Directors, subject to the authority contained in this behalf in the articles of association of the company. The Directors may however consider it desirable to get the sanction of the shareholders before issuing any shares for subscription by the public or by any particular individual or individuals pursuant to any contract made. They may, for example, arrange with the vendor of some property which the company wants to acquire that the purchase money will be satisfied by the issue of fully paid shares and may consider it prudent to apprise the shareholders of the facts and to take their sanction before issuing the shares. They may, on the other hand, issue shares for subscription to their friends and nominees in order to obtain control of the voting power of the company.

To prevent this latter contingency, the Amendent Act of 1936 introduced a new section 105C, which runs as follows:—

"Where the directors decide to increase the capital of the company by the issue of further shares, such shares shall be offered to the members in proportion to the existing shares held by each member (irrespective of class) and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer if not accepted will be deemed to be declined; and after the expiration of such time or on receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company".

It is evident therefore that this section is operative, only when the Directors sanction the issue of fresh capital, in which case, the offer must be made to existing shareholders of *all classes* in proportion to their holdings. When however the shareholders themselves sanction the issue, they may determine the manner in which and the people to whom, the shares may be offered for subscription. If the Preference Shareholders have no right of voting, the ordinary shareholders with voting rights may determine that the new shares are to be offered to ordinary shareholders to the exclusion of all other class holdings.

They may again decide that the issue is to be open to the public for subscription or to be offered to a particular party in accordance with a scheme. But where the Directors do not approach the shareholders for any direction in the matter, the offer must be made to all *classes* of shareholders proportionate to their holdings of shares. The wording of the section is that the offer is to be made "in proportion to the *existing shares* held by each member (irrespective of class)". It does not say that the offer is to be proportionate to the *capital* represented by a member's holding but to the number of shares held by him. It appears therefore that a member holding say 100 Preference shares of Rs. 100/- each will be entitled to the same number of shares as another member holding 100 ordinary shares of Rs. 10/- each

although the capital represented by the former is ten times as much as that by the latter.

For further restrictions on the power of a Company to issue shares see infra.

Consolidation and Subdivision of shares etc. Consolidation of shares into shares of larger value as well as the subdivision of shares into shares of smaller value can also similarly be done by an ordinary resolution of the company under the present amendment of section 50. This means that if the company has shares of the value of Rs. 10/- each it can consolidate each group of ten such shares into one share of Rs. 100/- so that thereafter the Company should have shares of the value of 100/- each only. Similary a company having shares of Rs, 100/- each can reduce the value of each share to Rs. 10/- and divide Rs. 100/- shares into Rs. 10/- shares.

So, too, the company can convert either the whole of its share capital or any part of it into stock and then reconvert it into shares. This also can now be done by an ordinary resolution. There is one form of reduction of share capital which can also be similary made by an ordinary resolution of the company. This is the cancellation of shares which have not been taken or agreed to be taken at the date of such cancellation. In other words, if the company has allotted, say one thousand shares and has one thousand more shares which have not been allotted and the company finds that it does not require any more capital than it has already got by the allotment of shares which have already been allotted the company may cancel the shares which have not been allotted. This would involve a reduction of the total authorised capital but it can be done by an ordinary resolution only.

The reason why for these purposes only an ordinary resolution is sufficient is that these forms of readjustment of capital do not affect the rights of creditors or share-holders and it is a matter of pure domestic arrangement of the existing share-holders only. The Amending Act of 1936 expressly states that cancellation of unallotted shares does not amount to a reduction of capital so as to come within the scope of section 55.

Notice to the Registrar. In every case where there has been an alteration of share capital by subdivision or cancellation of shares the company is required to file with the registrar a notice of the exercise of such powers by the company. Where shares have been converted into stock, notice to the registrar is necessary in order that under section 52 the provisions of the Act relating to shares only shall thereafter cease to apply to the stocks into which they have been converted. Where the share capital is increased as well as in the case of companies not having a capital where the membership is increased, a notice is also required to be filed with the registrar under section 53 of the Act under the penalty of a daily fine up to Rs. 50/-

Reorganization of Share-Capital. The company may reorganize the share capital by changing the rights, privileges and incidents of different kinds of shares either by consolidation of shares of different classes or by division of its shares into shares of different classes

under sec. 153 of the Act. Thus a company which has preference shares, ordinary shares and deferred shares may under this section decide to have only one class of shares or a company having only one class of shares may divide its shares into different classes such as ordinary and preference shares. Similarly it can alter the incidents and special privileges attached to particular classes of shares under this section. To do so the alteration must be sanctioned by a resolution of a majority of shareholders representing three fourths of the capital sanctioned by the Court in the manner provided in sec. 153. If the special rights of a class of shareholders is to be affected the resolution must be passed by the requisite majority of shareholders *of that class.* (see chapter XVIII infra)

Where however the rights and incidents of particular classes of shares are not contained in the Memorandum of Association but are provided in the articles and the articles also provide the procedure for any alteration or modification of such rights e. g. by the passing of a resolution by a particular majority of shareholders of such classes, any modification adopted by such shareholders by the requisite majority would be effective and binding on all shareholders of that class and no court sanction would be necessary to make the resolution effective subject to the right of the minority shareholders to apply to the Court for variation or abrogation thereof under the new section 66 A, within 14 days of the passing of the resolution.

Variation of share-holders' Rights

By the new Section 66A of the Act, it has been sought to safeguard the right of minority special class share-holders to a certain extent. It provides that where special rights attached to any class of shares are modified or abrogated, pursuant to the Memorandum or Articles or by means of a special resolution of that class, aggrieved minority shareholders holding in the aggregate not less than 10% of the issued shares of that class who did not consent to the modification or abrogation or did not vote in favour of the resolution may apply to the Court within 14 days to have the variation or abrogation cancelled and where such application is made, the variation shall not have effect unless and until it is confirmed by Court. The decision of the Court is final and the company is required to forward a copy of the Court order to the Registrar within 15 days after the service of the Court's order ; company's failure to do so will entail a fine up-to Rs. 50/-.

Form No. 8 in Appendix B may be used to send the notice of increment of the share capital of the company to the Registrar.

Reduction of Share-Capital

The expression "reduction of share capital" as used in the Act is often ambiguous. It may mean a reduction (1) of the nominal or authorised capital, (2) of the subscribed capital or (3) of the paid-up

capital. (y) Sec. 55 of the Act speaks of reduction of the capital "in any way" making it possible for the shareholders to make any form of reduction in the share-capital, including modes not specified. (z) The company may, if allowed by the Articles (without the sanction of the Court), *reduce the nominal share capital of the company*, under sec. 50, sub-sec. (1) cl. (e), but as provided by sub-sec. (3) of the same section this is not to be deemed a reduction of the share-capital (so as to bring it under sec. 55). Subscribed capital may also be reduced under sec. 55, sub-sec. 1, cl. (*a*) *by reducing the liability on shares in respect of share capital not paid-up*. Under cls. (*b*) and (c) of sec. 55, sub-sec. 1, the paid-up *capital may be reduced by writing off part of it* which is lost or unrepresented by available assets and by paying off any paid-up capital which is in excess of the requirements of the company.

The Indian Companies Act has *no provision* corresponding to sec. 40 of the English Act of 1908 by which the paid-up capital is reduced by *paying back part of it out of accumulated profits*. This would be possible also under the Indian law under sec. 55, sub-sec. 1, cl. (*c*), but *only by following the procedure* provided in that section and the sections following, and not without the sanction of the Court. Although not specifically noticed in the Act, *forfeiture of share capital may also* in some cases *have the effect of actually reducing the share capital*, both paid-up and unpaid. Thus, where shares worth Rs. 10,000/- on which Rs. 5,000/- has been called and only Rs. 4,000/- paid-up are forfeited, the effect of it is forthwith to reduce the paid-up capital by Rs. 4,000/- and the reserve capital by Rs. 5,000/-, Rs. 1,000/- being, if so provided by the Articles (see Table A., Art. 24) recoverable as a debt. Generally speaking, the Articles provide that the forfeited shares may be re-allotted. But such re-allottment may not be made. In that case the company diminishes its reserve capital to the extent of the uncalled shares and *pro tanto* reduces the security of its creditors. Such forfeiture may, however, be authorised by the Articles of the company (as indicated by Table A., Art. 26) without resorting to the Court under sec. 55. Sec. 32, sub-sec. 2, cl. (*g*) also recognises forfeitures. The consequent possible reduction of subscribed capital, however, does not bring the case under section 55.

There are other ways in which share capital may be indirectly reduced, *e. g.* by the company *purchasing its own shares* (a), *by surrender of shares where* it is made for consideration, (b) *by payment of dividends out of capital*, (c) and a *return of part of share capital* to shareholders on terms that it may be recalled again. In every such case, it is clear that the company must proceed under the provisions for reduction of capital under sec. 55 *et seq.*, where it is in fact a case of reduction of capital. Where *the surrender of shares is made without any consideration*,

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(y) Buckley's *Companies Act* 11th Ed., p. 122.

(z) Buckley, op. cit., p. 118 ; *Poole v. National Bank China. (1907) A. C. 229.*

(a) Sec. 54 (1) which embodies the decision in *Trevor* v *Withworth* 12 A. C. 409 followed in *Bhimbhai*. 18 Bom. 152 ; see also *Sorabji Jamsetjee*, 20 Bom. 654.

(b) *Bellerby* v. *Rowland*, (1902) 2 Ch 14.

(c) *National Funds Co.*, 10 C. D. 118 ; *Holmes v. Newcastle Abattoir Co.*, 1 C. D. 682.

as a short-cut to forfeiture, it is permissible without following this procedure. In every case of surrender the case must be determined on its merits, the principle being that where a surrender is tantamount to forfeiture, it would be valid apart from sec. 55. (d) *Payment of dividend out of capital* always means a reduction of capital, though under sec. 107 it is permissible in certain cases to pay interest on capital invested in construction work out of capital.

Reduction of capital. Necessity of special resolution.

A reduction of the capital of a company may be effected by a *special resolution* duly passed by an Extra-ordinary General Meeting.

"If the original Articles do not authorise the resolution (resolution for reducing share capital) there must be, first, a special resolution altering the Articles, and secondly, another special resolution (which must be subsequent and not contemporaneous with the resolution altering the Articles) reducing the capital." (e)

Section 54A (as amended) prohibits a company from buying its own shares or a subsidiary company from buying the shares of its parent public company, unless the consequent reduction is effected under the provisions of Sections 55 to 60 with the necessary Court sanction. It also prohibits a company from *giving* any financial assistance to any person, either directly or indirectly, to enable him to purchase the company's shares but such prohibition does not extend to the lending of money in the ordinary course of business where lending is part of its ordinary business. Further, the prohibition does not interfere with the right of a company to redeem its Preference shares where such shares have been issued under the provisions of section 105 B.

The resolution for reduction must state with sufficient clearness what is to be done in the way of reduction.

Thus, for example :—

(1) In reducing capital under the provisions of clause (*a*) sub-sec. 1 of section 55 the resolution is required to state "that the present capital of Rs. 100,000/- divided into 10,000 shares of Rs. 10/- each, be reduced to Rs. 50,000/- divided into 10,000 shares of Rs. 5/- each and that such reduction be effected by cancelling the present liability of Rs.5/- per share, and reducing the nominal amount of each share to Rs. 5/-."

Form of resolution on reduction under clause (a) of sub-sec. (1) of sec. 55.

(2) In reducing capital under the provisions of clause (*b*), sub-sec. 1 of section 55, the resolution is required to state "that the capital of the company be reduced from Rs. 100,000/- divided into 10,000 shares of Rs. 10/- each, to Rs. 50,000/- divided into 10,000 shares of Rs. 5/- each and that such reduction be effected by cancelling paid-up capital which has been lost (or is unrepresented by the available assets) to the extent of Rs. 50,000/-, and by reducing the amount of the shares from Rs. 10/- to Rs. 5/- each."

Form of resolution in reduction under clause (b).

(d) *Trevor* v. *Whitworth*. 12 A. C. at pp. 429, 438.

(e) Gore Brown's Handbook on Joint-stock Companies, 34th Ed., pp. 400-401.

(3) In reducing capital under the provisions of clause (c) sub-sec. 1 of section 55, the resolution is required to state "that the capital of the company be paid off to the extent of Rs. 5/- per share, upon the footing that the same may be called up again as and when required in accordance with the regulations of the company."

Form of resolution under clause (c)

Reduction of capital without sanction of Court may be allowed by way of *cancelling shares, which* at the date of passing of the resolution in that behalf *have not been taken* or agreed to be taken by any person, and diminishing the amount of the share capital by the amount of the shares so cancelled [*vide* sec. 50 sub-sec. 1 clause (*e*)]. An extra-ordinary resolution is required to cancel shares if Art. 41 of Table A is adopted.

When sanction of Court not required

Modes of Reduction

The following are the modes generally adopted for reduction of capital:—

(*a*) Reducing liability on uncalled or unpaid capital.
(*b*) Paying off capital not required for business.
(*c*) Paying off capital by issuing paid-up Debentures.
(*d*) Paying off capital on the footing that it may be called up again.
(*e*) Cancelling shares surrendered or forfeited.
(*f*) Paying off from profits and cancelling preference shares when there is a clause in the Memorandum and Articles of Association.
(*g*) Cancelling capital unrepresented by available assets.

Under section 55, sub-sec. 1, clauses (*a*), (*b*) and (*c*), three definite modes of reduction are given although this does not prohibit a company from reducing capital in any other way, provided Court sanction has been obtained. The three specified modes are :

(1) *Reducing the liability of shareholders in respect of uncalled or unpaid capital, e.g.* when the shares are Rs. 10/- each with Rs. 5/- paid up, reducing them to shares of Rs. 5/- fully paid up and thus relieving the shareholders from liability in respect of the uncalled capital under clause (*a*)

(2) *Cancelling capital which has been lost or is unrepresented by available assets.* This is one of the commonest modes of reduction. A company whose capital amounts to Rs. 100,000/- in Rs. 10/- shares, has lost, say, Rs. 50,000/- by some business disaster. Nothing, as Sir George Jessel said, can be more beneficial to the company than to admit the loss, and to write it off, e.g., to reduce its Rs. 10/- shares to Rs. 5/- and thus place itself in a position to resume payment of dividends [under clause (*b*)].

A company may have capital unrepresented by assets though it is not lost, e.g., if owing to an oversanguine estimate of value it turns out that it never was represented by assets. (f)

(f) *Floating Dock & c.* (1895) I Ch. 691.

(3) *Paying off or returning paid-up capital not wanted* for the purpose of the company, *e. g.* where the shares are of Rs. 10/-fully paid up, reducing them to Rs. 5/-, and paying back Rs. 5/- per share. Such payment may be allowed on the footing that, when desired, the company may call it up again, [under clause (*c*)].

Capital may not be wanted by the company though the money actually paid up may be wanted. For instance it is quite conceivable that the company which has a paid-up capital of Rs. 1 lakh may want all the money for the time being, but about Rs. 50 thousand out of it may be wanted only temporarily. In that case the company may decide to raise Rs. 50 thousand by borrowing or issuing debentures which can be paid up and redeemed, instead of carrying on a share liability for the amount, which will not be needed later on. The share capital of the company cannot be reduced otherwise than in the manner provided by the Act, and money paid on shares cannot be returned to shareholders when not needed otherwise than by proceeding under sec. 55 for reduction of capital. (See Buckley p. 120),

Reduction of capital "in any way."

These are the only modes of reduction specified in the section but the power of the company *to reduce share capital "in any way" is not limited* by these clauses.

Sanction of Court

The company may, by a special resolution, reduce its share capital in any way it chooses and the *Court will confirm any such resolution properly passed,* if it is convinced *that the reduction is beneficial* to the company and *is fair and equitable having regard to the interests of creditors* and different classes of shareholders. These powers of the company include such schemes as cancellation, of uncalled capital, which can only be called on winding-up, the surrender and re-issue of unpaid shares obtained by sub-dividing partly paid-up shares into shares of smaller amount and attributing the whole of the amount paid up to the shares retained, returning part of the paid-up capital to only some of the shareholders or in any other way. (g)

Where a reduction makes *distinction between different classes of shareholders,* such as throwing the whole loss on preference or ordinary share-holders, reducing one class or some only of the shares while not reducing others etc., the *Court would not ordinarily sanction* such reduction even if it is otherwise fair and equitable *without the consent of every single shareholder injuriously affected.* (h)

It is doubtful whether a reduction affecting any class of share-holders can be given effect to by the Court without a meeting of the class of share-holders under Sec. 153. (i)

(g) Buckley op cit., P. 118 ; (11th ed) *Gatling Gun Co.*, 43 Ch. D. 628 ; *British and Am Fin Corp.*,, (1894) A. C. 399 ; *Credit Association Corporation.* (1902) 2 Ch. 601 ; *Welsbach Co.*, (1904) 1 Ch. 87 ; *Poole* v *National Bank.* (1907) A. C. 229 ; *Louisiana Co.*, (1909) 2 Ch 552 ; *Thomas de la Rue,* (1911) 2 Ch 361 ; *Phoebe Gold Co.*, (1900) W. N. 182 ; *Hora & Co.*, (1910) W N 87 *Midland Railway Carriage Co* (1907) W. N. 175.

(h)Buckley, *op. cit* P. 121 ; *Gatling Gun,* supra ; see however *Quebrada R. L. C. Co.* 40 Ch. D, 363.

(i) Buckley, *op, cit.*, P. 120.

Procedure in Court

Applying to Court for confirmation order

On the passing of the special resolution "reducing share capital' under section 55 of the Act, a *petition to the Court* is required to be made *for an order confirming the reduction* (*vide* sec. 56); and after the date of the passing of the resolution, until such a date, which the Court may fix, the words *"and reduced"* should be added to the name of the company after the word "Limited" (*vide* sec. 57).

Use of the words "and reduced".

But under the proviso of the said section, the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

Procedure in Court for petition for reduction.

On receiving a petition for an order to confirm reduction of the share capital of a company, the Court shall settle a list of creditors and the creditors of the company on that date shall be entitled to object to the reduction (*vide* sec. 58). If a creditor dissents to the reduction, the Court, with the consent of such dissenting creditor, may dispose of the case on security being given for his debt or by securing up to an amount which the Court thinks fit (*vide* sec. 59). (j)

Creditor's right to object

The addition of the words "and reduced" with the name of the company in all its official publications is intended to give notice to the public of the then position of the company enabling them to decide on the desirability of establishing business connection with the company. Sections 58 and 59 are intended to secure the interest of the creditors of the company which may be affected where the effect of such reduction is to reduce their security. Under section 58 the only cases where creditors are entitled to object as of right are where the reduction involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital. In any other case it is in the discretion of the Court to permit the creditor to object.

In any other case, which does not *prima facie* have the effect of affecting the security of the creditor, the Court will grant permission to any creditor, to object only where a strong case is made out. (k)

Penalty for concealing the name of any creditor

Every officer of the company, who wilfully conceals or abets in concealing the name of any creditor, entitled to object to the reduction or misrepresents the amount of the debt or claim of any creditor, shall be punishable with imprisonment, which may extend to one year or with fine or both (*vide* sec. 64).

By reason of the imposition of the penalty, mentioned above, it is expected that the creditors will not be cheated in case of any reduction of capital of a company.

The Court, being satisfied on all the points, may make *an*

(j) For rules of procedure for reduction of capital see Rules of the Calcutta High Court in the appendix and corresponding rules of the other High Courts.

(k) *In re Moir's Brewery Co., Ltd.*, (1919), 1 Ch 28.

order confirming the reduction on such terms and conditions as it thinks fit (*vide* sec. 60) and may direct the publication of reasons for reduction for information of the public (*vide* sec. 65.)

Order of Court.

A *certified copy of this order* along with the *minute reducing the capital* is required to be *filed with the Registrar*, with a filing fee. The Registrar, on receiving these documents, shall register the order and the minute ; this completes the reduction. The Registrar, on registration, shall grant a certificate to the effect, which will be deemed to be conclusive in regard to reduction (*vide* sec. 61 sub-sec. 4), even though it afterwards transpires that the company had not by its Articles any power to reduce, or that the special resolution for reduction was invalid.

Registration.

The resolution for reduction of capital becomes effective only from the date of the registration and not before.

The minute when registered shall be deemed to be substituted for the corresponding part of the Memorandum and shall be valid and alterable as if it had been originally contained therein and shall be embodied in every copy of the Memorandum issued after its registration.

The company and the defaulting officers shall be liable to a fine not exceeding ten rupees for each copy of Memorandum, which is issued without such minute being embodied (*vide* see 62).

The liability of a shareholder after reduction takes effect is the difference (if any) between the amount paid or deemed to be paid, as the case may be and the amount of the share as fixed by the minute. But in the event of a creditor, who is entitled to object to reduction, not having objected at the time of reduction, through ignorance of the proceedings for reduction or because his name was not entered in the list of creditors placed before the Court, if on a winding-up of the company, the liquidators have been unable to pay up his claim every shareholder, who was a member on the date of reduction , shall be liable to contribute for the payment thereof to the extent of the amount which he would have been liable to contribute if the company had gone into liquidation on the day previous to the date of registration of reduction. See section 63 of the Act.

All the provisions of the Act regarding increase or reduction of share capital apply to a company limited by guarantee, having a share capital provided it has taken power to that effect under its articles of association *vide* section 66 of the Act.

General reduction and reduction by classes

"The reduction of capital should be an all-round one ; that is to say, where capital is to be paid off or to be cancelled as lost or unrepresented by available assets or where the liability for uncalled capital is to be reduced the same percentage should be paid off or cancelled or reduced in respect of each share ; and this *pari passu* mode of reduction is the proper mode where there are several classes of shares, e g. ordinary and preference shares, unless such preference

shares have priority as regards capital in winding-up, in which case the loss should be thrown first on the ordinary shareholders." (l) "Where the capital of the company is divided into preference or ordinary shares, the preference shares are not exempt from reduction equally with the ordinary, even where the reduction is sanctioned at a meeting where the preference share-holders had no votes." (m) But having regard to the language of section 153, which enjoins that any compromise or arrengement or any interference with the rights of special class of share-holder must be sanctioned by a majority in number representing three fourths in value of that class, it is doubtful if this would be so where the preference shareholders had no votes. In any case the Court will take into consideration the opinion of such shareholders before sanctioning reduction in such a case (see also sec. 66A).

This is a rule of general application from which companies should not depart without special cause. But, as already pointed out above in a proper case the Court would sanction *differential treatment* of share-holders. (n) As Palmer observes :

"But it is open to a company to pass a special resolution, reducing the capital otherwise than in accordance with the legal rights of the share-holders, e. g. by paying off wholly or in part *some* of the shareholders, although all are entitled to rank *pari passu*, or by cancelling part of the capital paid up on one class, although both classes rank evenly as regards capital. And it is now settled that the Court has jurisdiction to confirm *any* kind of reduction, notwithstanding that it involves a departure from the legal rights of classes." (o)

Accounting

Account on reduction of capital.

In the Share Ledger the simplest and most convenient way is to procure a rubber stamp briefly stating the effect of the resolution reducing the capital and to impress it upon every page affected. The share certificates should also be called in and similarly stamped, or new certificates may be issued in exchange therefor. In the General Ledger note the reduction on the heading of the "Share Capital a/c," and if the reduction does not affect the paid-up capital, no further entry is required. If, however, the reduction has been made for the purpose of writing off a balance to the debit of "Profit and Loss a/c" or some fixed asset, then a Journal entry must be made, debiting Share Capital a/c and crediting the account to be written down, with the total amount of such reduction of paid-up capital.

The balance sheet of the company is required to exhibit the true state of its capital account giving details of the abovementioned three classes *viz*, (*a*) authorised capital (*b*) issued or subscribed capital and (*c*) paid-up capital and when any part of the capital is issued as paid up otherwise than in cash, the particulars thereof.

(l) Palmer's Company Law 9th Edition page 96.

(m) Gore Brown's Handbook on Joint-stock Companies, 34th Edition, Page 401.

(n) See supra pp. 71-72.

(o) Company Precedents, 13th Ed., p. 1139.

Purchase of Shares of the Company

Sec. 54A sub-section (1) now provides a more rigid rule against the purchase by the company of its own shares than under the law before the amendment of 1936. The effect of this section is as follows:

(1) A company *can purchase its own shares by way of reduction of capital*, but in that case it must proceed by special resolution and have the sanction of the Court and in every respect conform to sections 55-66 of the Act.

(2) Apart from such reduction of capital *no company can buy its own shares.*

(3) This disability extends also to the purchase of shares of another public company where the purchasing company is a *subsidiary company* to the company whose shares are purchased.

(4) No public company or a private company which is a subsidiary company of a public company can give directly or indirectly whether by means of a *loan*, guarantee or by provision of a security or otherwise *any financial assistance for the purpose of purchase by any person of the shares in the company.* But the section provides that where lending money is part of the ordinary business of the company the lending of money in the ordinary course of business to any person would not be a contravention of this section although such money may be used for the purchase of its own shares.

The general rule against the purchase by a company of its own shares is however limited by one new provision of the amending Act. Section 105B of the Act authorises a company to issue *redeemable preference shares*, that is to say, preference shares which may be bought in by the company subject to the limitations prescribed in that section. Section 54A expressly excludes the redemption of such shares from the general rule against the purchase of shares.

Subsidiary Companies

Provision for subsidiary companies is a new feature of the Act of 1936. As a rule the amending Act provides for the extension of disabilities of public companies also to subsidiary companies and in many cases the special privileges which are enjoyed by private companies are made inapplicable to private companies which are subsidiary companies of public companies. A subsidiary company has been defined in section 2 sub-section (2) as follows :—

"Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and

(a) The amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent of the issued share capital of that other company or such as to entitle the company to more than fifty per cent. of the voting power in that other company, or

(b) The company has power (not being power vested in it by virtue only of the provisions of debenture trust deed or by virtue of

shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

That other company shall be deemed to be a subsidiary company within the meaning of this Act, and the expression 'subsidiary company' in this Act, means a company in the case of which the conditions of this sub-section are satisfied and includes a subsidiary company of such company.

Provided that where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall, for the purpose of determining under this section whether that other company is a subsidiary company, be taken of the shares so held."

In other words, when (a) more than fifty per cent of the share capital of a company however composed, whether with or without voting power is held by another company or (b) when more than fifty per cent of the total voting power of a company is under the control of another company, whether with or without a majority shareholding e.g. by virtue of holding a special class of shares with majority voting rights or (c) when, the majority of directors of a company can be apponited by another company, either by virtue of its special class share-holding or of some contract entitling it thereto, that other company becomes the 'holding' company of the 'subsidiary' company and if this 'subsidiary' company stands as a 'holding' company in relation to another 'subsidiary company', such 'subsidiary company is also to be regarded as 'subsidiary' to the original holding company.

As the three conditions enumerated above are not mutually exclusive, it is conceivable that the same company may be a subsidiary to three holding companies. It is possible that (a) fifty per cent of its share capital is held by another company rendering it a subsidiary to the latter, although the majority of the voting power may be controlled by the remaining moiety of the share capital with larger voting rights and (b) less than fifty per cent of the share capital of the company carrying majority voting rights may be held by a second 'holding' company, while (c) by an agreement with a third company, it may allow this other company to appoint the majority of directors and thus render itself a 'subsidiary' company. Thus, at one and the same time, a single company may find itself a 'subsidiary, to three different companies though that unlikely contingency was apparently not contemplated.

The last audited balance-sheet of the subsidiary company together with the Profit or Loss Account and auditors' report must be annexed to the Balance-Sheet of the holding company in accordance with section 132A and are to be regarded as a part of such Balance-Sheet.

If the subsidiary Company is a Private company but is subsidiary to a public company, it must have at least three Directors like a Public company and will also be subject to several other restrictions

from which a private company is exempt. For further details. see chapter IX on private companies.

Summary of Capital

A *summary of the capital account* as prescribed by section 32 is required to be prepared in Form E of Schedule III of the Act *showing the state of the capital account on the day of the first Ordinary General Meeting* of the company of the year, and this summary along with the balance-sheet and the list of members, directors and managers prepared *within twenty-one days* from the date of the meeting should be *kept in the registered office* of the company. A copy of the above-mentioned documents should be *filed with the Registrar.* In addition to the above particulars, a private company is required to submit a declaration to the effect that no offer or invitation has been issued by the company to the public to subscribe to its capital or debentures, since the date of the last return (or since its incorporation as the case may be) and where the total number of share-holders exceeds fifty, the excess is exempted under sec. 2 clause (13) sub-clause (b) Default in complying with the requirements of this section renders the company liable to a penalty of fine not exceeding Rs. 50/- per day during which the default continues.

Summary of capital account required to be filed.

Penalty.

The summary of capital that is required to be prepared under the provisions of sec. 32 is not required to be audited.

CHAPTER VIII.

SHARES

Share-Certificate and Stock

By the Memorandum of Association the authorised capital of the company is expressed in terms of shares or different classes of shares of fixed amount. The definition of the word as given by sec. 2 sub-sec.16 of the Act is as follows, "Share means share in the share capital of the company, and includes stock except when a distinction between stock and share is expressed or implied." *A share is not a sum of money but is an interest in the company* measured by a sum of money, and made up of various rights contained in the contract.

The shares or other interest (*e.g.* stock) of a member in a company shall be his moveable property, transferable under the provisions of the Articles and each share of a company shall be distinguished by its appropriate number (*vide* sec. 28). (p)

(p) For transfer of shares see *post* "*Transfer and Transmission.*"

A distinction must be made between a share and a share certificate.

Share and share-certificate.

A share certificate is only a *prima facie* evidence to show that the holder thereof has a certain share in the capital. A shareholder may lose a share-certificate and it may be very difficult and irksome for him to obtain a duplicate owing to stringent clauses in the Articles, but he cannot 'lose' a share and his membership can be terminated only by certain definite ways, *e. g.* by transfer or by death or by forfeiture etc. Although a share is a moveable property, it is not destroyed by the destruction of the share-certificate.

Share and stock.

The chief distinction between shares and stock lies in the fact that the smallest denomination into which shares are divisible, is one share, whereas stock can be divided into fractions of any value. Shares are units of a fixed amount into which capital is divided, *e. g.*, the share capital of a company may consist of 100,000 shares of Rs. 10/- each which amount is called the face value of a share. One can therefore have a single share of the face value of Rs. 10/- or two shares of Rs. 10/- each and so on ; but one cannot have 2½ shares of the value of Rs. 25/- because half-a share does not exist—the unit being one. When capital is expressed in stock, however, it is not divided into parts of equal value and can consequently be divided into fractions. It is possible to hold stock of any amount and the interest that a stock-holder can have in the capital of the company may consist of any fraction of the total capital. The market-price of stock is expressed by the current quotation for, say, Rs. 100/- of stock and the market-price of shares is the current quotation per share.

Although, there is provision in the Act, for the conversion of shares into stock or *vice versa* (*vide* section 50), most companies in India issue their capital in terms of shares. It may be noted however that stock cannot be issued until shares are fully paid up and under the amended section, a private company cannot issue stock. It is *ultra-vires* to issue stock when shares are partly paid. Both shares and stock may under the Act, be issud to 'bearer', as we shall see later. In England, there are two kinds of stock—'registered' and 'inscribed'. Holders of registered stock get stock certificates, detailing the amount of stock held by them in the company and transfers are made in the same way as of shares, subject to limitations set forth in the Articles. A holder of 'inscribed' stock, on the other hand, receives a stock receipt, which is merely an acknowledgement, that his name has been 'inscribed'in the list of stock-holders. When transferring 'inscribed' stock, it is not necessary to produce this receipt, but the transferor has to attend personally at the registered office of the company and execute a transfer-deed. For share warrants payable to bearer and other details on stock, see *infra*

From a consideration of the nature of shares as distinct from stock, it follows that when shares are held by several people jointly, the separate interest of each joint-holder cannot be recognised by the company. It also follows that while the total sole holding of a share holder in a company or any number of shares held by him can be charged or attached, the undivided interest of a joint-holder cannot be attached.

CLASSIFICATION OF SHARES

Not infrequently the shares of a company are divided into several classes, such as preference, ordinary and deferred.

Preference Shares

The *preference shares* represent that part of the original or increased share capital to which *certain special privileges* and *conditions are attached* as regards payment of dividends and return of capital or distribution of surplus assets in winding-up. (q) Such rights may be *defined by the Memorandum or Articles of Association.* If the rights are defined by the Memorandum, they cannot be subsequently varied, without the sanction of the Court as provided by sec. 153 of the Act, unless the Memorandum also confers powers to alter such rights. As a company often desires to vary the respective rights given to different classes of share-holders, it is wise only to take power in the Memorandum to issue preference, ordinary and deferred shares and to leave the declaration of rights to be attached to such shares to the Articles of Association or to special resolutions. The object of defining the rights of share-holders in the Memorandum as distinguished from the Articles is to give additional security to the position of the class of share-holders.(r)

Preference shares.

Under section 153 of the Act the rights of the preference share-holders may be *modified by a special resolution* with the consent of the Court, so as to enable the company to reorganise its share capital, whether by the consolidation or division of shares of different classes, provided that it is *approved by a resolution of the share-holders af the class.* This resolution is required to be passed by only a bare majority in number of share-holders, but the majority must represent three-fourths of the total capital of the class and not three-fourths of those present at the meeting, as in the case of a special resolution on other matters (*vide* sec. 81).

Mode of varying the rights and privileges of preference share.

Where however provision is made in the Articles of Asssociation for the variation of rights attached to any class of shares subject to the consent of any specified proportion of the holders of that class, no court sanction would be necessary if such consent is obtained and the decision of the special class share-holders would be binding on all members of that class. Section 66A which was introduced by the amending Act of 1936, provides however some remedy for dissenting share-holders of that class. This Section provides that where by the Memorandum or Articles the company is authorised to vary the rights attached to any class of shares subject to the consent of any specified proportion of the share holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares the *dissenting share-holders* holding not less than *10 per cent* of the issued shares of that class may apply to the Court to have the variation

(q) See Table A. Art. 3.

(r) On the variation of the Memorandum or the Articles relating to preference shares, see supra. Capital in Memorandnm. page 28.

cancelled within 14 days of the date when the consent was given or the resolution was passed. This application may be made on behalf of such dissenting share-holders by one or more of their number appointed by them in writing for the purpose. Upon such application being made, the Court after hearing all persons interested may cancel the variation if it is satisfied that the variation would unfairly prejudice the share-holders of that class or otherwise confirm the variation.

There is a distinction between the scope of section 153 and that of section 66A. Section 153 contemplates a case where the memorandum classifies the shares and gives no power to the company to modify the rights of the share-holders as stated therein. In such a case the variation in the shares can only be made by a special resolution confirmed by Court.

Section 66A on the other hand contemplates the case where either the memorandum provides for the classification of shares but gives to the company power to vary the rights under any specified conditions or the classifications of shares and the determination of rights appertaining to different classes of shares are made by the articles which authorise a modification of those conditions subject to the consent of a specified proportion of the share-holders. In such a case no sanction of the Court is necessary so long as the modification is made in compliance with the provision in the memorandum or the article, as the case may be, regarding the proportion of share-holders whose consent must be obtained in such matters. It is only in the latter case that provision is made for the dissenting share-holders to apply to the Court and for the exercise of the powers of cancellation by the Court if the alteration made is unfair to the share-holders of that class.

Payment of dividend of preference shares

Dividends *can only be paid out of profits* and *no part of the capital can be paid* out as dividend. (See Art. 97 of Table A which has been made compulsory by sec. 17) Hence, preference shares are no exception to this rule, so that, if the Articles provide for payment of a dividend of six per cent. on preference shares, *only so much of the amount as is available out of profits can be paid.* If that comes to less than six per cent., the preference share-holder's right to receive the balance of the dividend out of future profits depends upon whether the dividend payable on the preference shares as provided in the Articles, is *cumulative* or *non-cumulative.* Where the profits of any year are insufficient to pay the preference dividend, the deficiency is to be made good out of the profits of subsequent years in cases where the dividend is declared to be cumulative. Where the dividend payable as regards each year is to be paid from the profits of that year only, the dividend is non-cumulative. The question as to whether the dividend is to be regarded as cumulative or otherwise is entirely one of construction of the Articles.

Cumulative dividend.

Non-cumulative dividend.

If it is desired to make the dividend non-cumulative, this should be made clear in the Articles. In the the *absence of any words to restrict the preference shareholders* to profits of the current year, the *dividend would be considered to be cumulative.*(s)

(s) Bukley, *op cit.*, 11th Ed., 754. *Webb* v *Earle*, 20 Eq. 556; *Henry* v. *G, N. R. CO.*, 1 De, G&J. 606. Distinguished in *Staples* v. *Eastman, &c.*, (1896), 2 Ch. 303.

If the dividend be cumulative, the clause in the Articles of Association may run thus : "the preference shares are to be entitled to a fixed cumulative preferential dividend at the rate of. ....per cent,' and where the dividend is non-cumulative the clause may run thus : "the preference shares are to confer the right to receive, out of the profits of each year, a preferential dividend not exceeding.....per cent. for such year." In the absence of any provision to the contrary in the Articles, the preference share-holders will have *no claim upon the excess profits* once they have been paid at the specified rate ; but they may be paid extra bonus, if the profit be sufficient after paying the ordinary and deferred share-holders, if so provided by the Articles.

The preference share-holders *may have special rights in regard to the payment of capital in a winding-up.* When such right is to be attached, it is necessary to mention the fact in the Articles in terms like these : "The preference share-holders are to be entitled not only to a preferential dividend but to priority as regards capital in a winding-up." If so, the capital paid up on the preference shares must, in a winding-up, be paid in full out of the surplus assets before the ordinary share-holders can get anything. In the absence of any such provision in the Articles, preference share-holders would be entitled to share in the assets on winding-up equally with ordinary share-holders.(t)

Preferential rights as to payment of capital in winding-up.

What the rights and privileges of the preference share-holders of any company are to be is a matter to be provided for by the Articles. *The Articles may provide for any rights* so long as they are not contrary to the Act and the Memorandum. In most cases therefore the question of rights of preference share-holders is solely one of construction of the Articles.(u)

Two questions arise as to the rights of preference share-holders on a winding-up : (1) Are they entitled to all the arrears of their dividend in addition to the capital on winding-up, and (2) Are they entitled to share in any surplus which may remain after payment in full of all the capital subscribed along with ordinary share-holders, or are they limited only to the capital actually contributed by them ? In the absence of any provision in the Articles the answer to the first question would depend on whether, upon a construction of the Articles, share-holders acquire a right to the dividend only upon declaration of the dividend, or they are entitled as of right to the profits earned irrespective of such declaration. In the first case the answer to the first question is in the negative in respect of any arrears of dividend not actually declared by the Directors. In the latter case the answer would be in the affirmative.(v)

With regard to the second question there appears to be a conflict of authority. (w)

(t) *London India Rubber Co.* 5 Eq. 519 ; Palmer's Company Precedents, 9th Edition, Vol. I, page 795.

(u) *Crichton's Oil Co.*, (1902), 2 Ch. 86 at p. 92

(v) Buckley *op. cit.*, 11th Ed., P. 449 ; *Bridgewater Navig. Co.* (1891) 1 Ch 155 ; 2 Ch 317 ; *Bishop* v. *Smyrna Railway* (1895) 2 Ch 265

(w) Buckley, *op. cit.*, p. 450 ; *Espuela Land Co.*, (1909) 2 Ch 187 ; *Fraser* v *Chalmers* (1919), 2 Ch. 114 ; *National Telephone Co.* (1914) 1 Ch. 755 at P. 772.

The balance of authority seems to be in favour of preference share-holders retaining the right to rateable distribution. (x) But the question must depend on the construction of the Articles and the terms of issue in each case. (y)

The nature of right of voting at meetings conferred by the Articles on preference share-holders must be stated in the prospectus [sec 93 (1) cl. (o)].

What Articles should provide

In framing Articles, regarding the rights of Preference Shares, the following points should be decided :—

(1) Whether the dividend on Preference Shares should be cumulative or non-cumulative.

(2) Whether dividend should be payable on Preference Shares before carrying any amount to Reserve.

(3) Whether or not, the Preference Shares carry the right to participation in surplus profits after a certain percentage has been paid to the Ordinary Share-holders.

(4) Whether the dividend to be paid on Preference Shares is payable without any deduction for income-tax or not.

(5) Whether they carry the right of voting, restricted or unrestricted.

(6) Whether the Preference Shares have any preferential right regarding return of capital in winding-up or in relation to a reduction of capital.

(7) Whether there should be any priority in a winding-up for arrears of dividend.

(8) Whether the company is to be at liberty to issue Preference Shares ranking in priority to or *pari-passu* with the original Prefernce Shares. "It has generally been assumed that where a company issues a series of Preference Shares, it cannot issue any shares ranking in priority to or *pari-passu* with them unless on the issue, express powers so to do has been reserved in the Articles."—Palmer's Company Precedents' 13th Edition, p. 811.

Ordinary and Deferred Shares

Ordinary shares.

The ordinary share capital is that part of the original or increased share capital to which no special right or privilege is attached.

Deferred shares

Sometimes some fully or partly paid-up shares are allotted to founders or promoters or vendors of the company. (z) Such shares are termed *Deferred Shares*. The terms on which such shares are issued and the exact rights and privileges

(x) *Colleroy Ltd.*, v. *Giffard*, (1918) 1 Ch. 144.
(y) Palmer's Comp. Prec. 13th Ed., 808
(z) Founder's shares are now becoming rare, the usual practice now is to give founders fully paid-up ordinary shares. On founder's shares, see Palmer's Company Precedents Vol. 1 p. 555.

appertaining to them are *fixed by the Articles of Association.* Usually deferred share-holders are postponed to the ordinary share-holders in respect of dividends and in respect of participation in the assets upon winding-up. The rights attached to such shares may vary considerably in regard to dividend, voting and in a windind-up. But the holders will be liable to contribute in a winding-up to the extent of the amount which may remain unpaid on the partly paid-up shares. The conditions and considerations on which such shares are issued *must be mentioned in Articles of Association.* The *Prospectus* of the company *should also state the number of deferred shares,* if any, and the rights and interests of the holders thereof in the property and profits and their voting rights, if any. [Sec 93 sub-sec. 1, cls. (*a*) and (*o*)].

Redeemable Preference Shares

The Act as amended in 1936 now provided for the issue of a new class of shares which are in several matters not subject to the ordinary incidents of shares. These are redeemable preference shares. They are issued on condition that the company may at its option redeem such shares, that is to say, buy them off. These shares hold an intermediate position between shares and debentures. When a company is formed by or for the benefit of a limited class of persons who may not be able to raise all the capital necessary they may raise part of the funds needed for the working of the company by issuing debentures. The money obtained thereby is a loan which the company remains liable to pay and debenture-holders being creditors are entitled on liquidation to be paid in preference to share-holders.

On the other hand, if the whole money is raised by shares the interest for the company cannot be limited to the class of persons for whose benefit the company is started. The share-holders remain share-holders and cannot ordinarily be paid off until the company is liquidated. To enable companies to obtain necessary capital from outsiders without being burdened with a debt which must be repaid and which can be enforced against the company or being compelled permanently to share all the benefits with outsiders, it is provided that the company may issue preference shares on condition of redemption. As against debentures, these shares have this advantage that unless the company is able to pay off this outside capital it is not bound to do so, the capital subscribed by such preference share-holders not being a debt. And as against non-redeemable shares they have the advantage that the company may when it is in a position to do so pay off these outside share-holders and give the banefit to the class for whom the company was intended. Such redeemable preference shares are common in cooperative societies.

Section 105B provides that redeemable preference shares can be issued on some conditions namely,

(1) Such shares cannot be redeemed except, (a) out of divisible

Rules about redemption.

profits of the company or (b) out of the proceeds of a fresh issue of shares made for the purpose of redemption or (c) out of the sale proceeds of any property.

(2) No shares can be redeemed unless they are fully paid up.

(3) When shares are redeemed out of profits or by sale of property a capital redemption reserve fund shall be created by transferring to it part of the profits and the provisions regarding the reduction of share capital shall apply as if the capital redemption fund was the share capital of the company.

(4) Where shares are redeemed from the proceeds of a new issue, premium paid to the holders of the redeemable shares must be provided out of the profits of the company before redemption. This premium cannot be paid out of the subscribed capital.

The section further provides that where a company has issued redeemable preference shares the balance-sheet must show the amount of such shares and the time of their redemption ; and, where there is no fixed time, what notice is to be given before redemption.

Where shares are redeemed, the company would be entitled to issue new shares up to the nominal amount of the redeemed shares as if the redeemed shares had never been issued and the provisions of Section 249 regarding Stamp Duty will not apply to this new issue as if it were fresh capital.

Where new shares have been issued the capital redemption reserve fund may be applied by the company up to an amount equal to the nominal value of the shares issued in paying up unissued shares of the company which are then to be issued to members as fully paid bonus shares.

Subject to the provisions of this section a company may by its Articles make what conditions they choose for the redemption of redeemable preference shares.

See also ch XIV under Books & Entries for further elucidation of the nature of Redeemable Preference shares.

Acquisition of shares

Shares of a company may be acquired in one of the following ways :—

Acquisition of shares.

(1) By subscribing to the Memorandum of Association (see Chap. III.)

(2) By an application for shares, followed by allotment.

(3) By transfer from another share-holder. (b)

(4) By succession on the death of a share-holder. (c)

(5) By the issue of fully paid up shares in accordance with the Memorandum or Articles of Association. If the shares so granted

(b) See under *Transfer and Transmission* below.

(c) See under *Transmission* below.

are partly paid-up they do not vest except by acceptance by the share-holder.

How membership may be aquired.

Section 39, sub-sec. 2 of the Act provides that "every other person (except subscribers to Memorandam) who agrees to become a member of a company, and whose name is entered in its Register of Members, shall be a member." So in obtaining a share, otherwise than by subscription to to the Memorandum, there must be (1) a contract and (2) an entry in the Register of Members,

Agreement to be a Member of a Company

The Indian Contract Act sec. 2 makes a distinction between an *agreement* and a *Contract* which is defined as an agreement enforceable by law. It is clear that what the Companies Act means by 'agreement to be member of a Company" is a legally enforceable agreement or a *contract* under the Contract Act.

To make an agreement enforceable at law all elements of a contract as specified in the Indian Contract Act must be present

These are, that there must be (1) *free* consent of parties, (2) the parties should be competent to contract, (3) the agreement must be for lawful consideration, (4) with a lawful object and (5) not an agreement declared to be void by the Indian Contract Act. (sec 10, Contract Act) Free consent is consent not caused by coercion, undue influence, fraud, misrepresentation, or mistake of fact (secs 14-22 of the Contract Act) Competence of parties to contract is defined by secs. 11 and 12 of the Contract Act.

Consideration is thus defined by sec. 2, cl (d) of the Contract Act :—

"When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

Void agreements are defined in secs 24-30 of the Indian Contract Act. Besides, every agreement for an object which is illegal or immoral is void.

In order that a membership may be valid, there must be a lawful contract of membership satisfying the above requirements between the intending member and the company by which the member proposes to be member and the company accepts him as such.

If there are any circumstances which would make the agreement void or voidable under the Indian Contract Act, the membership in that case would not be created or would be voidable, as the case may be Thus a contract of membership with a minor or lunatic would be void altogether. (d)

A proposal of membership induced by fraud or misrepresentation, *e g.* in the Prospectus, would be voidable at the instance of the party affected. A membership

(d) Sec. 11. Contract Act ; *Mohori Bibee* v *Dhramadas* 30 Cal. 539. See, however. *Fazulbhoy Jaffar* v *The Credit Bank of India Ld.*, I.L R. 39 Bom. 331, where it was held that an infant, who after attaining majority received dividends and raised no objection to his name being included in the Register of members was estopped from denying that he was a shareholder. The case turns really upon a question of estoppel though their lordships also laid down that a minor as such could be a shareholder.

purporting to be created without consideration, as when a free gift of shares is made by the company to a person would be altogether void. Allotment of paid up shares to a person in consideration on his services or transfer of property is however a contract for good consideration

No special form of agreement is necessary.

Chitty, J., said, "there is no difference between a contract to take shares and any other contract. A formal agreement is not necessary. If, in substance, an agreement is made, the form is not material." (e) The agreement may thus be made merely by the conduct of the parties, as where a person by conduct induces the company to believe that he wishes to take shares and allows an allotment to be made with full knowledge.

Emergency limitation of share issue

Defence of India Rule 94A which restricted the issue of share capital was replaced by an ordinance which adopted the provisions of Rule 94A.

The ordinance has been in its turn, replaced by Act XXIX of 1947 which seeks to control all issues of capital and prohibits the issue of any capital in excess of a prescribed free limit, without the prior sanction of the Government of India. This will remain in force until 1950. The Act is reproduced in Appendix A.

The Government of India have from time to time published the free limit in respect of which no sanction would be required and at the present time, such limit is Rs. 5 lacs. A company may now therefore issue share capital or Debenture Loan up to a maximum of Rs. 5 lacs in any year without previous sanction from the Examiner of Capital Issues, Government of India but if it is proposed to float a new company with larger capital or to issue fresh capital or Debenture Loan exceeding that limit, it would be necessary to obtain previous sanction of the Examiner of Capital Issues, which will not be granted unless the application is made in the prescribed form giving information on specific matters. For the form, current at the moment, see form no 8B in Appendix B.

Application for Shares

The usual and the simplest method of agreement of taking shares is the *application for shares and allotment thereon.* The intending member makes an application which constitutes a proposal for membership and an allotment thereupon by the Directors of the company, constitutes an acceptance by the company of the proposal.

A notice of allotment to the allottee or some other mode of communication of the fact of allotment is necessary, for an acceptance which is not communicated is not binding on the proposer. But the communication is deemed to be *complete as against the proposer when it is posted* or otherwise put in the course of transmission so as to be out of the power of the acceptor (sec. 4, Contract Act). Application forms are generally supplied by the company along with the Prospectus.

(e) *Nicol's Case*, 29 C D. 426.

Section 96 *as amended by the Act of 1936* now provides that it shall not be lawful *to issue any form of application* for shares in or debentures of a company unless it is *issued with a prospectus* which complies with the requirements of section 93.

This rule is made subject to two exceptions viz. in the case of

(a) a bonafide invitation of a person to under-write shares.

(b) in relation to shares and debentures which are not offered to the public.

And the penalty of a fine up to Rs. 500/- is imposed for contravention of the Section.

Almost the same common forms are adopted by all the companies as share application forms Two specimens of forms which are generally used, are given in Forms No 9 and 10 in Appendix B.

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For the Text of Act XXIX of 1947 (Capital Issue Continuation of Control Act) and the form of application thereunder see *Appendix B. P. 331* under forms 8 & 8A.

An application is merely a proposal which *becomes binding agreement only upon acceptance which is made by the allotment.* So an application does not bind the company to anything. Nor is the applicant for a share bound by his proposal until its acceptance is communicated or put in the way of transmission to him. *A proposal may be withdrawn at any time before the communication of allotment* in the manner provided in sec. 4 of the Indian Contract Act.

Application by agent.

An application may be made, just like an offer in any other contract, by an agent. If the agent has authority to contract on behalf of the principal and his application is followed by allotment, the contract becomes binding on the principal in the same manner as any other contract through an agent. In every such case the company should take care to be satisfied about the authority of the agent by insisting on the production of a power of attorney or other valid authority. An alleged agent who contracts for another without legal authority will be personally bound under the contract he makes. So if an application is made by a person in a fictitious name or in the name of a person not *sui juris*, without proper authority to bind him, the company may, on allotment, hold the real applicant liable and the Directors would be entitled to substitute the name of the actual applicant for the name on the application.(f)

(f) *Pugh and Sherman's Case*, 13 Eu 566 · *London and Bombay Bank*, 18 C.D. 581.

when the application along with the deposit, which should not be less than 5% of the face value of the share and an admission fee, if provided by the Articles and the Prospectus of the company, is received, it may be entered in a book called the Application and Allotment book to ascertain the number of share applied for and the description of person who has applied.

Procedure on receiving application for shares

Each applicant is entitled to a receipt for the amount payable on application, either granted by the company or the company's banker, which he should retain. This receipt is generally required to be submitted when a share certificate is issued

The Directors have *power to refuse any application without* assigning any reason and such power is generally reserved by the Articles of Association. It would seem, however, that even if no such power is reserved by the Articles, the Directors have a free discretion to accept or refuse an application in the absence of anything to restrict such power in the Articles. The applicants who have not been allotted shares are generally informed by a "Letter of Regret" along with the refund of their deposit less expenses of the refund.

Letter of Regret

If the Directors do not allot the whole number of shares applied for, it does not amount to an unconditional acceptance of the proposal and therefore not a contract binding on the proposer unless he accepts the modified allotment. It is therefore usual and advisable to include in the form of application a clause to the effect that the applicant undertakes to accept the allotment of any smaller number of shares than applied for. Allotment of a smaller number on such an application completes the contract and does not require further acceptance by the proposer.

Brokers and Underwriters

Shares are generally disposed of by a company *through brokers*, who place or procure subscription for shares, without undertaking to take any shares themselves. Sometimes shares are disposed of *by underwriting*, which is really a species of insurance against non-subscription. The underwriter agrees to take up the shares or any specified portion of the shares issued to the public in case such shares are not taken up by the public within a specified time. In either case the *broker or underwriter receives a commission* which may be paid out of capital. The authority for the payment of such commission is given to companies by section. 105 of the Act, which runs as follows :—

Brokers and underwriters

Commision in selling shares

105. (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional for any shares in the company, if the payment of the commission is authorised by the articles and the commission paid or agreed to be paid does not exceed the amount or rate so authorised and if the amount or rate per cent. of the commission paid or agreed to be paid is,

(a) in the case of shares offered to the public for subscription, disclosed in the prospectus ; or

(*b*) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus or in a statement in the prescribed form signed in like mannar as a statement in lieu of prospectus and filed with the registrar and, where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice.

(2) Save as aforesaid and save as provided in section 105A. no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally for any shares of the company, or procuring, or agreeing to procure subscription, whether absolute or conditional, for any shares in the company, whether the shares or money be so 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, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have, and shall be deemed always to have had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

This section,

(1) leaves intact the legal rights of a company to pay *brokerage*, under the law as stood before the Act (sub-sec. 3),

(2) gives authority to a company to pay *commission* to a person (a) in consideration of his *subscribing or agreeing to subscribe*, whether absolutely or conditionally for any shares, (This *includes commission paid to underwriters*, and the words are wide enongh to include commission to be paid to other subscribers as well) or (b) *procuring or aggreeing to procure subscriptions* to shares absoultely or coditionally, (This includes *commission paid to brokers and* agents for procuration of subscription).

Provided that (a) the payment of such commission is *authorised by the Articles*, [It is not enough that such power is given by the Memorandum (g),] (b) the commission *does not exceed the rate* specified in the Articles, and (c) the rate *of commission is disclosed in the Prospectus or statement in lieu of Pros ectus* and in any circular or notice issued.

This section thus authorises the payment of brokerage where it was legal before and the payment of commissions to underwriters and others *for subscribing to or procuring subscription* to shares provided that such authority is given by the Articles and it is disclosed in the Prospectus etc. (h). The decision of the House of Lords

(g) *Republic of Bolivia Syndicate*, (1914), 1 Ch. 139.

(h) See *Metropolitan Ass v, Scrimgeour*, (1895). 2 Q.B. 604.

in *Ooregum Co*, v. *Roper*, (i) which decided that the payment of such commissions out of capital was *ultra vires* as being in effect an issue of shares at a discount has been, to this extent, modified.

Although the financial result to the company in paying commission and brokerage amounts to issuing shares at a discount, in theory it is an issue of shares at par. This section does not authorise the issue of shares at a discount but that is now allowed by the following section (see105A), so that the shareholder may get a share of a higher face value than the amount to be paid

Underwriting

Underwriting agreements.

An underwriting agreement is an agreement by which the underwriter agrees to take up the shares underwritten if and to the extent that they are not subscribed by the public. Agreements of this character are often very useful to companies, as it saves a company from the risk of its shares not being subscribed to the extent necessary. If it so happens, they can then look to the underwriter to take up the shares unsold.

Generally speaking, underwriting agreements give to some person or persons acting on behalf of the company authority to apply in the underwriter's name for shares comprised in the underwriting agreement which have not been taken up. This authority is irrevocable. (j)

Underwriter's liability.

An underwriter's liability to take shares varies according to the terms of the underwriting letter. It may give *an unconditional authority to apply* in the underwriter's name for all shares within the agreement if they are not subscribed within a specified date. In that case, provided the letter has been accepted and notice given of the acceptance to him, (k) the person having the authority may forthwith apply on the expiration of the time limited in the agreement. If, on the other hand, the agreement binds the underwriter to take the shares, or to find subscribers, "*if and when called upon*," he will not be liable until he has first been called upon to subscribe or find subscribers. (l)

An underwriting agreement like all other agreements is completed by acceptance and communication of the acceptance. The *underwriting letter is a mere offer* and is not binding until its acceptance is communicated as provided in sec, 4 of the Contract Act. (m) The acceptance may have been made verbally or by conduct and no formal letter of acceptance is necessary.

Underwriting is resorted to in order to secure to the company the subscription to shares to the extent underwritten. If subscrip-

(i) (1892). A.C. 125

(j) *Carmichael's Case* (1896), 2 Ch. 643 ; *Olympic Reinsurance Co*, (1920), 1 Ch 582 , (1920). 2Ch. 341

(k) *Ex parte Stark*, (1897), 1 Ch. 575.

(l) *Ormerod's Case*, (1894), 2 Ch. 474.

(m) *Ex part Stark*, (1897), 1 Ch. at p 591.

Purpose of having underwriters.

tions fail or are deficient, the company can look to the underwriter to subscribe to or find subscribers for the shares unsold. It is essential therefore that the underwriter should be a man of substance who is good for the whole of the amount underwritten. (ml) Underwriters are *not necessarily brokers* and *do not undertake to secure subscribers.* Their function as underwriters consists in insuring and guaranteeing the subscripiton. Thus, supposing that a person underwrites an issue of shares to the extent of one lakh of rupees to be subscribed within two months, he is not bound to exert himself to procure the sale of a single share, but is *entitled to his commission on the full value of shares subscribed* even though they may have been subscribed *without any effort on his part.* He is thus *distinguished from a broker* who is entitled to his commission only on the value of shares to which subscription has been procured by him. The underwriter's liability begins only when the amount of shares underwritten by him have not been subscribed. In that case he has either to procure subscribers for the balance or to take them himself.

An underwriting letter is not usually given to the company but to its promoters or directors or some other person, This practice was due to the doubt which existed under the old law as to whether the company could enter into such agreements by which shares issued to the underwriters would in effect be issued at a discount. The present law, however, places all doubts on the question at rest and there is no bar now to underwriting agreements being made with the company itself.

The amended section 96 provides an exception to the general rule that no form of application for shares can be issued by the company unless it is included in the prospectus, in favour of an underwriting contract, so that an invitation to a person to enter into an underwriting contract may forward an application form which is not the form issued with the prospectus. The form of application is of course one to take so many shares in the company, but if the agreement is in substance one to underwrite and not to take the shares personally then the acceptance of this application will not lay the company open to the penalty in section 96, because the form was not issued with the prospectus.

Form No. 14 in Appendix B gives an usual form of an underwriting letter. The terms of the agreement are a matter to be setteld by mutual consent. The essential contents of the letter are (1) *the number of shares underwritten,* (2) *the time* within which the shares are to be subscribed, (3) *an authority to apply* in the underwriter's name for the balance of shares underwritten which has not been taken up by others. If the whole of the amount underwritten is not subscribed within the time limited, the company cannot proceed forthwith to make an allotment of the balance. An application will have to be made and allotment made thereon. The letter of underwriting is required to be

Contents of underwriting letter

(ml) A statement of the opinion of Directors about the sufficiency of the underwriter is now required to be included in the Prospectus. Sec. 93 (1) (*ee*)

stamped as an agreement. The stamp duty on such a letter is *Imperial :* annas eight ; *Bombay, C. Prov., Punjab* . Rupee one ; *Bengal, Madras. Assam, U. Prov. :* annas twelve.

Sometime underwriters contract to have a certain number of shares allotted to them at par in lieu of their commission.

Mode of showing in balance-sheet. The total amount paid as commission for sale of shares should appear in the balance-sheet till the whole amount is written off from profits (*vide* sec. 106).

Issue of Sharers at a Discount

Under the law as it stood before the amendment of 1936 while it was competent for a company to pay commissions to brokers and underwriters it was not permissible to pay such commission to the share-holder himself for subscribing to the shares In other words, the share-holders had to pay the full amount of the face value of the shares for getting allotment.

The new section 105A however now permits the company to issue shares at a discount under some stringent conditions, This section is as follows :—

"(1) Subject to the provisions of this section it shall be lawful for a company to issue at a discount shares in the company of a class already issued :

Provided that—

(a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company and must be sanctioned by the Court ;

(b) the resolution must specify the maximum rate of discount (not exceeding ten per cent, in any case) at which shares are to be issued ,

(c) not less than one year must at the date of issue have elapsed since the date on which the company was entitled to commence business .

(d) the shares to be issued at a discount must be issued within six months after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Every prospectus relating to the issue of the shares and every balance-sheet issued by the company subsequently to the issue of the shares must 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 document in question.

(3) If default is made in complying with sub-section (2) the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty rupees."

Note (1) that shares cannot be issued at a discount *until after one year from the commencement of business,* (2) a *resolution* must be passed

by the company authorising such issue, (3) it must be *sanctioned by the Court*, (4) the *rate of discount* must be fixed by the resolution subject to a legal *maximum of 10 per cent.*, (5) the shares must be issued within 6 *months of the sanction of the Court.*

Allotment of Shares

Acceptance by the company of proposal to take a share is *ordinarily evidenced by allotment.* No proposal with regard to taking shares by application will be binding either on the applicant or on the company *until accepted by the company by allotment*, the applicant being at liberty to withdraw his application at any time before allotment. Allotment means the appropriation of a certain number of shares to an applicant by a resolution of a duly constituted board of directors or other person or persons authorised in this behalf. The shares are identified by their respective numbers, but it is not necessary to mention the distinguishing numbers in the resolution or the letter of allotment.

Application binding on allotment

As already stated before' where an application has been made in a fictitious name or by an alleged agent without authority, an allotment made will nevertheless bind the real applicant.

Restrictions as to allotment

Legal restrictions as to first allotment

There are legal *restrictions as to the* first *allotment* by the company. For this purpose sec. 101 of the Act should strictly be followed. The section *as amended* by the Act of 1936 runs thus .—

"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 directors must be raised by the issue of share capital in order to provide the sums or, if any part thereof is to be defrayed in any other manner the balance of the sum required to be provided in respect of the matters specified in sub-section (2) has been subscribed, and the sum of at least five per cent. thereof has been paid to or received in cash by the company.

(2) The matters for which provision for the raising of a minimum amount of share capital must be made by the directors are the following, namely :

(a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue ,

(b) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for or of his procuring or agreeing to procure subscriptions for any shares in the company :

(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters, and,

(d) working capital.

(2A) The amount referred to in subsection (1) as the amount stated

in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription.

(2B) All money received from applicants for shares shall be deposited and kept in a scheduled bank as defined in the Reserve Bank of India Act. 1934, until returned in accordance with the provisions of sub-section (4) or until the certificate to commence business is obtained under section 103.

(2C) In the event of any contravention of the provisions of sub-section (2B) every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding five hundred rupees.

(3) The amount payable on application on each share shall not be less than five per cent of the nominal amount of the shares

(4) If the conditions aforesaid have not been complied with on the expiration of one hundred and eighty days after the first issue of the prospectus, all money 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 ninety 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 seven per cent per annum from the expiration of one hundred and ninetieth day. Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void,

(6) This section, except subsection (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say)

(a) the amount (if any) fixed by the memorandum or the articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment , or

(b) if no amount is so fixed and named the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash has been subscribed and an amount not less than five per cent of the nominal amount of each share payable in cash has been paid to and received by the company.

(8) Sub-section (7) shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act."

Intention of putting legal restriction.

The object of this section is to ensure that the public may definitely know before proceeding to subscribe, the amount of capital on which the company intends to proceed to its first allotment, so as to judge whether the capital thus fixed is likely to be sufficient for the commencement of business.

The following points in the new section should be specially noted:

(1) The new section lays down specific rules regarding *matters which must be provided for by the minimum subscription.* It is not open to the company to prescribe by its prospectus a minimum subscription which does not provide for meeting the expenses as specified in sub-section (2).

(2) At least 5 per cent. of the minimum subscription must have been received *in cash.*

(3) The minimum subscription mentioned in the prospectus must be *exclusive of any amount payable otherwise than in cash.*

(4) It is now provided that money received from applicants for shares must not be spent but kept deposited with a Scheduled Bank against liability to re-payment under sub-section, if the conditions of allotment have not been fulfilled within 180 days after the issue of the prospectus.

(5) A new liability has been imposed upon promoters, directors and other persons to a fine up to Rs. 500/- if the money is not kept deposited in a scheduled bank, in addition to their joint and several liability under sub-section (4) to repay the money within 190 days.

Application of sec. 101

The provisions of section 101 do not apply to a private company. The above section will apply only :-

(1) To companies *which invite the public to subscribe* for shares.

(2) To public companies which on their formation do not invite the public to subscribe and have therefore *to file a statement in lieu of Prospectus* under sec, 98 of the Act Sub-section (7) of section 101 applies to such companies and no allotment shall be made unless the requirements of clause (a) or (b) of sub-section (7) have been fulfilled, These limitations apply only to the *first allotment* of shares and not to any subsequent allotment Further, the limitations of sub-section (7) do not apply to a company which has allotted any shares or debentures before the commencement of Act.

Points to be observed in first allotment.

The following points have to be borne in mind in case of the first allotment of shares . —

(a) Where a company offers its shares to the public fo subscription, the Prospectus issued under section 93 must contain particulars of the *minimum subscription* calculated to include the amounts required for the several purposes specified in sub-section (2).

(b) In the case of a company which does not issue any invitation to the public to subscribe to its shares *the minimum subscription,* on which the first allotment should be made, is *men-*

tioned in the Articles of Association. or in *Memorandum* and named in the *statement in lieu of Prospectus.* Otherwise the *whole amount* of the share capital has to be subscribed before allotment can be made.

Minimum subscription

As to the minimum subscription, it may be provided in the Articles that so many shares or so many rupees worth of shares or a specified percentage of the issued capital will costitute the minimum subscription on which the company may proceed to allot.

But the clause must be explicit and it would be advisable to specify the amounts required for the several purposes specified in sub-section (2).

Receipt of application money.

(c) Allotment can only be made after *application money has been received in cash* If the amount is paid by cheque it should be cashed before the allotment is made. (n) The minimum amount of the application deposit *cannot be less than five per cent,* of the face value of shares applied for (see sec. 101 sub-sec. 3).

(d) All money received from applicants must be deposited and kept in a Scheduled Bank until the certficate of commencement of business is obtained or until it is returned.

Time limit

(e) The first allotment must be made *within one hundred and eighty days from the date of the Prospectus.* If allotment cannot be made within that time by reason of the above conditions not having been fulfilled the whole amount received from the applicants for the share has to be refunded without interest within *one hundred and ninety days* of the issue of the Prospectus If such amount is not refunded within one hundred and ninety days the Directors shall be liable to pay the amount with seven per cent. interest.

Effect of irregular allotment.

Any allotment made in violation of sec. 98 or sec. 101 is *voidable* at the instance of an applicant for shares and *not void* altogether (sec. 102) Any share-holder may avoid an allotment if made in contravention of sec. 98 or sec. 101 *within one month from the date of the Statutory Meeting* of the company (under sec 77) or where a company is not required to hold a statutory meeting or where allotment is made after the statutory meeting, within one month of the allotment. If no notice of avoidance is given within that time the allotment stands good although it may be in contravention of sec. 101. To avoid the allotment, it is not necessary to bring a suit within the month. If notice of avoidance is given within the time and is followed by prompt legal proceedings, it is enough. (o)

The Act nowhere lays down how and by whom the allotment has to be made. Table A, Art. 71, (which has now been made compulsory

(n) Palmer's Company Law 9th Edition, page 107, Buckley—*Companies Acts*, 11th Ed. p 89 This is no longer the law in England where, by sec 39 (1) of the Act of 1929 receipt of a cheque by the company in good faith is good payment That clause has not been adopted in the Indian Act.

(o) *National Motor Co.*, (1908), 2 Ch. 228.

under sec 17,) provides that the Directors have all the powers of the company which are not required by the Act or the Articles to be exercised by the company at a General Meeting. Under this article, the *power of allotment, among other powers, would be vested in the Directors* and can be exercised in accordance with the rules laid down in the Articles for the transaction of business by the Directors. Where the power is vested only in these terms in the Directors, they *cannot delegate the powers* to a committee of Directors, in spite of Art. 91 of Table A. (p) But the Articles may expressly provide for delegation of this power, (q) as well as provide for any other mode of allotment, such as, for instance, authorising managing agents to allot. Allotments so made in accordance with the Articles would be properly made.

Who can make allotment.

No time should be lost in despatching notice of allotment, as an applicant may withdraw his application and claim the payment of any deposit towards the shares applied for before the notice have been posted. As pointed out before, acceptance can be effectively communicated by word of mouth or by conduct, even without such letter of allotment, but it is safe and prudent always to post a letter of allotment and to keep proper record of such posting. This may be done by an allotment letter as given in the Form No. 15 in Appendix B which is the one usually adopted, with counterfoils bound in a book and numbered consecutively. All letters of allotment must bear two annas stamp (*vide* amended Stamp Act, Act XLIII of 1923). Such stamp may be impressed on the body of the allotment letter or may be affixed with a revenue stamp (r) of the value.

Notice of Allotment

A letter of allotment which is not duly stamped is not invalid and would be binding as an allotment of the share both on the applicant for share and the company. But a penalty, under sec 35 or sec 61 of the Stamp Act, is payable if the letter is unstamped.

Stamp on Allotment Letter

The shares mentioned in the letter of allotment may be transferred on the basis of this letter before the share certificate is issued as it is an evidence that the holder possesses so many shares in the company.

An allotment when made and duly communicated to the allottee, in the manner previously described is irrevocable and binding on both the company and the member to whom the allotment is made even though the allotment letter is never received (s) But if the allotment is not made within a reasonable time after the application it is not binding on the applicant. (t) It is not essential to formally allot shares to subscribers of the Memorandum as they contract to become members by subscribing thereto and are liable as members without any allotment. (u)

Binding force of Allotment Letter

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[p] *Howard's Case*, 1 Ch 561.
[q] *Harris's Case*, 7 Ch 587
[r] Postage stamps are not now revenue stamps and cannot be used for this purpose.
[s] *Harris's Case*, 7 Ch 587
[t] *Charmichael's Cases*, 17 Sim. 163 at p 166 *Ex Parte Baily* 5 Eq. 428.
[u] *Evan's Case* 2 Ch 427 *London Coal Co*, 5 C. D 525. see however 185 I. C 501, 185 I. C. 712 and *Contra* 177 I C. 577.

Return of Allotment

A Return of Allotment as provided by sec. 194 should be *filed with the Registrar within one month* from the date of the allotment and a *fee of Rs 3/-* as prescribed in Table B is to be paid for filing this document. The form as given in Form No. XV in Appendix A is the prescribed form for return of Allotment. If the return of Allotment is not filed within the specified time, the defaulting officer is liable to a *fine not exceeding* Rs. 500/- *per day* during which the default continues.

Return of allotments

SEC 2 OF ACT XXVI OF 1941 has amended Sec 104 of the Act giving the registrar power to extend the period of one month prescribed by the section if it is considered by him to be inadequate. It is provided also that the penalty for default in that case would only be incurred if the return is not filed within the period so extended.

Consideration for Allotment

Where the Articles provide that a certain number of shares shall be allotted to any person in consideration of property transferred or services rendered, it is necessary to have a proper allotment to give effect to this. Form No. 16 in Appendix B may be adopted for the Letter of Allotment in such cases. It is only when the allotment is accepted by the applicant that a binding agreement is made and the shares become vested in the allottee. Without such allotment, the mere mention in the Articles does not vest the shares, nor, it would seem is any one entitled to claim to the allotment against the company by virtue of any pre-incorporation contract or of any statement in the Articles, though he has his remedy in damages against promoters for breach of contract. This letter must bear two annas stamp as is the rule in case of a Letter of Allotment.

Allotment as to fully or partly paid-up shares.

An allotment like this can only be made in pursuance of a formal contract on due stamp(v) setting out that they are made in consideration of some property or rights acquired by the company. The contract must state full particulars of the consideration.(w)

Contract for fully or partly paid-up shares.

A specimen of the form for the contract is given by Form No. 17 in Appendix B. The contract (together with the contract of sale or for services or other agreement which constitutes the consideration) is required to be submitted to the Registrar for his inspection along

(v) *Imperial* annas *eight Bombay, C Prov., Punjab* Rupee one, Bengal. *Madras, Assam, U. Prov.*, annas twelve

(w) An allotment made without consideration is void, for the Act imposes on shareholders the liability of paying the value of the shares in full. *Ooregaum*, v *Roper*, (1892) A C. 125 *Wardley* v *Kolly fontain Mines* (1904), 2 Ch 108 But the company may take other considerations in lieu of cash This consideration must be real and not illusory and must be valuable consideration as defined in the Contract Act So long as the consideration is valuable and the company considers its value to be equal to the amount of shares issued, it is not usually material that the value of the consideration is over-estimated or exaggerated *Ooregaum* v *Roper*. But there are limits beyond which the Courts would refuse to go and a consideration which is on the face of it grossly inadequate would not support an allotment. *Hongkong China Gas Co.*, (1914), 1 Ch 527.

with the Return of Allotment noting down the fact on the Return of Allotment in the space provided for the purpose [*vide* sec. 104 sub-section 1. clause (*b*).]

When an allotee remits the dues on allotment call, he will be entitled to a receipt either from the company or from its banker, as the case may be. This receipt, the allotee must retain to be exchanged for the share certificate. Form No. 18 in Appendix B may be adopted for such a receipt with counterfoil and numbered consecutively. This receipt also should bear one anna stamp (*vide* Article 53 of Indian Stamp Act) if the deposit exceeds Rs. 20.

Allotment money receipt.

Members or Shareholders

In the case of a company, limited by shares the word member is a synonym for the word shareholders and *vice versa*. (x)

Definition of *member*.

Section 30 of the Act defines the word *member* as follows :—

(1) The subscribers of the Memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its Register of members.

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

Hence, automatically, on registration of the company a *subscriber to the Memorandum* becomes a member; and, in case of other members, membership will be constituted by a *proposal*, an *acceptance by the company* and *entry in the Register of Members*. To constitute membership, entry in the Register of members is ordinarily essential. But where membership has been acquired by a proper contract as by signature of Memorandum or by allotment of shares on application, and registration has not been made by mistake, fraud or negligence, the fact of non-registration would not take away the member's rights or obligations. (y)

The Madras High Court has held that sec. 38 lays down the exclusive proceedure for rectifying the register. In the same case it has been held that where the articles provide that no shares shall be allotted to strangers without the sanction of a general meeting, but allotment was made without such sanction and the name of the allottee entered on the share register, the membership of the allottees cannot be repudiated. (y')

Where the register is not accurate, the Court has the power to rectify the register, either before or after winding up (see sec.38). This is made on the assumption that a person who is already a member has been improperly left unregistered or that a person who is not a

(x) *Vide* Palmar's Company Law, 9th Edition, Page 101.
(y) See infra under *Register of Members*.
(y') Damodar vs I.N. Agency I L.R. (1945) Mad 928.

member has been improperly registered. The liability of such persons whose names have been improperly left unregistered must be taken to have accrued as from the date when the right to registration arose. It follows that while registration is most important, it is not conclusive.

As Lindley J. observes, "The true view of the Act we take is as follows : 1. If a proper register is kept that register is *prima facie* evidence that a person whose name is on it is a shareholder, 2. If in addition it is proved that such person has become, by subscribing to the prescribed sum or otherwise, entitled to a share in the company, the evidence that he is a shareholder is conclusive, 3. If there is no register, or if the register is so defective as to be inadmissible in evidence, other evidence must be adduced to prove that a person is a shareholder." (z)

Who may become Members

Who may become a member is a question which may naturally arise. The following persons may be members --(1) any person not under disability, (2) any infant, (see below), (3) any woman, (4) any corporate body, if authorised by its Memorandum of Association and (5) several persons jointly.

Who may become member ?

In allotting shares, care should be taken to examine the solvency of the applicant and so far as possible, not to make allotments to persons who have not the means to pay the calls regularly, otherwise the company may be in difficulty when in need of money. Particular attention should therefore be given to the applicant's occupation. There is no difficulty in allotting shares to males of full age. There is some risk in allotting shares to a female unless she owns any property in her own right, for without it the company would have no security for the payment of calls by her.

General considerations to be made in allotting shares.

Membership of infants. The question of of the membership of infants is not free from difficulty.

In England "an infant may become a member of a company and hold shares either by subscribing the Memorandum of Association(a) or by taking a transfer of shares (b), but the company has power to refuse to accept a minor as shareholder or transferee of shares (c) and should always do so where a liability attaches to the shares, for the infant can, on attaining majority, repudiate the shares if they are then burdensome (d)"—[Gore-Brown's Handbook, p. 86 (35th. Ed.)].

In England an infant's contracts were before the Infant's Relief Act voidable only and not void and even under that Act it is only some specific contracts which have been made void altogether. In India however contracts of infants, except for necessaries are altoge-

(z) *Portal* v. *Emmens*, 1 C. P D 201 ; 1 C. P. D. 664

(a) *Re Laxon & Co*, (1892) 3 Ch. 5555, *Nassau Phosphate Co*, 2 Ch 610

(b) *Lumsden's case*, 4 Ch 31.

(c) *Symon's Case* 5 Ch 298, *Costello's case*, 8 Eq. 504.

(d) *Dublin & Wicklow & Co.*, v, *Black*, 8 Ex. 181, Ebbett's case 5 Ch. 302; *Re Laxon & Co*, supra

ther void.(e) As pointed out before signature of a memorandum of association by a minor is altogether void in India. So too would a transfer to a minor be void, being a contract.

A minor may however acquire a share as moveable property by inheritance or bequest. That would necessarily carry with it membership of the company, as also liability in respect of the shares of the company.

Even in India however an infant may contract through his guardian and in a proper case a purchase of shares by an infant through his guardian would seem to be valid. Even then, there is always a possibility of the infant repudiating the contract by proving proper grounds for repudiation, and companies should, where there is a liability attaching to the shares, be well advised to refuse to register the transfer. It seems doubtful whether in such a case, where the guardian purports to act as guardian the company can register the guardian himself as shareholder, in the absence of any circumstances showing that the guardian undertook a personal liability.(f) The proper course in such a case would therefore be to refuse to register the trasfer unless an adequate indemnity is obtained from the guardian personally.

Where an infant acquires a share through a guardian as well as where he acquires a share by inheritance or bequest, the ownership of the share belongs to the infant and it is the infant who is to be put on the register as the shareholder, and not his guardian. He cannot function otherwise than through his guardian, but he is nevertheless himself the member. The guardian would act for him just as an attorney might act for an adult shareholder, only his power to act would arise not out of a contract but under the law. The Madras High Court has however held that an agreement by a minor through his guardian to take shares is altogether void. (f')

Persons under Court of Wards.

The position is the same when an infant or a disqualified proprietor is under the Court of Wards. The ownership of the share still vests in the ward, the Court of Wards only "takes charge" of the property and has, under the statute, the sole power to manage or dispose of his property. Cases have been known in which the manager of the Court of Wards has applied to have his name registered in the place of the Ward, as if the taking charge of the property by the Court of Wards had the effect of 'vesting' the property in it. Such applications are entirely misconceived. The assumption of charge by the Court of Wards gives rise to certain statutory rights to the Court or its manager in dealing with the property, but the property vests nevertheless in the ward. The ward therefore is the only person who is entitled to be on the register. The proper course would be for the manager to give notice to the company that the management has been taken over by the Court of Wards and that he has been appointed manager. Thereafter the manager would be entitled to exercise all statutory rights on behalf

(e) *Mohori Bibee* v.. *Dhurmadas*, 30 I A. 114.

(f) *Massey and Griffin's Case*, (1907) I Ch. 582.

(f') *Pelani appa v Official Liquidator* I. L. R. 1942 Mad. 875

of the ward in respect of the share and the company would be bound to recognise the manager as the sole person competent to act for the shareholder ; and further, the company or its directors would be liable for any loss occasioned by their recognising or acting upon a transfer or other disposition of the share by or for payment of dividend to any person other than such manager.

There seems to be a practice in some companies on insisting on registering the guardian or the manager of Court of Wards as the shareholder. This practice is entirely unjustified, as the share does not legally vest in the guardian or manager, he is only the statutory agent of the shareholder. He cannot therefore be entered as a member. And the registration of such person as member can only lead to complications, as the company cannot recognise any trusts—the result being that the real owner of the share may be put into difficulties in the matter of enforcing his rights and obtaining a transfer of the share in his own name when he becomes *sui juris*.

Some companies provide in their articles that no infant may be registered as a member. Where the articles so provide the company can refuse to register a transfer in the name of an infant even though the transfer may have been executed on behalf on the infant by its properly constituted guardian. But in such a case the company cannot register the guardian as the shareholder, for the simple reason that the guardian is not a shareholder. While thus the company may refuse to register transfers it is more than doubtful whether the company can on the basis of such an article refuse to register an infant who has obtained a share by inheritance or bequest. In such a case refusal to register would be tantamount to a forfeiture of the share already vested in the infant by law and the articles cannot provide for forfeiture of share on such grounds, (see *infra* under *Forfeiture*), Nor can the company insist by virtue of such an article that the guardian of the infant shall be registered in the place of the minor shareholder, because the share does not vest in the guardian and under sec. 33 the company cannot recognise any trust. Where such an article exists it must be rgarded as limited to cases of transfer only. Its application to cases of transmission by death would make it *ultra vires* and the clause would be repugnant to the right of ownership of the shareholders.

Corporations as Members

It is quite legal to allot shares to a corporate body, if such corporation is *authorised by its Memorandum of Association* to be a member of another company. A 'corporation sole' like the Bishop of Calcutta can validly become a member of a company by his office name, and though the incumbent may change from time to time, it would not affect the membership. It is different however with holders of other offices who are not corporations sole for they are not 'persons' in law. Thus "the Collector of 24 Pergunnahs" or the Secretary of an Orphanage as such cannot become a member. Where a share is allotted to a person who holds the share as the holder of an office, the company can only allot to and register him by his name and will disregard his fiduciary character. When the officer changes, it will be necessary to execute a transfer of the

Corporations as members

share to his successor. Several persons, jointly, may become members and in such a case though all the names will appear in the Register of Members, the Articles usually provide, for convenience, that notices, reports and other publications intended for the members will be issued in the name of the person whose name stands first in the Register of Members. A partnership firm, as such, cannot be a member, as in law such a firm is not *a person* ; but the individual partners of the firm may be joint members and it would seem that as partners can contract in the name of the firm, if a company accepts a partnership firm as member, the effect of this would be to constitute the partners of the firm joint members and the company cannot repudiate such membership as bad in law.(g) It is doubtful whether it would be proper to register shares in the name of a Society or Trust Fund formed under the Societies Registration Act of 1861. Although it is a corporation, the property moveable or immoveable belonging to the society vests by law in the Trustees and not in the Society as a corporate body. It would be proper, in such cases, to register shares in the personal names of the trustees and disrgard their fiduciary character.

Liability of Members

The liability of the subscribers to the Memorandum to pay the amount of shares subscribed is absolute. When the Memorandum is registered, the subscriber cannot repudiate his subscription on the plea of misfeasance or misrepresentation, but *an ordinary applicant for shares may withdraw his application* by giving notice of withdrawal at any time *before the allotment is made.* The liability of a subscriber to the Memorandum on the other hand to pay for the full value of the shares there subscribed cannot be repudiated or in any way extinguished, except where the full nominal amount of the share capital has been allotted to others. For his membership he requires no allotment, and no entry in the share register though, as a matter of practice, it is always necessary to enter his name on the share register which should be a complete and self-contained record of the shareholders and sec. 31 requires the company to maintain a register of all members. While thus the company is bound to enter the name of the subscribers in the share register, such entry is not a condition precedent to the acquistion of membership by the subscribers.

Liability of subscribers to the Memorandum

The liability of the subscriber to take the shares subscribed for will be taken to be satisfied if a larger amount of shares is subsequently allotted to him without reference to the subscription of the Memorandum provided that the shares allotted are not paid-up shares but such as he has to pay for. The liability is not satisfied by taking the same or even larger amount of shares from other shareholders as the contract is to take the shares from the company. (h) The subscriber cannot escape liability by showing that he was induced to subscribe by reason of misrepresentation made by promoters.(i)

With regard to the time-limit for enforcement of the liability, in

(g) Buckley's *Companies Act*, 11th Ed. p 56,

(h) Palmer's Company Law, p. 102, Buckley's *Companies Act*, 11th Ed. p. 39.

(i) Buckley *op, cit.* p. 40.

an English case a subscriber was held liable after nine years of his subscription (j), but having regard to the provisions of the Indian Limitation Act (Schedule I Art. 115) it is doubtful whether that case is good law for India. If a subscriber dies before the payment of his share money, his estate will remain liable for money.

The liability of a member in a limited company is to the extent of the value of the shares he holds and nothing more. In case of winding-up of the company a member is not required to contribute anything more than the outstanding liability on account of his shares (*vide* section 156).

Liability of member,

The liability is to pay the amount of the share capital *according to calls made in accordance with the Articles of Association.* As each call is made the liability attaches from the date on which the call is payable in terms of the notice. A suit for the recovery of the calls must be made (Sch. 1 Art. 112 of the Limitation Act) within three years from the date on which the call is payable, after which it becomes time-barred and cannot be recovered by the company itself. But upon winding up a new cause of action accrues to the liquidator and he may now, under the amended Act sue, for the amount called by him within three years of the call, made by him. [sec. 159 (1)].

How membership in a company may cease

The membership of a company may be terminated in any of the following ways :—

(1) *By the shareholder transferring his shares* to other persons. In such a case the transferor ceases to be a member as soon as the transfer is registered, but not before. Even after the registration of the transfer the transferor remains liable as a past member in case of a winding-up of the company within a year from the date of his ceasing to be a member (section 156).

The object of thus extending the liability of shareholders is to protect the company and its creditors against *mala fide* transfer to men of straw to escape liability on liquidation If the company is wound up within one year of transfer and the unpaid share money is not recovered from the transferee the transferor may under this section be compelled to pay to the extent required on winding-up The section makes no exception in favour of *bona fide* transfer : liability as past members under the section is absolute.

(2) By his shares being *forfeited.*(1)

(3) By the *shares being sold by the company to enforce its lien,* if allowed by its Articles, for debts of the member to the company and the purchaser being registered as holder in his place. The same result would follow when the shares are sold in execution of a decree by any other creditor, provided that the transfer is recognised by the company and the transferee registered as a member.

(4) By death. On the death of a shareholder, his heirs, executors or administrators are entitled to be registered as shareholders on satisfactory proof of their title by succession in the manner provided by the articles. It is safe for the company to require proof

(j) *Esparto Trading Co.*, 11 C. D. 191.
(l) See *post* under *Forfeiture of Shares.*

by the production of the Probate of the Will or Letters of Administration or a Succession Certificate or a certificate of the Administrator General. The production of such proof is not absolutely essential. The Directors may in a proper case register the successor without such proof *at their own risk*. The estate of the deceased member will be liable to the company for the outstanding balance of calls payable on the shares if there has been no transfer to the heirs or legal representatives. (m)

(5) By a *valid surrender*. As the effect of a surrender would be a reduction of a share capital, it cannot be done except by following the procedure in section 55 and the following sections for reducing share capital, except where the surrender is without consideration, where forfeiture has been incurred but not formally made. (n)

(6) *By rescission of the contract of membership* on the ground of fraud, misrepresentation or mistake. This case seldom arises and it is very difficult for a shareholder to get relief on this ground when the shares have been alloted and the notice of allotment issued. A subscriber to the Memorandum cannot repudiate his shares on this ground.

Rescission of Contract of Membership

A person who agrees to become a member of a company acquires that position by virtue of contract In order therefore that the membership should arise, it is essential that all the elements of a valid contract as defined in the Indian Contract Act should be present.(o)

Where the essential elements of a contract are wanting, there is no membership and even if a person has been entered in the register as a member he does not acquire the status or the liabilities of membership Thus where the person in question *has not the capacity to contract*, or where the application for share has been *withdrawn before allotment*, or where the agreement is *for an illegal purpose or consideration* no valid contract of membership comes into existence although allotment should have been made

Where the agreement is made under circumstances in which it would become voidable under the Indian Contract Act, the party at whose instance the contract is voidable can rescind the contract by taking proper steps Although under the general law of contract a voidable contract can be avoided by notice to the other party, it would seem that in the case of a contract of membership, a shareholder in whose name a voidable allotment has been made *can avoid the contract only by giving notice of avoidance* (within one month of the first Statutory Meeting in cases under sec 102) *and following it up by legal proceedings* either by way of suit or an application for rectification of the Register of Members under sec. 38 of the Companies Act. Under the general law of contract a person who has been induced to enter into a contract by fraud, misrepresentation or mistake can either rescind the contract or accept the contract and sue for damages. But in the case of purchase of shares of a company his only remedy seems to be to rescind the contract.

(m) See *post* under *Transfer and Transmission*,
(n) Buckley, *op cit* 11 Ed. p. 102—4.
(o) See supra p. 91.

He cannot, as in the case of sale of goods, retain the shares and sue the company for damages. (p)

Subject to these differences the right of a shareholder to rescind the contract is the same as that of any other contract and he would be entitled to rescind the membership where the contract has been made under circumstances which would make it voidable under the Indian Contract Act

The class of cases in which occasion for rescission most commonly arises in company law is that of *misrepresentation in the Prospectus*. The prospectus is a representation by the company with regard to its objects, resources, liabilities and prospects and forms the basis of the contract between those who apply for shares on reading the Prospectus and the company Where therefore there has been fraudulent misrepresentation or a misrepresentation of material facts which has induced a shareholder to apply for shares, the shareholder so misled has the right to rescind the contract, provided that he applies within a reasonable time after he comes to know of the fraud or misrepresentation (q)

A fraudulent misrepresentation, that is, a false representation which is known to the person making it to be false or is not believed by him to be true and which is made with the object of deceiving the other party, is always a ground for rescission But in the case of other representations, in order to entitle a party misled by it to rescind the membership, it must have been a misrepresentation of or supression of a *material fact* and must have *actually misled the party seeking relief*. Whether a person is actually misled is a question of fact (r)

The Court will not grant relief where there is no real deception but the party seeking relief was simply joining with other speculators in taking risks (s)

But it is not necessary that the misrepresentation complained of should have been the sole inducement to the applicant to apply for shares It is enough that it was an inducement (t)

Even a partial misrepresentation is a sufficient ground for rescission (u)

Where an application is made on the basis of a prospectus but before allotment a material change is made in that prospectus the applicant is entitled to revoke his application & avoid the allotment without proof of any misrepresentation (ul) In such a case there is in fact no offer to take the shares on the basis of the changed articles which can become a binding contract by acceptance by allotment

Except on above conditions, a member's name cannot be removed from the Register of Members or his right as a member repudiated, provided he paid the calls regularly, however unpleasant he may be to the company or to the management.

(p) *Houldsworth* v *Glasgow Bank*, 3 A. C. 317 , *Addlestone Linoleum Co.*, 37 C. D 191

(q) *Reese River Co , Smith's Case*, 2 Ch 604 at p. 609 , *Downes* v. *Ship*, L.R. 3 H L. 343

(r) *Aaron's Reefs* v *Twiss*, (1896), A.C. 273 at p. 280 ; *Macleay* v, *Trait*, (1896). A.c. 24 at p. 28

(s) *Jennings* v. *Broughton*, 5 De G M & G. 126 at p. 140.

(t) *Edginton* v *Fitzmaurice*, 29 C D. 459 , *Arnison* v *Smith*, 41 C.D. 348

(u) *Clermont* v. *Tasburgh*, I Jac. & W. 112 ; *Adam* v. *Newbigging*, 13 A. C. 308

(ul) *Rajagopala* v. *S. I. Ry Works A, I. R* 1942 Mad. 656.

Whenever a member ceases to be so, the date of his cesser of membership shall be noted down against his name in the Register of Members in the column provided for the purpose (*vide* sec. 31, clause iii).

In registering transfers of shares resulting in the cessation of membership of a shareholder, the Directors and the Secretary should take particular care to see that *at no time the number of members falls short of the statutory number i.e*, below seven in the case of a public company or below two in the case of a private company. Under sec. 147 of the Act if a company carries on business for six months after the number is so reduced, all the members who are cognisant of the fact become personally liable jointly and severally for all the debts of the company contracted during the period.

Register of Members

Particulars to be contained in the Register of Members.

A Register of Members must be kept according to the Act as provided by sec. 31. Under that section the following particulars must be contained in the Register of Members :—

(i) *the names and addresses and the ocupations*, if any, of the members and, in the case of a company having a share capital, statement of the *shares* held by each member distinguishing each share by its *number* and of the *amount paid* or agreed to be considered as paid on the shares of each member ;

(ii) the *date* at which each person was *entered in the register as a member* ,

(iii) the *date* at which any person *ceased to be a member.*

Form No. 21 in Appendix B is in conformity with the Act and may be adopted for a Register of Members.

By sub-section 2 of section 31 a company is liable to a *fine not exceeding Rs. 50/- for every day* during which the default continues, if any irregularity has been made in keeping this book in compliance with the requirements of the Act.

Share Ledger.

A separate share ledger, keeping a folio for each member, is generally kept as subsidiary to the register, for facility of work, though not required by the Act. In some companies, this book is treated as the Register of Members as it also contains all the requisite particulars as prescribed by law. Form No. 22 in Appendix B may be adopted for a share ledger.

Index of members.

Section 31A now requires a company having more than 50 members to keep an index of the names of the members of the company, unless the share register is kept in such a form as to constitute in itself an index. There is no special form laid down, although the index may be a card index, but what is necessary is that the index should contain with regard to each member sufficient indication to enable the account of that member in the register to be readily found. It is also provided that for

default in complying with this provision a company and every officer responsible shall be liable to a fine.

Entry in the Register of Members

The Register of Members shall be kept ready at the registered office of the company just after the registration of the company as the names of the subscribers to the Memorandum are to be entered in it when the company is granted incorporation. Of course, the non-entry of the name of a subscriber of Memorandum in this register will not reduce his liability for the shares he subscribes As regards other members their names should be entered in it only when allotment has been made and communicated to them, or a transfer of shares in their favour has been recognised by the Board of Directors, as it is upon such allotment or recognition that their membership becomes complete Section 40 of the Act provides that the Register of Members shall be the *prima facie* evidence of any matter by this Act directed or authorised to be entered therein.

Rectification of Register of Members

Care should be taken that entries in *the Register of Members are promptly and accurately made*, as delay or inaccuracies may lead to expensive law suits (*vide* section 38). If the name of any person is *fraudulently or without sufficient cause entered in or omitted* from the Register of Members of a company, the person aggrieved or any member of the company or the company itself may apply to the Court for *modification of the Register*. The Court has discretionary power in dealing with such an application. It may grant damages, if any, sustained by the aggrieved party, or make order as to costs Mere negligence of a clerk may lead to a costly litigation. If there has been any *rectification* in the register, the fact should be *communicated to the Registrar (vide sec. 39)*.

Scope of sec. 38.

Section 38 gives a summary jurisdiction to the Court to effect a correction in the register This jurisdiction is not limited to the circumstances stated in the section Thus the Court can rectify the register by ordering the entry of names of joint-holders of shares in a manner consistent with the constitution of the company where it is different from the manner of entry adopted by the company (v)

This is a summary power given to the Court and is invoked by an application in Chambers Apart from this, a share-holder whose name has been improperly omitted or a person, whose name has been improperly entered as a shareholder, can have his remedy by suit and, where the contest is essentially one of disputed title between conflicting claimants involving complicated questions of title, the Court has power to refuse to act under this section and refer the parties to a regular suit (w) But the Court has power under this section not only to order rectification where there is default of the company and relief is sought against the company by a member but also where the conflict is between rival claimants.

The jurisdiction arises (1) where the entry or omission is made without sufficient cause and (2) where default or unnecessary delay takes place. The

(v) *Burns v Siemens Bros*, 1 Ch 225

(w) *Ruby Consolidated Mining Co., Askew's Case* 9 Ch. 64 *Stewart's Case*, L. R. 1 Ch at p. 586; *Ward & Henry's Case*, 2 Ch 431.

expression *without sufficient cause* has been very broadly interpreted. If, upon a decision of a question of legal title, it is found that the right name is not registered or if allotment is made by an improperly constituted Board and the allottee is aware of the irregularity and chooses to exercise his right to rescind, or if a man is induced by fraudulent misstatement or suppression of facts to become a member of the company, it has been held that the Court has jurisdiction to order rectification on the ground that the entry has been made or omitted *without sufficient cause* (x) The effect of these decisions is that wherever there is a right of rescission of the agreement of membership the person affected can apply under this section for rectification of the register. (y)

The question as to what constitutes *unnecessary delay* is to be judged with reference to the facts of each case A transfer which is not open to any objection ought to be confirmed by the Directors at the first meeting at which it can be done. Failure to do so in the absence of any reasonable cause, constitutes *unnecessary delay* (z) But before a person can apply for rectification, his right of rectification must be complete Thus where the Articles require some things to be done for a valid transfer and those things have not been done or where the Articles give the Directors a discretion to accept or refuse to recognise a transfer, and they had no opportunity for exercising that discretion, the right of the transferee has not arisen and he cannot claim rectification (a) But where the Directors have had opportunity and there is evidence that no objection to the transfer exists the Court can presume that the Directors would approve and order a rectification (b) Default or delay on the part of the person seeking relief would be a bar to rectification after winding-up But where the rectification has not been made for the laches of the company the default of the shareholder will not be a bar (c)

The section applies even after winding-up (see sec, 184) The power can be exercised after winding-up at the instance of any contributory or of the company or of the Liquidator But as between vendor and purchaser of shares under a purchase after the winding-up commenced the Court will not rectify except upon strong ground. (d)

This is an enabling section and only empowers the Court to rectify the register by a summary process It neither excludes the possibility of rectification

(x) Per Giffard L J in *Ex parte Kintrea*, 5 Ch 95 at page 99, *Ex parte Shew* 2 Q B D 463, *Sly Spink & Co*, (1911) 2 Ch 430, Kelly C B in *Ex parte Ward*, L R 3 Ex. p 180.

(y) See supra under *Rescission of agreement of membership*,

(z) For case of delay, see. *Joint Stock Discount Co (Nation's case)*, 3 *Eq*. 77, *Hull's Case*, 4 *Ch* 769 n, *Read's Case*, 15 W R 631, *Manchester & Oldham Bank* (1885). W N. 169, *Fyte's Case* 4 *Ch* 765 *Hart's Case* 6 *Eq* 512, *Ex parte Little* 17 W. R 461, *Sussex Brick Co*, 1 Ch. 598, *Joint Stock Discount Co Shepherd's Case*, 2 Eq 564, *Hercules Insurance Co* 9 Eq 589.

(a) *In re The Indian Specie Bank Ltd*, I L R 40 Bom, 134, where the company went in liquidation before applications for registration of transfer could be considered and it was found that there was no unnecessary delay or absence of sufficient cause, the Court refused to order rectification by registration of transfer.

(b) Buckley's *Comp, Act*. 11th Ed. p. 245, *Marshall v Glamorgan Iron Co*., 7 Eq. 129 at p. 137.

(c) Buckley's *Comp Act*. 11th Ed. p. 246.

(d) *Onward Building Society*, (1891), 2 Q. B. 463 see also *In re Indian Specie Bank*. I. L. R. 40 Bom. 134

Inherent power to correct

by a regular suit or a mandamus nor limits the *inherent power of the company to correct its own register where there is an error, without any reference to the Court.* Where the Directors are satisfied upon representation by a shareholder or otherwise that an incorrect entry has been made in the Register, there is nothing in law to prevent their correcting the error, before winding-up After winding-up the Directors would have no such power and the only way in which rectification can be made then is by an application to the Court (d[1])

The Register of Members may be changed by the resolution of the Board or the sanction of the Court for facility of work, either fully or partly changing or adopting the original register But the original register is required to be preserved for reference, if any cause should arise

Date of entry in Register.

The column for the date of entry in the register is to exhibit the date on which the entry on the register was actually made but not the date on which the allotment was made or the entry accounted for. The date on which a person ceases to be member should also be promptly entered.

Inspection of register

The register of members and the index of members can be inspected by members during business hours subject to such reasonable restriction as the company in general meeting may impose so that not less than 2 hours each day is allowed for inspection And it is also open to inspection by any other person on payment of Re 1/-. Such persons may also make extracts from them (sec 36) If any member requires a copy of the register or any part thereof or of the list and summary of capital the company is bound to supply such copy within 10 days excluding nonworking days and dates on which the transfer books are closed, on payment of a fee of six annas for every hundred words required to be copied If inspection is refused or any copy required is not sent within time the company and every officer of of the company is made liable to the payment of a fine of Rs 20/- for every day and the Court may compel compliance with the terms of the section (e)

Closing of Register of Members.

A company is entitled to *close the Register of Members up to fortyfive days in a year but not for more than thirty days at a time by giving seven days previous notice by advertisment in some newspaper* circulating in the district in which the registered office is situated (*vide* sec 37) The usual proceedure is to advertise the closure of Register in the notice convening the ordinary General Meeting. The object of closing the register immediately before the General Meeting is to suspend entries of transfer until the dividend has been declared and to prepare the list of members for reference in the event of polls being made and demanded. But if the register is closed unreasonably or from improper motives, the Court may grant relief to the

(d1) see however I L R 1915 Mad 728 where this proceedure was regarded as the exclusive means for rectification

(e) For cases on the right of inspection see R. v *Wilts Nav.* 29 L. T. 992; *Holland* v *Dickson*, 37 C D. 669, *Davies* v. *Gas Lihht Co*, (1909), 1 Ch 248; *Mutter* v. *E. & M Railway*, 38 C. D. 92; *Bloxam* v. *Metropolitan Railway*, 3 Ch. 337.

aggrieved party, by compelling registration of transfer made in the interval or by rectification of the register.

List of Members

A list of members on the Register on the date of the first ordinary General Meeting of the year is required to be *annexed to the summary of capital*, (*vide* section 32). A list of members, thus prepared, is required also *to be placed on the table at each General Meeting* for inspection of the members. This list and the summary of the share capital should be preserved along with the share register and a *copy of them is to be filed with he Registrar.*

This list is now required under the amended section 32 to be filed *within 18 months* of the incorporation of the company, and *once every year* thereafter. It will be noted that under the amended sections 76 and 77 the company has to call a general meeting, namely, the statutory meeting within six months and the Annual General Meeting within 18 months of incorporation and thereafter once every year. Sub-section (3) of section 32 now requires the register to be completed within 21 days after the first ordinary general meeting of the year and thereafter to file a copy with the Registrar.

The contents of the list are specified in sub-section (2) of section 32.

In addition to the other particulars which are common to all, private companies are now required under sub-section (4) to submit along with the annual return a *certificate* signed by a director or other officer of the company that the company has not since the date of its incorporation or of its last return as the case may be, issued any invitation to the public to subscribe for any shares or debentures and, where the number of members shown in the list exceeds fifty a similar certificate to the effect that the excess number consists of members who are excluded from computation under section 2 sub-section (1) clause (13) sub-clause (b).

Penalty

The company and the officers, if they make default in carrying out the requirements of this section, *shall be liable to a fine not exceeding* Rs. 50/- per day during which the default continues and if any officer *wilfully makes any materially false statement* in such report or balance sheet, knowing it to be false, then the officer concerned shall be *punishable with imprisonment* for a term which may extend to three years and shall also be liable to a fine (*vide* section 282). Greatest possible precaution should, therefore, be taken in making up this list, summary of the share capital and the balance sheet. The form as given by Form No. E, Schedule III of the Act, should be used for preparing the list of members.

The liability to make the return does not cease when the penalty is incurred. (f)

Some companies may find it necessary to sell shares in Great Britain and may think it expedient to have a British Register of Members for facility of

(f) *Totaram* v. *Emperor*, 14 P.R. (Cr.) 1916

work and such British Register may be kept under provision of sections 41, if the company is authorised by its articles If such a register is kept, the fact as well as the situation of the office must be notified to the Registrar within one month from the date of the opening of the register or in default, the company will be liable to a fine not exceeding Rs 50/- a day during which the default continues Such a register shall be deemed a part of the original register (*vide* sec. 42), and copies of all entries in the British Register should be maintained at the Head Office in India in a Duplicate Register By the new section 42A the provisions of sections 41 and 42 are now applicable in relation to Burma and a Burma Register may now be maintained in the same way as a British Register

British & Burma Registers

Share Certificates

Section 29 of the Act provides that a certificate under the common seal of the company specifying any shares or stock held by a member shall be *prima facie* evidence of the title of the member to the shares or stocks therein specified, and the Articles of Association of the company also usually contain provisions as to the mode of issue of such cerficate. Form No. 23 in Appendix B may be adopted for a share certificate. A scrip, certificate or other document, except the share warrants to bearer, entitling any person to become the proprietor of any share of any company requires two annas stamp (*vide* Indian Stamp Act). Such stamp may be impressed on the body of the certificate or revenue stamp of the value may be affixed to it.

Section 108 of the Act requires a company to keep the certificate ready for delivery within three months from the date of the allotment, or from the date of transfer of shares, as the case may be, unless the conditions of the issue of the shares, debentures or debenture-stocks otherwise provide. Thus if the Articles of Association of a company provide the issue of the share certificate on full payment of the shares then the issue of the share certificte may be deferred till the full amount of the share has been paid But in the absence of such a provision in the Articles of Association, every company must keep the certificate ready within the prescribed time. In default, the company and every officer shall be liable to *a fine* not exceeding Rs. 50/- for every day during which the default continues.

Certificate of share to be kept ready

Penalty.

The intention of the Legislature in enacting this section appears to be to secure the prompt issue of the share certificate, as want of it makes it difficult for the shareholder to transfer the shares. Most of the Indian companies do not call the full amount of the shares within three months from the date of the allotment. So it is prudent to make provision in the Articles of Association for issue of the share certificate only on full payment of the shares or otherwise to keep the certificate ready for delivery and to mention on the body of the certificate the amount realised on each share, keeping space for noting down future calls on the back of the certificate.

The prompt delivery of a share certificate facilitates dealings by the shareholders in the market with their shares, as by law such a *certificate is prima facie evidence as to the right of the holder* to such

shares. (Secs. 29 and 34 (3)). Lord Selbourne remarked, "certificate of shares in companies of this kind are the proper and indeed the only documentary evidence of title in the possession of a shareholder".

The share certificate is merely *prima facie* evidence of the title of the holder. It is not conclusive, so that even if a person should hold a share certificate issued Cert *prima facie* to him the company can contest his claim to membership by evidence. showing that the certificate had been obtained by fraud or was improperly issued or otherwise not representing the real state of things This position is, however, seriously affected by the doctrine of Estoppel (g)

The doctrine of Estoppel bars a person from denying truth of representations made by him where another person has acted on the faith of the representa- Question of tion and altered his legal position (See sec. 115—Indian Estoppel Evidence Act and Woodroffe on Evidence Ch VIII) The company by issuing a share certificate asserts that the person in whose name the certificate is issued is the registered shareholder entitled to shares included in the certificate (h) and that the amount thereon payable has been paid (i)

Where any person acts on this representation and alters his position to his detriment on the faith of it such as, for instance, by buying the shares or accepting them as security the company is estopped from denying that the facts are as stated in the certificate or showing that the share certificate has been obtained by fraud or mistake or that it does not represent the actual state of facts (j)

The cases in which the question of estoppel most generally arises are those in which a transferee of the original holder of the certificate is concerned But the company may also be estopped from denying the correctness of facts testified to by the certificate as against the original allottee where he has no notice of any circumstance vitiating it, and has acted to his detriment in some way, after the issue of the certificate on the faith of the representation (k)

The only persons who can have the benefit of this estoppel are the persons who have acted to their detriment by reason of the representation A bare trustee of a Bank which had lent money on the security of a share certificate is not entitled to the benefit of the estoppel after the Bank has been paid off and the company can successfully plead against him that the share certificate was not a correct statement of facts inasmuch as the trustee had suffered no detriment.(l)

The person who gets a title by estoppel to a share can convey a good title to an innocent purchaser, but where the transferee is a person who was aware of the irregularity vitiating the certificate, he cannot plead his vendor's title by estoppel (m) The principle is the same with reference to representation.

(g) See Buckley *op. cit*, 11th Ed 145 seq

(h) *Bahia & San Francisco Ry. Co.* L. R 3 Q. B. 584, *Balkis Co.* v. *Tomkinson* (1893), A. C 396.

(i) *Burkinshaw* v. *Nicolls*, 7 C. D, 533 3 A. C. 1004. 1027

(j) *Balkis* v *Tomkinson*, supra and cases cited there, *Bahia & San Francisco Ry Co.*, supra, *Webb* v. *Herne Bay Commissioners* L R 5 Q B. 642, *Romford Canal Co.* 24. C D 85

(k) Balkes v *Tomkinson*, supra, *Parbury's Case*, (1896) 1 Ch. 100, *Bloomenthal* v *Ford*, (1897), A. C 156.

(l) *Simm* v. *Anglo American Telegraph Co* 5 Q B D 188

(m) *Cricklmer's Case*, 10 Ch. 614, *London Celluloid Co.*, 39 Ch, D 190

regarding the title to the shares as to that regarding the amount paid on the shares.

A company is not generally estopped by a forged certificate issued by its secretary, (n) but if the Directors authorised the issue of a certificate, being misled by fraudulent devices of the secretary, the company is estopped (o)

The certificate is a declaration to all the world that the person in whose name the certificate is made out is a shareholder in the company and it is given by the company with the intention that it shall be so used by the person to whom it is so given and acted upon in the sale and transfer of shares. This being the case the Directors should be very particular in issuing a certificate The company may incur a serious liability for an incorrect share certificate, if issued through inadvertence or negligence. The secretary or the person working for the secretary should be very careful in delivering the certificate. Before delivery he should *take back all the money receipts issued prior to the certificate* and *the letter of allotment* given by the company, duly endorsed by the shareholder If any such receipt or the letter of allotment is missing he should take a duly executed *letter of indemnity* from the shareholder on due stamp (p) as the shares comprised in the certificate may have been disposed of in the meantime Form No 24 in Appendix B may ed used for a Letter of Indemnity

Secretary's duty in delivering certificate

A note is usully found at the foot of the share certificate to the effect "the certificate must be produced before a transfer is registered." Such a note is intended to be a warning to the holder to take care of the certificate, because he cannot compel the company to register any transfer without its production. It is not addressed to outsiders and therefore does not amount to a contract with a purchaser or

Effect of foot-note in certificate.

(n) *Ruben* v *Great Fingall* (1904) 2 K.B 712, on app (1906), A C 439
(o) *Dixon* v *Kennaway*, (1900) 1 Ch 833
(p) *The Stamp required is*

		Imperial			Bombay. U. Prov			C. Prov. Bengal. Punjab. Assam.			Madras		
When the amount or value exceeds Rs 10		0	9	0	0	2	0	0	2	0	0	2	0	0	3	0	0
When it exceeds .																	
Rs 10 but not	Rs 50	0	4	0	0	4	0	0	4	0	0	4	0	0	6	0	0
,, 50	,, 100	0	8	0	0	8	0	0	8	0	0	8	0	0	12	0	0
,, 100	,, 200	1	0	0	1	0	0	1	0	0	1	0	0	1	8	0	0
,, 200	,, 300	1	8	0	2	4	0	1	12	0	1	14	0	2	4	0	0
,, 300	,, 400	2	0	0	3	0	0	2	7	0	2	8	0	3	0	0	0
,, 400	,, 500	2	8	0	3	12	0	3	2	0	3	2	0	3	12	0	0
,, 500	,, 600	3	0	0	4	8	0	3	13	0	4	8	0	4	8	0	0
,, 600	,, 700	3	8	0	5	4	0	4	8	0	5	4	0	5	4	0	0
,, 700	,, 800	4	0	0	6	0	0	5	3	0	6	0	0	5	0	0	0
,, 800	,, 900	4	8	0	6	12	0	5	14	0	6	12	0	6	12	0	0
,, 900	,, 1000	5	0	0	7	8	0	6	9	0	7	8	0	7	8	0	0
and for every or part thereof in excess of	Rs 1000	2	8	0	3	12	0	3	4	0	3	12	0	3	12	0	0

mortgagee that the share will not be transferred without its production.(q) By sub-section 3 of section 34 as amended, it is now laid down that a transfer cannot be registered by a company unless the scrip together with a duly executed and stamped transfer deed is lodged with the company, provided that where the instrument of transfer has been proved to the satisfaction of the directors to have been lost, they may, on an application by the transferee bearing the requisite stamp for the transfer, register the transfer on such terms of indemnity as they may think fit.

Section 34 (3)

When a part of the shares included in one certificate is sold, the seller usually sends his certificate to be lodged with the company *for certification by the Secretary* and on receipt of such a certificate the buyer may pay the consideration money. This certificate will not guarantee the title of the transferor nor establish the validity of various documents which establish the title. Nor does such certification estop the company in any manner from denying the validity of the shares. It is only a confirmatory statement that a certificate has been lodged and is no representation about the contents thereof.(r) The certification is generally made in the following form :—

Certification

No.	
Certificate No with the Company this	for the shares named within lodged day of 19 .
For	Co. Ld.
Passed by	*Secretary.*

When a transfer is made, the original certificate may be changed for a new one or a note on the back of the original certificate in the space provided for the purpose may be made. When a part of the shares included in a certificate is transferred, the registered holder may retain the original certificate with a note of transfer on the back in the space provided for the purpose and a fresh certificate has then to be issued to the transferee for the number of shares purchased by him. But it is safer and more convenient to call for and cancel the original scrip and issue fresh certificates in sub-division thereof.

Certificate after transfer

The Articles of Association of a company generally provide for the issue of a fresh certificate in place of the original one if it is lost or defaced. A nominal fee may be charged for such a fresh certificate, if provided by the Articles of Association. Great care should however be taken by the Directors to be satisfied that the original certificate has been actually destroyed or lost beyond recovery, for the Directors are liable for any loss due to a wrong

Issue of fresh certificates in place of lost or worn out certificates.

(q) *Rainford V. Keith & Co.* (1905), 1 Ch. 206
(r) *Whitechourch v. Cavanagh,* (1902) A.C. 117.

issue of duplicates. In most cases it is advisable that the Directors should insist on an indemnity bond preferably guaranteed by a Bank or an Insurance Company before a duplicate is issued.

A shareholder can demand a separate share certificate for each share held by him or may require one single certificate for a number of shares registered in his name. As the numbers of shares held by him need not necessarily be consecutive, difficulty may be experienced in enumerating the distinctive numbers of the shares, especially when the shareholder, claiming a single certificate for the whole lot, has a large holding. It is prudent either to reserve a large space in the share certificate itself or to adopt a clause in the Articles to the effect that a consolidated certificate for shares will not be issued unless the distinctive numbers are consecutive.

Stock

Under sec. 50 of the Act a company, if so authorised by its Articles, may convert all or any of its paid-up shares into stock. In issuing stock in place of shares, it should be borne in mind that the shares must be fully paid-up. When the stock certificates are issued, the fact should be noted on the Register of Members and a fresh stock register should be opened in which the details of the stock should be entered. The form adopted for the Register of Members may be adopted in the case of the stock register also. The company may again re-convert all stock into shares, if allowed by the Articles. Form No. 25 in Appendix B may be adopted for a stock certificate.

Share-warrants to bearer

A company other than a private company, if authorised by its Articles of Association, may, in respect of any fully paid-up shares or stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified and may provide by coupons or otherwise for the payment of future dividends on the shares or stock included in the warrant (*vide* sec 43). The advantage of the system is that the share-warrants are treated in the market as freely negotiable. Hence, the shares comprised therein may be transferred by mere delivery of the warrant instead of the tedious procedure required in the case of a formal transfer of shares. (*vide* Section 44)

Advantage and disadvantage

There are, however, disadvantages which discourage the system. A heavy stamp duty is required for such a warrant under the provisions of the Indian Stamp Act (Art. 59). The stamp duty payable on such a warrant is given in the footnote.(s)

Besides, there is usually considerable difficulty in getting lost share-warrant re-issued. The difficulty is naturally greater than in the case of share certificates, as, the share warrants being payable to bearer, the Directors naturally take much greater precaution in issuing duplicates and would require more stringent proof of loss.

When a share-warrant is issued, the name of the prior holder

(s) For stamp duty see next page.

Register of Share Warrant.

is struck out of the Register of Members, and in the Register of Share Warrants the following particulars are to be entered (*vide* sec. 47).

(i) the fact of the issue of the warrant ;

(ii) the statement of the shares or stock included in the warrant distinguishing each share by its number , and

(iii) the date of the issue of the warrant.

The company and the officers concerned will be liable to a fine not exceeding Rs. 50/- a day for not complying with the requirements of sec. 47 during the time the default continues,

Form No. 26 in Appendix B may be adopted for a share-warrant Holding of a share-warrant will not qualify a Director where share qualification is required for the post.

The holder of a share-warrant may be deprived by the Articles of the right of voting in a meeting or exercising the rights of a member ; very often, however, Articles allow holders to vote, if the share-warrant is deposited beforehand. The bearer of a share-warrant, if so entitled by the articles, may demand his name to be entered as a member on surrernding the share-warrant for cancellation and he shall then be deemed to be a member of the Company.

Indian companies, generally, do not alter the conditions or convert the original shares into stock or share warrants as provided by

(s) Stamp duty payable on a Share Warrant

	Imperial	Bombay C Prov U Prov	Bengal, Madras, Punjab, Assam
When the value of the consideration for such conveyance as set forth therein does not exceed Rs. 50.	0 12 0	0 12 0	1 2 0
Where it exceeds Rs. 50 but not Rs 100	1 8 0	1 8 0	2 4 0
,, 100 ,, 200	3 0 0	3 0 0	4 8 0
		U Prov.	Bombay, C. Prov , Bengal, Madras, Punjab, Assam.
,, 200 ,, 300	4 8 0	5 4 0	6 12 0
,, 300 ,, 400	6 0 0	7 5 0	9 0 0
,, 400 ,, 500	7 8 0	9 6 0	11 4 0
,, 500 ,, 600	9 0 0	11 7 0	13 8 0
,, 600 ,, 700	10 8 0	13 8 0	15 12 0
,, 700 ,, 800	12 0 0	15 9 0	18 0 0
,, 800 ,, 900	13 8 0	17 8 0	20 4 0
,, 900 ,, 1000	15 0 0	19 11 0	22 8 0
and for every Rs. 500 or part thereof in excess of Rs. 1000	7 8 0	9 12 0	11 4 0

secrion 43 and 50. It is desirable to consult expert opinion when ever any such change or conversion is contemplated.

Calls

Whenever a person takes shares in a company, he accepts with it the liability to make a payment of calls made on them. The part of the share capital which remains due on a share is payable when the shareholder is called upon by the Directors in accordance with the Articles to pay the whole or any part of it. Such requisition made by the Directors is called a call. (t) A member is bound to pay the amount for the time being unpaid on his shares in accordance with the Articles of Association and the Prospectus of the company. His liability is discharged if all calls have been paid. The Directors have no power to compel a member to pay up the full amount of his shares otherwise than by making a valid call in accordance with the provisions of the Articles of Association and the Prospectus.

What is a call ?

The Act makes no provision regulating the making of calls. The company is *at liberty to provide by its Articles who shall make the calls*, how the calls shall be made, what limits, restraint or qualifications are to be placed on the powers of the company to make calls. Art 12 of Table A provides a suitable article for the purpose. The provision of the Articles with regard to the time and amount of calls are usually stated in the Prospectus and it forms the basis of the agreement for taking shares, so that where any restrictions exist, the company *cannot make a call in contravention of those restrictions.* A statement in the Prospectus, however, that "no further calls are contemplated" or "that no part of the capital beyond a certain amount is does not prevent the company from making calls beyond the amount'so stated where necessity arises. (u)

The Act does not lay down who can make the calls. Table A Art. 12, vests the power in Directors and this is the usual practice But the *Articles may give the power to the Managing Agents or any other authority.* Even if the Articles do not so provide, the Directors can delegate their power to a commitee of Directors, if the Articles contain any provision like Art. 91 of Table A.

Who can make calls ?

Subject to the restrictions imposed by the Artic'es the Directors or other persons authorised in this behalf *can make calls at their discretion.* This power they must exercise *for the benefit of the company* though they are not required to state their reasons. In this matter the Directors are trustees for the shareholders (v) though in a qualified sense. (w) The propriety or otherwise of a call is a matter of internal management of the company which the Court will not ordinarily undertake to investigate. But if *a call is illegal or*

(t) Money payable on allotment, or where the Prospectus provides for the payment of the share capital in definite instalments such instalments are not calls, *Croskey* v. *Bank of Wales*, 4 Giff. 314.

(u) *Accidental Insurance Corp.*, 15 L. T. 182.

(v) *Gilbert's Case*, 5 Ch. 1559.

(w) *Forest of Dean Coal Co.*, 10 Ch. D. 450.

ultra vires as being made for a purpose not within the objects of the company (x) or where the calls are *made in substantial contravention* of the Articles (y) or *mala fide, e, g.* made in the *personal interest* of the Directors (z) the Court will interfere to *restrain the Directors from making a call.*

Points to be observed in making calls

In making a call the following matters should be carefully observed :—(i) that *the Directors are duly appointed, (ii) that the Directors are duly qualified, (iii)* that the *meeting of the Directors has been duly convened, (iv)* that a *quorum* is present, *(v)* and that the resolution making the call is *duly passed and specifies the amount of the call, the time, place and the person* to whom the call is to be paid. (a) The resolution may be recorded in the following form :—

"Resolved that a call of . per share be made upon the members of the company in respect of the amount un-paid on their shares, and that the same be payable on or before. day of at, ..the registered office of the company, and that all calls unpaid by that day shall bear interest at the rate of per cent. per annum from the day when the same shall become payable until payment".

Effect of irregular call.

A substantial irregularity or failure to follow the Articles may invalidate a call and great care should be taken to see that the Articles are strictly followed both as regards the powers of Directors and limitations on their powers to make calls and as regards procedure. *A mere minor irregularity, however, will not invalidate a call* which substantially complies with the Articles. (b) No call shall be valid if made in contravention of the Articles of Association. Sometimes the Articles contain a provision that "the amount of a call shall not exceed... .. part of the nominal amount of shares and that two successive calls shall not be made payable at a less interval than..... months or.....days." Any condition of this kind must be kept in mind in making a call.

Call notice.

The notice of call should be carefully framed in conformity with the resolution passed in making the call Form No 27 in Appendix B may be adopted for notice of a call In issuing the notice the conditions as to notice provided by the Articles must be observed It is usual to issue reminders, if the call is not paid in due time, but unless so provided by the Articles, reminders are not essential for any purpose

The Act provides nothing as to the amount and number of calls or to the time of payment. A company may not call the full amount of the shares at all, and may keep a part of the uncalled amount as reserve under the provisions of sec. 69.

There is nothing in the law to prevent the making of *prospective*

(x) *Natush* v. *Irving*, 2 Coop C. C. 358 , *Const* v. *Harris*, T. &. R. 496.

(y) See *e. g., Alma Spinning Co . Bottomley's case*, 16 C D. 681 ; *Howbeach Coal Co.*, v *Teague*, 5 H. & N. 151.

(z) *Gilberts' Case*, 5 Ch. 559

(a) **Palmer's Com. Law, 9th Ed. p. 147.**

(b) **Buckley's *Companies Acts*; 11th Ed., p. 671**

calls. A resolution on the 13th March, that a call be made on the 30th March, payable on the 1st May was held to be valid, (c) and calls for two different dates may be made at the same meeting.(d)

When a call is made, it becomes a debt and is realisable as such (see sec. 21) and, where the Articles so provide, as they usually do, (see Art. 14 of Table A) interest may be realised on calls due if not paid. Art. 14 gives power to the Directors to waive payment of *the interest.* This power is discretionary and remission of interest cannot be claimed as of right. Where, however, a shareholder has received no notice of a call, his liability to pay interest does not obviously arise.

Realisation of call Interest

A call does not bind a shareholder until he receives notice of the call. The Articles provide for the manner of giving notice. The posting of a letter containing the notice will be presumed to be sufficient, until it is proved that as a matter of fact, the notice has not been received. But a mere irregularity in the notice is not fatal, where the shareholder has in fact received notice.(e)

Notice of call

Although notice of call is essential to bind a shareholder, the call is ordinarily deemed to have been made on the *day on which the resolution making the call is passed.* The question becomes of importance where the Articles provide a minimum interval between two calls.(f)

Date when call is made .

When a call is made, it will be the duty of the Directors to compel every shareholder to pay the amount due from him in respect of such a call . and they will be guilty of *a breach of their duty* if *they do not take all reasonable means for enforcing payment.* The Directors will be guilty of misfeasance and breach of trust if they omit to make calls on their own shares or show any favour to a Director in enforcing payment. The Directors may sue the defaulting shareholder or forfeit the shares if they cannot realise the amount due on calls otherwise. The suit in such a case will be as in the case of a debt due from him (*vide* sub-sec 2 of sec. 21).

Directors' duty to enforce payment of calls.

Call on a deceased member.

The call on a share of a deceased member shall be made on him, if his name remains in the Register of Members and the amount due on such call is realisable from his estate. [see Table A cl. 115].

A call can only be made on a member whose name is on the register irrespective of whether, he is a benamdar or a beneficial owner. So too in the case of an unregistered transfer it is the transferor and not the transferee on whom call can be validly made (f1)

(c) *Sheffield Railway Co.* v *Woodcock,* 7 M. & W. 574.

(d) **Buckley,** *op. cit,* p. 673.

(e) **Buckley,** *loc. cit.*

(f) **Buckley.** *op. cit.* p. 676.

(f) ***Murshidabad Loan Office*** **v.** *Satis Chandra Chakravorti* 47 C.L.N. 480.

"If a member becomes bankrupt, the company may prove, not only for calls actually made, but also for the estimated amount of future calls; but the payment of a dividend in a bankruptcy is not equivalent to payment of the amount for which proof is made, and in the distribution of the company's assets, the trustee in bankruptcy will only participate on the footing of what has actually been paid." (g)

Call on a bankrupt member

When shares are transferred after a call has been made, the company may, if authorised by the Articles, refuse to register the transfer until the amount due on the call has been paid. Even if the transfer is registered, the transferor remains liable for all calls made before the transfer.(h)

Calls are *usually payable in cash.* Any agreement with a shareholder that he shall not be liable to pay calls is *ultra vires.* (i) There are some cases in which the Court had to consider whether an *agreement with a shareholder that calls shall not be payable in cash* but by set-off against goods supplied can be pleaded in answer to a claim for the call money. Where no money is actually due to the shareholder at the date of the call the plea cannot be taken. But in other cases it would seem that in India such a plea would be valid except upon a winding-up. The English cases, which throw a doubt on this, are founded on the fact that in English law the call becomes a specialty debt with special remedies.(i) As there are no specialty debts in Indian law, there would seem to be no bar to such a set-off where the amount of the set-off is a liquidated claim (see Civil Procedure Code, Or. 8, r. 6).

When a call has been made the fact is required to be noted in a book, kept for the purpose, called the "Call-book." It may be kept along with the application and allotment book with separate columns for the purpose if the number of calls be few; but where the calls are numerous, a separate book in the form as given in Form No. 19 in Appendix B should be used.

Call-book.

The shareholders will be entitled to a receipt as they pay each call. The form as given in Form No. 20 in Appendix B may be adopted for the purpose. It is usual also to endorse the payment on the share-certificate. The effect of such an endorsement is that it becomes *prima facie* evidence of the payment of such sums and, as against innocent purchasers, the company may become estopped from denying the correctness of the statement.

By section 49 sub-sec. 5, a company, *if so provided by its Articles of Association, may accept,* from any member who assents thereto, *the whole or any part of the amount remaining unpaid* on any shares held by him, *although no part of that amount has been called up.* The company will be

Payment of calls in advance.

(g) *Vide* Palmer's Company Law, 9th Edition Page 149.

(h) *Watson* v. *Kales*, 23 Beav, 294.

(i) Buckley, *op. cit.*, p. 674, where the whole question is fully discussed.

entitled to pay any *reasonable interest* on such advance payment under the provisions of the Articles of Association. But the Directors in exercising the power to receive payments in advance must act *bona fide* for the benefit of the company. Where payments are received *mala fide* in the personal interest of the Directors, the Directors are held liable, (j) Such *interest like interest on any other debt may be paid out of capital* where there are no profits, (k)

Participation of dividend when calls-in advance made

By sub-sec. 3 of this section a company, if it is so provided by its Articles, may pay dividend in proportion to the amount paid upon each share where a larger amount is paid up on some shares than on others, but in such a case the *calls-in-advance will not be taken as paid up on shares.* Unless the Articles provide otherwise, all the shares will be entitled to participate equally in dividend, without regard to the amount paid upon each. The company may similarly, if authorised by its Articles, make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares (Section 49, sub-section 1).

Right of voting if calls are not paid

The Articles of Association generally provide that no member shall be entitled to any vote in meetings until he has paid all his calls.

Lien

The company has no right to purchase or take its own shares as security for a debt. But this does not stand in the way of a *company having a lien on its own shares for any debts which may be due from the shareholders* either on account of the shares or otherwise. The law does not give the company such a lien, but the company may and usually does provide *by its Articles* for such a lien on lines of Art. 9 of Table A. This declares that "a company shall have a *lien on every share* (not being a fully paid-up share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share and the company shall also have *a lien on all shares* (other than fully paid-up shares) standing registered in the name of a single person, *for all moneys presently payable by him* or his estate to the company."

When lien may be enforced

Under this article the lien would be (i) in respect of *uncalled money* on the shares, although it may not have become payable or even called and, (ii) in respect *of other debts* due from the shareholder, provided that the share stands in the name of a single person. The lien does not exist in respect of *fully paid up shares.* But the Articles may provide for lien even on fully paid-up shares by suitable alterations in the wording.(l)

Under this Article the lien also *extends to the unpaid dividends,* payment of which may therefore be withheld pending the satisfaction of the share holder's liability to the company.

(j) *Sykes' Case,* 13 Eq. 255.

(k) *Lock* v. *Queensland Co* , (1896), A.C. 461.

(l) *Bradford Banking Co* v. *Briggs* 12 A.C. 29 , *Bank of Africa* v. *Salisbury Gold Co,* (1892), A.C. 281.

A lien is, strictly speaking a right created by law by which a person is entitled to withhold possession of a property against the owner unless debts due by the owner to the holder of the lien is paid. But the doctrine of lien has been extended by Statute, equity and mercantile usage even to cases where the lienee has got possession of the property and to rights of a similar character created by contract.(m)

A lien is generally speaking a passive right and does not ordinarily involve a right to dispose of the property over which it exists for the enforcement of the lien But such rights are recognised in some liens, notably equitable liens, such as the vendor's lien for unpaid purchase money, The *right of sale of shares* for the enforcement of this lien, if it is sought to be secured, *should therefore be expressly provided for* in the Articles as is done by Arts 10 and 11 of Table A(n). These articles provide for sale of the shares only when the sum in respect of which lien is claimed is *presently payable* and not for any sums which will become payable in future, and provision is also made for *fourteen days' notice* to the shareholder before the sale is made, to give him an opportunity of clearing his debts.

While the company can enforce a lien by the sale of a share, it has no power to forfeit the share for non-payment of any debt to the company. (nn)

A question of *priorities* may arise as between the company and third persons claiming rights in respect of the shares as pledgee or as beneficiaries It has been held that a company cannot, by virtue of a clause giving it "a first and paramount lien and charge" upon the shares for the debts of the holder, claim priority in respect of money which becomes due after the company has got notice that security upon the shares has been given to another person(o) On the other hand, where the trustee is the registered holder, it has been held that the company's lien for debt from the trustee prevails over the rights of beneficiary (p) To avoid such complicated questions of priorities it may be advisable to have the Articles so worded as to give to the company's lien priority over all claims in respect of the shares whether anterior or posterior in date to the debt due to the company (q). Such a clause in the Articles would be a notice to all persons dealing in such shares and any person who accepts a security on shares with such notice would therefore be postponed to the company Such a clause, however, would reduce the negotiable value of the shares and may on that account be found undesirable in some cases.

Under Art 9 of Table A, the Directors have the power to declare any share to be wholly or in part exempt from the provisions of that clause A lien, therefore,can be effectively discharged by a clear arrangement between the shareholders

(m) See Halsbury's Laws of England, 2nd Ed Vol 20 pp. 552-554.

(n) Even where a right of sale is not expressly provided, it has been held in England that the lien of the company is not a mere right of retainer but amounts to an equitable charge upon the shares—involving a right of sale *General Exchange Bank, Re Lewis*, 6 Ch 818, *Everitt* v *Automatic Weighing Co*, (1892). 3 Ch 506; *Hopkinson* v. *Mortimer & Co.*, (1917), I Ch 646

(nn) *Hopkinson* v. *Mortimer & Co*, (1917), I Ch 646.

(o) *Bradford Banking Co* v *Briggs* 12 A C 29, *Bank of Africa* v. *Salisbury Gold Co.*, (1892). A C 281.

(p) *Ex parte Mexican Mining Co*. 24 Q B. D. 613.

(q) On the question about the effect of a such clause, see Palmer's Company Precedents, Vol I, p 637.

and the company It may also be affected by estoppel where the holder of a security on the share has been led by the conduct ot representation of the company to believe that there is no lien on the snares before advancing the money It may also be affected by other clauses in the Articles. Thus, where the Articles provided that, unless otherwise agreed, the registration of a transfer of shares would operate as waiver of the company's lien on these shares, it was held that by registering a transfer, the company was estopped from enforcing the lien against the transferee(r)

As to the right of the company to refuse registration of transfer until debts due by the shareholder to the company have been paid, see post under *Transfer & Transmission*

Company's right to sell share on enforcing lien

Where the company is empowered to enforce a lien by sale after default, it may transfer the shares to the purchaser's name upon such sale with due notice to the debtor. The purchaser shall be registered as a member, and he shall not be required to see to the application of the purchase money, nor shall his title to the shares be impeached by any irregularity or invalidity in the proceedings as to the sale.

How lien should be enforced

In *enforcing a lien* a duly constituted *Board in meeting* shall pass a *resolution* to the effect and sell shares in such manner as they may think fit, but no sale shall be made until: (1) *the time for such payment, fulfilment or discharge* for which the *lien exists shall have actually arrived*, (2) *notice in writing of intention to sell shall have been served on such member* or representative, (3) *default shall have been made* by him or them *in payment, fulfilment or discharge of such debts, liabilities or engagements for a specified time after such notice.*

When the shares are sold on a lien they should pass through the transfer register (see *Transfer and Transmission*) as in the case of an ordinary transfer or forfeiture. A lien cannot be eforced by forfeiture, as the lien is an equitable mortgage and forfeiture in a mortgage is, in equity, inoperative.(s)

Transfer and Transmission

Transfer a Statutory right.

The *right of tranferring shares* is a *statutory right* of a shareholder, (*vide* sub-sec I of sec. 28). Lord Blackburn said, "When joint-stock companies were established the great object was that the shares should be capable of being easily transferred." The Articles of Association can and do only provide the mode of and restrictions on the right of transfer but cannot take away the right altogether.

Private comany restricts right of transfer.

It is of the essence of a Private Company to *restrict the right of transfer*; for a Private Company contemplates that the shares in the company *should not be held by the public generally*, but should be confined exclusively to a more or less narrow circle. To retain this character private companies must place great restraints on the transfer of shares

(r) *Matheson* v. *Nath Sing Oil Co Ltd*, 5 Bur. L. T. 271; 18 I.C. 481.
(s) Plamer's Company Law, 9th Edition, page 160.

so that they may not pass to strangers. Besides, unrestrained transfer may have the effect of raising the number of shareholders beyond the statutory limit of fifty shareholders.

A public company, on the other hand, which generally offers its shares for subscription by the public, has less reason to restrict the shareholder's right of alienation, which is incidental to his *property right* given him by sec. 28 sub-sec. (1) of the Act. But the company may want to safeguard its interests by imposing some restraints on transfers. Such restraints may be—

Public company's right of transfer.

(i) purely formal, as when the company strictly requires the transfer to be in a particular form to secure satisfactory proof of valid transfer, such as the requirements (in Section 34) that the transfer must be by deed or that the transfer will not be registered unless the application is accompanied by the share certificate;

(ii) or they may be made to safeguard the rights of the company in respect of its claims against the share holder, as for instance, where the company retains power to refuse to recognise a transfer of shares, which are not fully paid up, to an insolvent, or a transfer without satisfaction of debts due to the company for which it holds a lien on the shares sought to be transferred,

(iii) or the restrictions may be designed to-protect the trade-interests of the company as where the company retains the power to refuse recognition of transfer of too many shares to one shareholder who might swamp the others; or the transfer of shares to a rival trader.

Whatever *limitations* are sought to be placed *upon transfer of shares, they must be provided for by the Articles. Where Articles do not place any limitations on the rights, the company cannot refuse to register a bonafide transfer* or to recognise the transfer on any ground whatsoever.(t) In such a case the transferee becomes the legal owner of the share immediately upon the transfer, as, in the words of Romer, J., (u) the transferee "has acquired the full status of shareholder or, at any rate all formalities have been complied with, and nothing more than some purely ministerial act remains to be done by the company."

Limitations of transfer.

But the Articles usually provide that the Directors should have some discretionary power vested in them to refuse registration. They may provide that the Directors should have the power to refuse registration in certain specified circumstances as in Art. 20 of Table A or that they should have

Directors' discretion.

(t) *Smith v Knight & Co., Weston's Case*, 6 Eq 238, *Gilbert,s case*, 5 Ch. 559; *Cowley & Co.*, 49 C D.; *Copal Varnish Co.*, (1917) 2 Ch. 349, *Lindlar's Case*, (1910) 1 Ch. 312.

(u) *Moore v North Western Bank*, (1891) 2 Ch 599, see also *Societe Generale de Paris v. Walker*, 11 A C 20, *Roots v. Williamson*, 38 Ch D. 485.

absolute discretion to refuse to register a transferee without assigning any reason. In such cases the mere transfer of a share does not confer any legal title on the purchaser, but confers only equities against the vendor in respect of the share until the Directors have recognised the transfer and registered the transferee.(v)

Such restrictions must be lawful (w) But as pointed out by Lord Wrenbury, "Provisions in the articles restraining or regulating transfers cannot be obnoxious to the rule against perpetuities (*Borland* v *Steel Brothers*, 1901, 1 Ch. 279) since that rule has no application to contracts nor are they void as being repugnant to absolute ownership (*Ibid*) A provision that in the event of bankruptcy the bankrupt's share shall be sold to particular persons at a particular price which is fixed for all persons alike and is not shown to be an unfair price is not obnoxious to the bankruptcy law (*Ibid*) A provision empowering the company in general meeting by a specified majority to require any member to transfer all his shares to other members even at a price much below their real value, as it affects all members any of whom may be exposed to its operation is also *prima facie* valid (*Philips* v *Manufacturers* & Co., 116 L T 290), as is also a provision that before transfer elsewhere shares must be offered at their fair value to the directors (*A.G.* v. *Jameson* 1904, 2 I R 644)"

Although the transfer does not become binding on the company in such cases until it is registered, as between the transferor and the transferee the title to the share passes on the day when the deed is signed(x)

Until the transfer is registered, it does not become operative A transfer which is not registered does not operate as a trust (y)

A *bona fide* transfer which is not obnoxious to any restrictive rule in the Articles, where the Directors have no discretionary power to refuse registration is binding and it cannot be made illegal by any alteration of the Articles subsequent to the transfer. A transfer does not become *mala fide* merely because it has been made expressly with a view to avoiding liability on the shares (z) Where the transfer is however made so as to avoid liability but to retain the benefit of the shares or where the Directors have been induced by the transferor, by active falsehood or concealment to recognise the transfer, or where the transferor has obtained opportunity for executing his transfer fraudulently or in breach of some duty, as when he has procured a postponement of commencement of winding-up

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(v) *Torkington* v *Magee*, (1904) 2 K.B 427 ; *Mc Even* v *West London Wharves* 6 Ch. 655, *Moore* v. *N W Bank* (891) 2 Ch 599, *Societe General de Paris*, v *Walker*, supra ; *R D Sethna* v. *National Bank*, I.L R 36 Bom. 334. The rule is the same where the transfer is not voluntary but in execution of a decree of a Court. *Tadepalli Nagabhusanam* v. *Sri Ram Ramchandra Rao*, I L R. 45 Mad. 537 ; 30 M.L.J. 231, *E. D. Sasson & Co. v. Patch* 45 Bom. L R. 46.

(w) For examples of the extent to which restrictions can go, see Buckley *op cit*., 11th Ed. p. 139.

(x) *Firm of Sawan Mal Gopi Chand* v. *Sib Charan Dal*, 71 I.C 814.

(y) *Amarendra* v. *Manimunjari*. 48 Cal. 985.

(z) *The Discoverers' Finance Corporation Lindlar's Case*. (1901) 1 Ch 217 317, see however *Hakim Rai* v *Peshawar Bank Ltd*. 31 I C 865, where Shadilal J. laid down that directors ought to refuse registration of transfer when the company is insolvent though winding-up has not commenced The principle of this decision is not consistent with *Lindlar's Case*.

in order to get time to execute such transfer, such transfers would not be vaild and binding.(a)

Where Directors have a discretion to refuse registration, the discretion must be properly exercised. They must fairly consider the question at a meeting of the Directors.(b) In the absence of anything in the Articles requiring them to assign reasons they need not assign any reasons for refusing to register the transfer. But if they do assign any reason the Court will consider whether the reasons assigned are proper. (c) The action of the Directors must be *bona fide*, for the power to refuse to recognise a transfer is a fiduciary one and must be exercised for the benefit of the company. Any abuse of the power will be rectified by the Court.(d)

Must be properly exercised

The discretion must be exercised with reasonable promptness. "Unnecessary delay" may be a ground for an application under sec. 38 for rectification of register.(e)

Where Directors have discretionary power to refuse registration and consequently the title of the transferee does not mature until registration, as between two claimants to share, priority in date of the transfer determines the title, unless the second claimant shows that all formalities, save only a ministerial act were gone through as between himself and the company and that consequently he had acquired the full status of a shareholder before the company received notice of the claims of the prior claimant, so that he had an unconditional right to registration as a shareholder But where the Directors have yet a discretionary power to exercise it cannot be said that only a ministerial act remains to be done (f)

Where the Articles provided that the transferee of a share should be a 'proper person' the Court has jurisdiction to determine whether the transferee had a right under the Articles to get his name registered and whether he was a "proper person"(g)

Registration of Transfers

The new section 34 under the amendment of 1936 makes detailed provisions with regard to the registration of transfers of shares. That section is as follows :—

"(1) An application for the registration of the transfer of shares in a company may be made either by the transferor or the transferee, provided that where such application is made by the transferor no registration shall in the case of partly paid shares be effected unless the company gives notice of the application to the transferee and

(a) *Ibid* pp, 318-22.
(b) *Exparte Penney*, 8 Ch 446 at p 452.
(c) *Bell Brothers*, 7 T L.R 699, *Bede Shipping Co*, (1917) 1 Ch 123, But the decision of the Directors will not be upset merely because the Court does not agree with it *Matheson* v *Nath Sing Oil Mill Co, Ld* 5 Bur L T 271, 18 I.C. 481 *Thenappa v. Indian Overseas Bank* A.I R 1943 Mad 743.
(d) *Ceylon Land and Produce Co*, 7 T L R, 692, *Coalport China Co.*, (1895) 2 Ch 404; *Bennett's Case*, De G M. & G. 284, *Bede Shipping Co*, Supra.
(e) *Vide* supra pp 114-115
(f) *R.D. Sethna* v. *National Bank of India Ld*, 13 Bom. L.R. 998.
(g) *Rajnagar Spinning & Weaving Mfg. Co Ld.*, 14 Bom. L R. 919.

subject to the provision of sub-section (7) the company shall, unless objection is made by the transferee within two weeks from the date of receipt of the notice, enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee.

(2) For the purposes of sub-section (1) notice to the transferee shall be deemed to have been duly given if despatched by prepaid post to the transferee at the address given in the instrument of transfer and shall be deemed to have been delivered in the ordinary course of post.

(3) It shall not be lawful for the company to register a transfer of shares in or debentures of the company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with the scrip :

Provided that, where it is proved to the satisfaction of the directors of the company that an instrument of transfer signed by the transferor and transferee has been lost, the company may, if the directors think fit, on an application in writing made by the transferee and bearing the stamp required by an instrument of transfer, register the transfer on such terms as to indemnity as the directors may think fit.

(4) If a company refuses to register the transfer of any shares or debentures the company shall, within two months from the date on which the instrument of tranfer was lodged with the company, send to the transferee and the transferor notice of the refusal.

(5) If default is made in complying with sub-section (4) of this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(6) Nothing in sub-section (3) shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(7) Nothing in this section shall prejudice any power of the company under its articles to refuse to register the transfer of any shares."

The points to note in this section are 1) that the application for registration of transfer may be made either by the transferor or the transferee (2) no transfer will be registered upon the application of the transferor in the case of partly paid shares without notice to the transferee : (3) subject to the exception in the case of a lost transfer deed no transfer can be registered by the company without a proper stamped instrument of transfer executed by both the transferor and the transferee accompanied by the share scrip : (4) in the case of lost transfer deed the company may register on an application in writing by the transferee bearing the stamp payable on the transfer deed ; (5) if registration of transfer is refused, notice of such refusal must be given within 2 months under a penalty of a fine for default ;

(6) transmission of a share by operation of law does not require any transfer deed and the person who becomes entitled by such transmission such as the heir or a trustee in bankruptcy or a receiver in an insolvency is entitled as of right to claim to be entered in the register under sub-section (6), (7) the company' powers of refusal to register a transfer are those given by its articles.

Notice to the transferee is made compulsory under this section, in the case of partly paid shares but not to the transferor where the application is presented by the transferee. But even in such a case it is desirable that the transferor should be informed by a letter from the company as to the transaction and where the deed has been executed by an attorney it is desirable to give notice both to the attorney and the registered holder. The form as given in Form No 28 in Appendix B may be adopted for the purpose The transferor is liable to the company as a shareholder, as well as the transferee, in the case of shares which are only partly paid up, whilst the transfer remains unregistered. (h) Except where the transfer is not registered owing to the default of the company, in which case the transferor is relieved of his liability (i), the transferor will be liable for all the calls on those shares. The transferor remains liable in all cases where the transfer is invalid and where the registration of the transferor's name has been obtained by fraud. Hence, by section 34, the transferor is also given the right to enforce registration of the transfer.

Where so authorised by the Articles, the Directors *may refuse to register a transfer when there is a call in arrear*, but they may register notwithstanding the arrear, holding the transferee liable for payment of such arrear calls, as he takes the shares subject to the same conditions on which the transferor holds them at the time of the execution thereof. Such a clause is always found in the usual form of a transfer.

Although the Act nowhere prescribes anything about the form of an instrument of transfer, (unlike the new English Act of 1929), the Articles of Association generally prescribe the form for transfer and lay down that no transfer will be registered unless executed in the prescribed form. But the directors may waive any minor irregularity as regards the form which does not materially affect the transfer. Form No. 29 in Appendix B is usually adopted for a Share Transfer form. Where there are joint-holders, a transfer, to be effective, must be executed by all. Upon a transfer, the deed duly executed and stamped along with the share certificate, should be lodged with the company for registration.

Transfer Form

Where a transfer takes place by a Court sale, even there it is necessary that the Court should execute the transfer deed with full stamp duty (Or.XXI. r. 80 C. P. C.) before title to the share can pass to the purchaser.

(h) *Symon,s Case*, 5 Ch 298

(i) This follows from sec. 33, sub-section (1) cl. (*b*).

(j) See Buckley *of cit* pp. 42-43.

Transfer of shares is very often made by transfer in blank. A transfer form is signed in blank and handed over to a broker with the share certificate, and the person to whom the blank form is given fills up the blank space for the name of the transferee. Such transfers are as effective as a regularly filled in form signed by transferor, on the principle that membership of a company arises from an agreement to become a member (sec. 30) and the blank transfer is good agreement.(k)

Blank transfers

Blank transfers are often used for giving shares as security for debts The share certificate with a transfer in blank is deposited with the banker or other creditor and this creates a good equitable security (l) It is not necessary to give a notice to the company of the security to preserve priority against subsequent incumbrances (m)

The holder of a blank transfer as security can fill in his name as purchaser, and can thereupon proceed to apply for registration of the transfer after a reasonable time has elapsed after the due date of repayment. But he cannot mortgage the shares held by him as security, to secure his own debt (n)

The system in vogue in the Calcutta Stock Exchange carries the principle of the law recognising blank transfers as far as it may go, leading occasionally to anomalous results. A sells his share to B and hands over the certificate with a blank transfer. B does not complete it but sells the share to C by simply handing over the blank transfer form executed by the first transferor and the share certificate. C does the same to D and so on till the share comes into the hands of X who fills up the transfer form and applies for registration possibly after a long time In the meantime the share has been held by a number of persons as owners while the share register contains the name of A as owner. It sometimes happens that when the blank transfer is completed A is dead or has become insolvent, so that the transfer on the date on which it is completed is of doubtful validity. Besides, it may very well happen that the original transfer is forged and nevertheless it may be going round for years without detection.

Something like this happens also where a regular stamped transfer has been executed by A to B, B to C and C to D, without B and C registering the transfers and D applies for registration. In this case however there is no difficulty and the company may and must register D as the transferee although the intermediate transferees have not been registered. See *Nicol's Case*, 29 Ch. D. 434. Palmer's Company Precedents, 13th edition, p. 647.

An irregularity in a transfer is not necessarily fatal to the acquisition of the purchaser's title. *Minor irregularities, e.g. where full names, addresses etc. of the parties are not given may not affect* the validity of a transfer which is substantially good.(o) Where a transfer is not made

Irregularities

(k) *Ex parte Sargent*, 1 Eq 273 *Langer's Case* 37 L J (Ch.) 292.

(l) *Societe Generale* v. *Walker*, 11 A C 20, *France* v. *Clark*, 22 C. D. 830; 26 C. D. 257.

(m) *Societe General* v *Walker*, supra

(n) Buckley, *op cit*, p 681.

(o) For example of such irregularities which are not fatal, seeBuckley *op cit.*, pp. 682 *et. seq. Letherby* v. *Christopher*, 1904 1 Ch. 815.

according to the requisite formalities, the transfer will not be recognised.(p)

Transfer by minor.

Transfer of shares of infants or minors can only be made by their guardians acting with ordinary prudence for the benefit of the minor (see sec. 27, Guardian and Wards Act).

The transfer of a share can be made by a duly appointed attorney. In registering such transfers the Secretary should be careful to see (1) that the power of attorney is produced and (2) that it is duly stamped and registered. A notice of the transaction should be sent to the attorney as well as his principal before registering such transfers.

Forged transfers.

A forged transfer does not pass a right to the transferee although the transfer may have been registered by the company concerned. The Secretary should take particular care to verify the signature of the seller with that on record, but the company is still liable if in spite of all precaution, a forged transfer is registered. "As against the real owner, a forged transfer is a mere nullity and he can compel the company to re-instate his name on the Register and to pay all past dividends" (see *Davis* v. *Bank of England*). The company is also liable for damages to third parties, acting in good faith. The company has a right to claim damages from the transferee, but it turns out that the transferee in such cases is usually a man of straw.

Certification of share.

When a part of a large number of shares included in a share certificate is intended to be transferred and the seller does not hand over the share certificate to the transferee, the custom is that the seller lodges the share certificate with the company and gets a certification of the shares. (q) Such a certificate is regarded as a representation by the company that the transferor has produced the share certificate and is the registered holder of the share comprised in the transfer. In giving such a certificate the Secretary is supposed to look at the documents only and if they appear to be in order he certifies . but he is not bound to enquire whether the documents produced to him are genuine or not.

"He does not warrant the title of the transferor, nor the validity, in point of law, of various documents, which together establish his title."

Transferor's liability as past member.

In the case of *winding up within one year* from the date of his ceasing to be a member the *transferor will be liable as a past member to pay* the arrears of the shares if not realised from the transferee (*vide* sub-sec. 1 and 3 of sec. 156).

The stamp duty payable on a transfer depends on the amount of consideration set forth in the instrument of transfer. But where the

(p) *Hakim Rai* v *Peshwar Bank Ld.*, 31 I.C. 865.

(q) For Form of such certificate see page 112 supra.

Stamp duty on Transfer.

consideration shown is less than the market value of the shares, the Directors or the Secretary should examine the contract for verification. If no consideration is stated as where the transfer is gratuitous, full *ad valorem* duty is payable unless the transfer is from a trustee to another trustee or from a trustee to a beneficiary. In the latter case, the nominal stamp duty (in Bengal Rs, 7-8) or the *ad valorem* duty is payable, whichever is less. A transfer for "consideration of love, affection or gratitude" is subject to full *ad valorem* duty. The stamp duty payable in cases of transfer is as given in the foot note on p. 139. (*vide* Stamp Act Article 62).(r) A transfer of shares may be effected by a regular conveyance, deed of gift or a deed of settlement, and generally speaking this is done where shares are transferred along with other property. In such cases if the full stamp duty on the shares transferred has been paid the transfer will be perfectly valid. But where the Articles provide, as they generally do, that a transfer must be executed in a particular form it will be necessary to execute a transfer on such a form notwithstanding the deed of gift or settlement. But in this case, if full stamp duty for the transfer has already been paid on the conveyance, deed of gift or settlement, these transfer deeds would be treated as subsidiary documents and would require to be stamped as such, under sec. 4 of the Indian Stamp Act. with a Re. 1/- stamp (Re. 1-8/-in Bengal).

The stamp affixed is required to be cancelled by the executant under sec. 12 (1) (a) of the Stamp Act. Where the stamp on a transfer

(r)

	Imperial Art 23	U Prov	Bengal, Madras Punjab, Assam	Bombay, C. Prov
When the value of the consideration for such conveyance as set forth therein dose not exceed Rs 50	0 4 0	When the face amount does not exceed Rs 100	0 6 0	0 4 0
Where it exceeds Rs. 50 but does not exceed Rs 100	0 8 0	0 12 0	0 12 0	0 8 0
„ 100 Rs 200	1 0 0	1 8 0	1 8 0	1 0 0
„ 200 „ 300	1 8 0	2 4 0	2 4 0	2 0 0
			Bombay, C Prov, Bengal, Madras, Punjab, Assam.	
„ 300 „ 400	2 0 0	3 0 0	3 0 0	
„ 400 „ 500	2 8 0	3 12 0	3 12 0	
„ 500 „ 600	3 0 0	4 8 0	4 8 0	
„ 600 „ 700	3 8 0	5 4 0	5 4 0	
„ 700 „ 800	4 0 0	6 0 0	6 0 0	
„ 800 „ 900	4 8 0	6 12 0	6 12 0	
„ 900 „ 1000	5 0 0	7 8 0	7 8 0	
and for every Rs. 500 or part thereof in excess of Rs. 1000	2 8 0	3 12 0	3 12 0	

deed has not been so cancelled by the executant, the Secretary should cancel the stamps when they are lodged with him. Cancellation should preferably be done with a punch perforating machine, though scoring through the stamp is sufficient. The stamp authorities now insist on cancellation by perforation.

Nature of stamp.

The adhesive stamp as provided by Rule 17 of the Indian Stamp Rules, 1914, intended for the purpose of share transfer only, may be had from the Stamp Office of the metropolis of each province or from stamp vendors of that place. The transfer deed may also be executed on impressed non-judicial stamps of the value.

A company may realise a fee for the registration of a transfer if provided by its Articles of Association, and such a provision is generally found in the Articles.

Accounting of transfer

In accounting for a trasfer, no entry in cash book or in journal, except the amount of transfer fee which is realised in cash, is required. The transfer entries are passed through the transfer register, which may be called the journal for transfer. In the share ledger the transferor is debited with the amount of the shares transferred and a new account is opened in the name of the transferee crediting him with the amount. The date of ceasing to be a member should be carefully noted against the name of the transferor in the column kept for the purpose in the Share Register and the name of the transferee is to be entered as a new member in the said register. Form No. 30 in Appendix B may be recommended for a "Share Transfer Register."

In regard to issuing of certificates after transfer, see under *certificate of shares* supra p. 112.

TRANSMISSION

Who is entitled to share of deceased person?

Shares are to be regarded as movable property (sec. 28). The death of a shareholder does not terminate the relation between the shareholder and the company as in a partnership. The share *passes as movable property* to the person who would be entitled to it as heir, executor or administrator, as the case may be, if the Articles make no provisions to the contrary.

Proof of title.

Art. 21 of Table A, which is usually adopted by most companies, provides that "the executors and administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share." This article is copied from the English Act, which creates no difficulty in England, where every person has to take out a Probate or Letters of Administration to establish his title as the representative of the deceased. In India, in the case of exempted persons under the Indian Succession Act, Letters of Administration are not essential in the case of intestacy. Even in testamentary succession, no probate is necessary for a Mahomedan Will. Under Hindu law and Mahomedan law again, the property of the deceased vests directly in the heirs and not in the personal representatives in the first instance. If Article 21 of Table A is adopted

it would make it compulsory upon every heir of a Hindu or a Mahomedan to take out Letters of Administration before his name can be entered in the Register of Members. This would cause very great hardship. Very often it is found that companies who have adopted this article ignore its provisions and accept other proof of title, such as a Succession Certificate. It would seem that so long as this article stands, the company cannot safely admit any person other than an executor or administrator as successor to a deceased shareholder.

Besides a Probate in the case of a Will and Letters of Administration, the heir's title can be evidenced, in India, by a succession certificate of a competent Court under the Succession Act, or a certificate of the Administrator General under sec. 36 of the Administrator General's Act. Neither of these two proofs of the claims of an heir can be admitted where this article is adopted To suit the requirements of India, the article should be modified. in some such form as the following :—

"The executor or administrator of a deceased shareholder where there is one, or the heir where there is no Will and no Letters of Administration have been taken out, shall be entitled to be recognised by the company as having title to the share of the deceased shareholder upon satisfactory proof of his title by producing either a Probate or Letters of Administration or a Succession Certificate or a certificate of the Administrator General"

In *re Balmukund Dube* (1930 All 82) the Allahabad High Court held that under the Succession Act 1925, Letters of Administration cannot be issued in respect of shares of joint-stock companies registered in the name of a deceased member of a Mitakshara joint family and that it was not within the legal competence of a company to frame articles subversive of the statutory law of the land. It is however the practice of the Calcutta and Madras High Courts (33 Madras 93) to grant Letters of Administration, where the Articles of Association so require. Several reasons can be adduced in support of the latter view . -

Firstly, when the shares stand in the name of a single person, there is nothing to indicate that they are the property of the joint family and the registered holder practically occupies the position of a trustee and as such, the shares may be regarded as a Trust Estate to which Letters of Administration may be granted

Secondly, it is the recognised principle of company law that a company should not enter into any question of trust and should not arrogate to itself the functions of a Court of Law to decide which of possibly several claimants is the real heir of a deceased member or whether the property is or is not part of a joint estate. Although Letters of Administration or Succession Certificates are not conclusive evidence of the right of the grantee, yet such grants are *prima facie* evidence and a company acting on these would, to a large extent, be protected.

Thirdly, whatever may be the statutory law of the land, the relation between the shareholder and the company is of the nature of a contract, of which the Articles of Association may be regarded as the basis. So long as the Articles do not deprive the shareholder of the inherent rights of ownership over property any clause which seeks to modify such rights would be perfectly valid in law because when he contracts with the Company, he is supposed to be

aware of its Articles and is therefore bound by them. Further, as Palmer remarks (vide Palmers Company Precedents, 13th Edition p. 575). "In considering whether any clause in the articles is or is not inconsistent with the Act, the provisions contained in Table A should be borne in mind, for it must be assumed, prima facie, that those provisions and similar provisions, as approved by the Legislature, were regarded by the Legislature as legal With regard to the grant of a Succession Certificate, it is sometimes contended that as a share cannot be regarded as a debt, a certificate cannot be granted therefore in respect of shares This is fallacious, as under section 370 of the Indian Succession Act of 1925, a certificate may be granted to a Hindu or a Mahomedan in respect of any debt or security and the word 'security' has been deemed to include "any stock or debenture of or share in a company or other incorporated institution"

On the death of a shareholder residing in an Indian State, it is open to the legal heir to obtain a Succession Certificate from a British Indian Court of competent jurisdiction or from the British Resident accredited to the State and provided the certificate granted by the Resident bears proper British Indian Court Fee stamps, it will have effect in British India. On the lapse of the paramountcy of the British crown, the Residencies will be wound up and until new legislation is made with regard to these matters, it would be safe for a company to insist on the foreign grant being validated by an Indian Court

On the death of a shareholder who is resident of Great Britain or any other foreign country, the Executor or the Administrator of the Estate should appoint somebody in British India by a duly executed power of attorney, authorising the agent to apply for and obtain from a High Court in British India, Letters of Administration in respect of the Indian assets of the deceased shareholder.

Personal representative not a member except on application.

The Executor or the Administrator (or the heir, if recognised) *does not become a member of the company except upon an application by him to be registered* as such in the place of the deceased shareholder. For upon registration as a member he would become *personally liable* for calls and such liability cannot be imposed upon the representative of the deceased without his consent.(s)

Until the shares are transferred as above, the name of the deceased shareholder remains on the register and he or rather his estate is deemed to be the shareholder and the *representatives of the deceased* are entitled to receive dividends and are liable for calls *as such representatives* and not in their personal capacity.(t)

Notice should be served on them (u) but a notice in the name of a deceased shareholder would in some circumstances be valid.(v)

Until registration the Executor or the Administrator comes in as such but *upon registration he becomes a member in his personal capacity.*

(s) *Buchan's Case*, 4 A. C, 549.
(t) *Bombay Burma Co.* v. *Smith* L R 21 I.A. 139, 146, *James* v. *Buena Ventura Syndicate*, (1896) 1 Ch 456.
(u) *James* v. *Buena Ventura*, (1896) 1 Ch. 456.
(v) *Allen* v. *Gold Reefs*, (1900) 1 Ch. 656.

The Executor or the Administrator, instead of applying for registration of his own name, *may transfer the shares in his capacity as a personal representative to a legatee* or other person and such transfer would be valid, (sec. 35), though a clause in the Articles reserving a power to the Directors to refuse to register a transfer would apply to these transfers just as much as to a transfer by the shareholder himself in his lifetime.

Transfer by executor or administrator

In the case of the *death of a joint holder of shares* Art. 21 of Table A makes a provision conformable to the English law of of joint ownership Where this Article is adopted the title of deceased shareholder passes by survivorship to the other joint holders and upon the death of the last survivor it would pass to the representatives of such last holder just like his own exclusive property. This is only so far as the company is concerned, which does not recognise trusts But the legal title of the survivor would not take away the beneficial right of the legal heirs of the deceased co-owner if they are entitled to it under the law The survivor or his heirs who become the legal owners of the shares would then become trustees for the deceased co-owner's heirs The heirs of deceased co-owners would have no rights against the company, but would be entitled to claim against the recorded shareholder the profits of the shares

Death of joint holder.

Thus supposing that A and B, two brothers in a Dayabhaga joint family, jointly own a share in the company and A dies, under this Article B would be solely entitled to be recorded as shareholder of the company and the company would recognise no right of A's son C But B would be accountable to C for half the profits of the share as a trustee in the absence of any agreement between A and B to the contrary

A case analogous to transmission upon death is that of trustees in bankruptcy when a shareholder becomes insolvent Under Art. 22 of Table A the trustee has the right to be registered in the place of the bankrupt. [see sec 34 (6)] The clause authorising Directors to refuse recognition to a transferee does not ordinarily apply to transmission to a trustee in bankruptcy. But the Articles may be so framed as to prevent the trustee acquiring title. Thus a provision in the Articles that in the event of bankruptcy the bankrupt's share shall be sold to particular persons at a particular price was held to be lawful.(w)

Trustee in bankruptcy

In transferring the shares on transmission, the *entries in the Register of Members* and *in account books* shall be recorded *in the same way* as in the case of an *ordinary transfer.* The usual form of transfer and the prescribed fee for it is not required in this case, as the purpose is served by the Succession Certificate, Letters of Administration or the Probate of the Will.

Accounting on transmission

A new certificate may be issued in favour of the heirs, executors or administrators or the old one may be returned after making notes on the back of the certificate in the space reserved for noting down transfers. The heirs, executors or administrators will be

(w) *Borland* v. *Steel Bros,* (1901 1 Ch. 279.

treated as a single member or as joint-holders and will be entitled to exercise the rights and privileges of the deceased member in whose place they were substituted.

Forfeiture

The Articles of Association of a company generally provide for the right to forfeit shares for non-payment of calls or instalments. Such *a power to forfeit a share can only be acquired by the Articles of Association* (x) or by special resolution, (y) as the Act is silent on this point, though Table A of the Act by clauses 24 to 30 has dealt with the subject

The only other mention of forfeiture in the Act itself is in sub-section (2) (g) of section 32, where the number of shares forfeited is required to be shown in the Annual List to be submitted by a company. As mentioned in a previous chapter forfeiture really amounts to reduction of capital, if the Directors do not re-issue the shares and as such should require Court sanction but for the fact that this kind of reduction has been recognised as not coming under section 55.

Surrender of shares

"Surrender," unlike forfeiture, is not recognised by the Act and the fact that the Courts have admitted 'surrender' is probably due to its virtually amounting to a forfeiture Cozens-Hardy, L.J. (in *Bellerby* v. *Rowland* 1902 2 Ch. 14) says. "Every surrender of shares whether fully paid or not, involves a reduction of Capital which is unlawful, except when sanctioned by the Court under the Companies Act. Forfeiture is a statutory exception and is the only exception. For I regard a surrender under circumstances which would justify a forefeiture as merely equivalent to a forfeiture." It would appear settled therefore that surrender is valid while it is resorted to as a short cut to forfeiture, dispensing with the necessity of sending a notice to the defaulting shareholders and of holding Directors' meeting before the forfeiture may take effect. but it is invalid where the Company gives any consideration for such surrender.

It should be noted that the law-does not contemplate a forfeiture of fully paid up shares, as there is no liability on the shares and on similar grounds a surrender of fully paid up shares in exchange for the equivalent amount of fully paid up preference shares was held to be valid, but in later decisions it has been held, that all cases of surrender of fully paid up shares involve a reduction of capital and are therefore invalid unless sanctioned by the Court. The law is rather unsettled on this point.

The main difference between a surrender and a forfeiture is, in the words of Collins, M.R., "that one is a proceeding in invitum and the other a proceeding taken with the assent of the shareholder, who is unable to retain and pay future calls on the shares." In forfeiture, the shareholder is not relieved of his liability to pay the arrears of calls but in a surrender, if so provided in the Articles, the shareholder

(x) *Clarke* v. *Hart* 6 H.L.C. 633.
(y) *Dawkins* v. *Antrobus* 17 C.D. 15 Palmer's Comp. Prec. Vol. I, p. 633.

may be releived of such liability. In a forfeiture, if the shares subsquently turn out to be valuable, the shareholder may seek to have them restored to his name, *e.g.*, if the procedure laid down in the Articles has not been strictly followed ; but in a surrender, as the shareholder is a willing party, this right is denied to him. It must be remembered however that the power to forfeit and the power to accept surrender are not identical but distinct and unless express power to accept surrenders is taken in the Articles, it cannot be exercised on the power to forfeit—vide *Hall's Case* 5 Ch, 707.

When the power of forfeiture has been given by the Articles of Association, *it should be used only for the benefit of the company* ; but the Directors will abuse their power and do an injustice to the other shareholders if they forfeit the shares of a person in order to enable him to escape the liability.(z)

It is doubtful whether the Articles can provide for forfeiture of shares for other reasons than non-payment of calls A clause in the company's Articles forfeiting the shares of a shareholder, who should commence or threaten an action against the company has been held to be invalid as being an infringement of the shareholder's right of property (a) Sometimes companies have taken the power of forfeiture for non-payment of debts of the shareholder to the company generally and not merely for arrears of calls or instalments Such powers although held valid in older cases seem to be excluded by more recent cases, in which it has been held that the forfeiture effected on such powers would be tantamount to a reduction of capital (b In a recent case Das J has held after an elaborate discussion of authorities that a clause in the Articles of Association of the Calcutta Stock Exchange Association authorising forfeiture of fully paid up shares for failure of a member to fulfil his obligations to other members, not for non-payment of calls is valid—sed quære (b1)

Procedure in Forfeiting Shares

The Directors must take particular care and *pursue minutely the course marked out by the Articles of Association* when they seek to enforce the right, as forfeiture clauses are very strictly interpreted by the Courts.(c) A slight irregularity is as fatal as the greatest. For example, if the call in respect of which the forfeiture is made was not validly made or the notice of forfeiture was inaccurate in requiring the payment of interest, such irregularities are fatal to the validity of the forfeiture (d)

Procedure to be followed in making forfeiture of shares.

Notice of forfeiture.

The notice should be carefully drawn up strictly in accordance with the Articles of Association (see Table A, Art, 25). A form of notice will be found in Form No. 31 in Appendix B.

(z) *Esparto Trading Co.*, 12 C D 191 . *Harris v. North Devon Ry Co.*, 20 Beav 384

(a) *Hope v International Financial Society*, 4 Ch D 327.

(b) *Hopkinson v Mortimer Harley & Co* (1917) 1 Ch 646.

(b1) *Naresh v Ramani* 49 C W N. 502

(c) *Clarke v Hart*, supra ; *Gardner Gully etc. v. McLister*, I App. Cas 39.

(d) *Lalamia v. Adsami* to A.I.R. 1944 Mad 322.

The notice should be carefully *posted to the registered address of each member* of whose shares forfeiture is intended. A bankrupt share holder should also be served with the notice, but in such a case it will be well to give the notice to the trustee also. The notice should also be sent to the registered address of a deceased shareholder if his heirs, executors or administrators have not been substituted in the Register of Members.(d)

Directors powers on forfeiture of shares.

On non-payment of calls or instalments of share, the Directors have three courses open to them, *viz* :—(1) to sue for the realisation of the money ; (2) to forfeit the shares or (3) to do nothing. The third course is not recommended, as in that case the Directors may be liable for the loss caused to the company by their failure to take steps for the realisation of the calls. The right of *forfeiture rests on the discretionary power of the Directors* and a share *does not become forfeited merely because the shareholder has incurred the liability to forfeit* until the shares are duly declared forfeited.

Effect of Forfeiture

The forfeited shares, by the forfeiture, become the property of the company, and may be sold at a discount, provided that the amount of discount does not exceed the amount previously paid on those shares. The *forfeiture may be annulled by the Directors* so long as they have not sold them, on such terms and conditions as they may think fit. Such a power is usually found in the Articles of Association. A shareholder, whose shares have been irregularly forfeited can sue the company or, in a winding-up prove for damages against the company.(e)

Liability of member upon forfeiture.

The forfeiture of a share terminates the membership of the shareholder in the company and, *prima facie*, it prevents any action by the company to realise from the delinquent member calls made before the forfeiture.(f) But the *Articles commonly provide* that where shares have been forfeited, *the owner of the share remains liable for all sums due* on those shares at the time of forfeiture (*vide* Table A, Art. 29) It is important that such power should be taken under the Articles. Apart from any such provision in the Articles, the holder of the forfeited share is *liable as a past member* for all sums due from him, if the company *should be wound-up within one year from* the date of forfeiture [(sec. 156, sub-section (1).(g)] This liability also extends to a shareholder who has transferred his shares within a year of winding-up, though the shares have been forfeited in the hands of the transferee.(h)

A liquidator has no power to cancel a forfeiture made by the Directors before the commencement of the winding-up.(i)

(d) *Graham* v *Van Diemen's Land Co.*,1 H. & N. 541 , *Allen* v. *Gold Reefs etc* , (1900) 1 Ch. 656.
(e) Palmer's Comp. Law. 9th Ed., p. 152.
(f) Lord Cairns, L J. in *Stocken's Case*, 3 Ch. App. 412 at p. 415.
(g) *Creyke's Case*, L. R. 5 Ch App. 63.
(h) *Bridger's & Neill's Cases*, L. R. 4, Ch. App. 266.
(i) *Dawes' Case*, 6 Eq. 232.

When the shares forfeited are sold, the purchaser is not liable under the notices of calls previously made on the last holder but he is liable upon a fresh notice in respect of the amount of the calls made, for the company cannot sell free from that liability.(j) Where power has been taken in the Articles (e.g. Art. 29 of Table A) to recover the amount due from the previous shareholder the new holder to whom the share has been reissued is entitled to be credited with the amount realised from the last holder, "as the company cannot get the money twice over." (*Rand Gold, etc.,* 1904, 2 Ch. 468). If the Articles provide the contrary and the shares are reissued on the express term that the new holder will pay the arrears of calls without credit for any sums realised foom the defaulting shareholder, the above decision would presumably not apply. (Buckley, op. cit., p. 605n)

Where a company proves in a bankruptcy of a shareholder for future calls and receives less than the full amount, this does not make the shares paid up for the purpose of adjusting the rights of the shareholder in a winding-up of the company.(k)

Contents of notice.

It is desirable that the *resolution of the Directors should explicitly state "that the required notice has been given and not complied with* and that share numbers .....to.....standing in the name of .....be and are hereby forfeited."

Sometimes a clause is added in the Articles that where a share shall be forfeited, notice of the resolution of the forfeiture should be given to the defaulting member. This clause seems reasonable, for the member may sue to annul the forfeiture and such a notice is necessary to enable him to exercise the right. But even where the Articles expressly provide for such a notice the absence of it does not invalidate a forfeiture.(l)

No re-allotment without forfeiture possible.

Where arrears are owing for calls on shares, the Directors may waive the default or forfeit the shares. It is only to a very limited extent that they can accept a surrender of shares in such case as a short cut to forfeiture. They cannot deal with the shares in any other way. Some companies have been known to follow a peculiar course with defaulting shareholders. Suppose A has had 100 shares of the value of Rs. 10 each allotted to him on which he has paid calls to the extent of Rs. 6 per share but is unable to pay the balance. In such circumstances same companies practically re-allot the shares by allotting 60 shares to him and taking the amount paid by him as full payment on these 60 shares. This course is entirely illegal.

An allotment once made cannot be re-opened and the shareholder has in this case irrevocably become the holder of 100 shares. To reduce his allotment to 60 shares is a reduction of capital which the company cannot do even by a special resolution without the sanction of the Court. Besides, this new allotment would be clearly without consideration. It cannot even be admissible as a surrender of 40 shares. For surrender is only admissible in lieu of forfeiture. A surrender in

(j) *New Balkis*, (1904) A.C. 165.

(k) Palmer's Company Law, 9th Edition, p. 153.

(l) *Webster's Case*, 32 L J. Ch. 135.

consideration of applying the money paid on those shares to payment of calls on the remaining shares would be clearly invalid.

The only lawful way of helping the shareholder who is unable to pay the balance of calls in such a case would be for somebody to buy up his forty shares for Rs. 400 which might be paid to the company in payment of arrears of calls. The only alternatives are forfeiture or letting alone—with resulting liability of directors for the loss. No doubt it would be quite possible to make the arrangement made in these cases with the sanction of the Court under sec. 55, but not otherwise.

Accounting of Forfeiture

Accounting of forfeiture.

An entry should be made in the register immediately after the forfeiture, cancelling the share of the defaulting member, for his rights as member terminate immediately upon the passing of the forfeiture resolution. With regard to the method of making such entries the following is suggested by Mr. Dicksie :

"In the Share Ledger, by means of the Register of Transfer, transfer the shares in question to the forfeited shares account. When re-sold transfer them from this account to the account of the purchaser in the usual way. In the General Ledger pass by means of the Journal an entry debiting 'share capital account' with the amount paid up on those forfeited shares and crediting 'forfeited shares account'. Until the shares are re-issued the balance of the forfeited shares account should be separately stated upon the liabilities side of the Balance Sheet, but when the shares have again been disposed of the balance of the forfeited shares account, may, if thought fit, be credited to Reserve Fund. The Directors may, however, re-issue such shares at a discount not exceeding the amount originally paid up thereon, and when advantage is taken of the power, the amount of such discount must be made good to the share capital account out of the forfeited share account."

In the Register of Members the forfeited shareholder will cease to be a member from the date of passing of the resolution of forfeiture and when those shares are re-issued the purchaser will be entered in the Register of Members as a member as in the case of a transferee in an ordinary transfer though the Directors will be quite competent to re-issue such shares on fresh terms and conditions. If any commission in re-issuing such shares has been paid, such commission will be treated as discount on the share and should be made good out of the balance remaining to the credit of the forfeited share account. No transfer form nor any stamp duty is required on re-issue of the forfeited shares, though they will be treated as transfers. The old numbers of shares should be kept, as by the Memorandum of Association the share capital of a company is limited to a fixed number of shares and hence cannot be increased by inserting a new set of numbers in place of the old ones.

A new share certificate will be issued to each member who holds a share on re-issue of the forfeited shares. No communica-

Issue of fresh certificate when forfeited shares are resold.

tion to the Registrar is required on forfeiture or re-issue of such shares. No allotment return is also required to be filed on re-issue of shares as the shares in question had previously been allotted and the return of allotment duly filed. The only mention of the forfeited shares is found in the summary of share capital which is required to be prepared under the provisions of sec. 32.

CHAPTER IX

MEETINGS

Statutory Meeting

Within *six months* of the date at which the company is entitled *to commence business*, and not less than one month after that date a general meeting of the company, called the *statutory meeting, must be held* under the provisions of sec. 77. It is the first meeting of the shareholders and the section contemplates that the state of affairs of the company up to that date should be placed before the shareholders and the shareholders should be at liberty to discuss all matters relating to the company. The Act, therefore requires a report called the "Statutory Report" to be placed before the meeting to show the exact position of the company.

The statutory meeting must be held as required by this Act. The Directors are not exonerated from holding the meeting by reason of an extraordinary meeting having been held within the statutory period (m) and no Articles of Association can vary this provision of the law.

Notice and statutory report to be issued.

The notice of the meeting along with a report called the *"Statutory Report" shall at least twenty-one days* (n) *before the meeting* be issued to every member of the company and to every other person entitled to receive such notices and reports [sec. 77 sub-sec. (2)]. A copy of such report and notice *shall also be forwarded to the Registrar of Joint Stock Companies* along with filing fee after it is sent to members.

Statutory Report

How the Statutory Report shall be prepared.

The Statutory Report shall be prepared on the *balance of a day not more than seven days prior to the date of the report* [sec. 77 sub-sec. (3) cl. (c)]. This report *shall be certified* by at least *two Directors* or by the *Chairman* of the Directors *if authorised* by them (sub-sec. 3). Under section 83A, a Company, other than a Private Company, cannot function unless there are at least three Directors. On the death or retirement of a Director, where there is a minimum number of

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(m) *Gardner v. Iredale*, (1912) 1 Ch. 700.

(n) This is a statutory provision and no provision in the Articles as to the time for issuing notices affects this provision.

Directors, the remaining Directors can appoint another to fill up the vacancy but any other act by them will be *ultra-vires*. The certificate will be quite enough if the Director only write "certified to be correct" and then sign their names. Such report *shall also be certified by the Auditor*, so far as it relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company on capital account (sub-sec. 4).

Particulars to be contained in the Statutory Report.

The report shall contain the following matters as provided by the Act :—[sec. 77 sub-sec. 3].

(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 on the issue or sale of shares ,

(d) the names, addresses and descriptions of the directors, auditors, managing agents and managers, if any, and secretary of the company and the changes, if any, which have occurred since the date of the incorporation ,

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification ,

(f) the extent to which underwriting contracts, if any, have been carried out ,

(g) the arrears, if any, due on calls from directors, managing agents and managers ; and

(h) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, managing agent or manager or a partner of the managing agent if the managing agent in a firm or if the managing agent is a private company a director thereof.

The object of holding the Statutory meeting is to acquaint the shareholders with the fullest possible details of the activities of the management since the incorporation of the company and within six months of the commencement of business. The Statutory Report must therefore be as complete a picture as possible and the amending Act of 1936 has taken care to enumerate the different heads on which information must be supplied. In preparing the Statutory

Report utmost care should be taken to see, that the information given is complete in respect of all the items mentioned in sub-section 3 of section 77.

Form No. VII in Appendix A is the form provided by the Act for the Statutory Report.

The notice convening the meeting may be given in the Form No. 32 in Appendix B.

Penalty

Section 77 sub-section (10) now provides that every director of the company who is guilty of or who knowingly and wilfully authorises or permits default in complying with any provision of this section shall be liable to a fine up to Rs. 500/-.

The risk a company runs in failing to hold the statutory meeting in time is very great, as this is also one of the grounds on which the company may be wound up by the Court on the application of a shareholder under sec. 162. No such application can be made within fourteen days after the last day on which the meeting ought to have been held (*vide* sec. 166, clause *b*). But the Court has power either to order a winding-up or to direct the holding of the meeting.[sec 77 (9)]

Procedure in conducting the statutory meeting

In the meeting the Directors shall cause *a list to be produced* at the commencement of the meeting showing *the names, descriptions and addresses of the members* and the *number of shares held by them* respectively. The meeting will be conducted in the same way as an ordinary General Meeting. It would seem however, having regard to the provisions of section 77 sub-section (8), that adjournment of the meeting can be made only by the meeting itself. If the meeting has been duly called, Directors would have no power to postpone it unless the Articles give them the power.(n1) If the Articles provide that the chairman shall have the power to adjourn meetings, that provision would not apply to the statutory meeting which can only be adjourned by a resolution of the meeting itself. The members will be quite competent to discuss any matter relating to the formation of the company but no resolution shall be recorded if no previous notice thereof has been given. [sub-sec. (7)]

Obligations of private company in regard to statutory report and meeting.

Sub-section (11) of section 77 of the Act provides that the provisions of the section shall not apply in the case of a Private Company. Under sub-section (11) of the Act as it stood before the amendment of 1936 private companies were exempted only from forwarding the statutory report to the shareholders and filing it with the registrar. But under the amended sub-section (11) which follows section 113 of the English Act of 1929 private companies are exempted altogether from the provisions of this Section so that it is now *no longer necessary for private companies either to hold a statutory meeting or to prepare a statutory report* as they would have to do under the law before the amendment of 1936.

(n1) *Smith* v. *Paringa &c* (1906) 2 Ch. 193.

General Meeting

Section 76 of the Act requires every company to hold the **first general meeting** within *18 months* of its incorporation and thereafter *to ho'd a General Meeting at least once in a calender year* and not more than *fifteen months* after the last meeting. This provision of the law cannot be over-ridden by anything in the Articles. The Articles may, however, provide for more than one meeting.

Penalty.

The company and every officer of the company, who is knowingly a party to a default in holding the meeting, as provided by the above section, shall be liable to a *fine* not exceeding Rs. 500/-. [sec. 76 (2). And the Court has now the power to direct the calling of a general meeting in default [sub-sec (b)].

If there is only one annual General Meeting, *the audited balance-sheet with Auditor's report, must be placed* before the meeting (sec. 131).

Requisition Meeting

Meeting on requisition

The minimum under sec 78 (1) is representation of one-tenth of the Share Capital for requisitioning a meeting, but if so desired, the convening of meetings on requisition can be made still easier. One member can be empowered by the Articles to requisition or for the matter of that to call a meeting without requisition; "but it seems undesirable to put it in the power of one or two possible troublesome members to set the machinery of a general meeting in motion vexatiously" (Palmer's Com. Prec. 13th edition, p. 673).

Nothing was said in the old Act about requisition meetings of companies which have no share capital. But sec 79(5) as amended now provides for the calling of general meetings by five per cent of the members of such a company. This means that in such a case no requisition would be necessary.

Shareholder's right to require the Directors to convene a General Meeting.

The Articles may lay down the way in which such requisitions must be made. The Directors shall be bound to proceed to call the meeting *within 21 days from the date of the requisition* and on their failure to do so within the prescribed time *the requisitionists* or the majority of them *shall be entitled to call the meeting within three months from the date of requisition* (*vide* sec. 78) and sec. 79 provides the mode of conducting such meetings and votes.

Power of Court to call the Meeting

Moreover, on the application of any member *the Court may call or direct the calling of a General Meeting* if there had been none held within the last fifteen months [*vide* sub-sec. (3) of sec. 76].

The amendment of 1936 now provides by sub-section (4) of section 78 that any meeting called by the requisitionists shall be called in the same manner as far as possible as meetings called by directors and sub-section (5) makes a new provision for the payment of expenses of such meeting. It is now provided that any reasonable expenses incurred by the requisitionists by reason of the failure of directors to

convene a meeting shall be repaid by the company to the requisitionists and the company in its turn shall retain the amount so paid, out of the remuneration payable to the defaulting directors.

General meetings of a company fall under two classes, *viz* :—(*a*) *ordinary* and (*b*) *extraordinary*. The Articles of Association generally define the business which can be conducted in an ordinary meeting (see Table A Art. 50).

Ordinary Meeting

Under section 76 a general meeting shall be held once every calendar year and not later than fifteen months after the last general meeting. The first meeting of the Company will have to be held within *eighteen months* of the date of incorporation, unless there has been an extraordinary General Meeting during the time. But the holding of an extraordinary a meeting within the time is sufficient compliance with the section.(o) If a meeting is not called within the time the Court may call meeting on the application of any member [sec. 76 sub-sec. (3)]. The statutory meeting, according to Palmer, is not an ordinary meeting and the first ordinary meeting must be held *within eighteen months of incorporation* and not within eighteen months of the statutory meeting.(p)

First ordinary meeting.

Section 131 requires the directors of the company to lay before the general meeting a *balance-sheet* and *profit and loss account* not later than eighteen months after the incorporation of the company; and thereafter at least *once in every calender year*. The balance-sheet and profit and loss account (or, in the case of a non-trading company, an income and expenditure account) must be made up to a date not beyond 9 months of the meeting in the case of Indian companies and 12 months in the case of companies having business or interest outside British India. The meeting may be called at any time within 9 months of the date up to which the balance is made up, provided that it is in, the case of the first meeting, within 18 months of incorporation and in the case of other meetings (1) within 15 months of the last meeting and (2) within the calendar year next following the year of the previous meeting. It is advisable however to hold the meeting as soon as the balance-sheet and the report are ready.

The new section 131A also requires what was usually done before the amendment that a *report of the directors* containing the particulars therein specified should be attached to the balance-sheet.

General meetings of the company can be called by the person who is authorised by the Articles to call such a meeting. In the absence of a specific provision, meetings can only be called by the directors. It would seem however when the directors authorise the holding of the meeting on a particular date, notice of the meeting may be signed "by order of the Board" by the Secretary. Under the provisions of section 79 sub-section (2) it is further provided that two or more members holding not less than 1/10th of the total share capital paid up or

Who may call the meeting.

(o) *Lord Claude Hamilton's Case*, L. R. 8 Ch. 548.
(p) Palmer's Company Law, 9th Ed., page 163.

if the company has no share capital, not less than 5 per cent in number of the members of the company may call a meeting.

This provision apparently is not limited to requisition meetings only and will be effective to authorise the requisite number of members to call a meeting in the absence of anything in the Articles. Unless authorised by the Articles the Secretary *cannot on his own initiative call any General Meeting* (q) without the order of the Board of Directors, who alone are competent to call such meeting in the absence of anything to the contrary in the Articles; but a meeting called by the Secretary without the previous sanction of the Board, may be valid by subsequent ratification by the Board before the meeting is held (r)

When Court may call.

The Court may call or direct the calling of a meeting under the provision of section 76, when default has been made in holding a meeting of the Company during the previous year and when application has been made to the Court in respect thereof by any member of the company. The new section 79 Sub-section (3) now gives the power to the Court to direct the calling of a meeting, either *on its own motion* or *on the application* of a director or any member when for any reason it is impracticable to call a meeting in the way detailed in the Articles and also to give directions in difficult situations.

The liquidator may call a General Meeting under the provisions of secs. 216, 217 and 246.

Proceedings of a Meeting.

The new section 79 makes several provisions with regard to the conduct of proceedings at a meeting of the share-holders and in addition Articles 56 and 66 of Table A which have been made compulsory under section 17 also make certain provisions regarding the conduct of general meetings With regard to service of notices it is also necessary to have regard to the provisions of articles 112-116 of Table A which have also been made compulsory. Section 79 runs as follows:

"79. (1) The following provisions shall have effect with respect to meetings of a company other than a private company not being a subsidiary of a public company and the procedure thereat, *notwithstanding any provision made in the articles* of the company in this behalf —

(a) a meeting of a company other than a meeting for the passing of a special resolution may be called by not less than fourteen days' notice in writing; but with the consent of all the members entitled to receive notice of some particular meeting that meeting may be convened by such shorter notice and in such manner as those members may think fit;

(q) Gore Brown's Handbook on Joint Stock Company 34th Ed., page 340. *State of Wyoming Syndicate* (1901) 2 Ch. 431. *Haycraft Gold Co.*, (1900) 2 Ch. 230; see, however, *Southern Counties Bank*, 73. L.T. 374.

(r) Palmer's Company Law. 9th Edition, page 164, *Hooper* v *Kerr Stewart & Co.*, 83 L. T. 729.

(b) notice of the meeting of a company with a statement of the business to be transacted at the meeting shall be served on every member in the manner in which notices are required to be served by Table A and for the purpose of this clause the expression Table A means that Table as for the time being in force, but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting;

(c) five members present in person or by proxy, or the chairman of the meeting, or any member or members holding not less than one-tenth of the issued capital which carries voting rights shall be entitled to demand a poll. Provided that in the case of a private company if not more than seven members are personally present, one member and if more than seven members are personally present, two members shall be entitled to demand a poll.

(d) an instrument appointing a proxy, if in the form set out in regulation 67 of Table A, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles, and

(e) any shareholder whose name is entered in the register of shareholders of the company shall enjoy the same rights and be subject to the same liabilities as all other shareholders of the same class

(2) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf,—

(a) two or more members holding not less than one-tenth of the total share capital paid up or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting.

(b) in the case of a private company two members and in the case of any other company five members personally present shall be a quorum;

(c) any member elected by the members present at a meeting may be chairman thereof;

(d) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each hundred rupees of stock held by him, and in any other case every member shall have one vote

(e) on a poll votes may be given either personally or by proxy,

(f) the instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation, either under the seal or under the hand of an officer or an attorney duly authorised; and

(g) a proxy must be a member of the company.

(3) If for any reason it is impracticable to call a meeting of a company in any manner in which meeting of that company may be called or to conduct the meeting of the company in manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is given may give such ancillary or consequential directions as it thinks expedient and 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.

Articles 56 and 66 are as follows :

Art. 56 "At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution."

Art 66. "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 seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid"

Notice

A meeting of the company other than a meeting for passing a special resolution has to be called on not less than 14 days notice in writing. A meeting may be called on shorter notice, however, with the consent of the members entitled to notice [section 79 (1A)].

For a meeting for passing a special resolution the notice must be issued not less than 21 days before the meeting subject to a similar proviso that if all members entitled to attend so agree, a special resolution may be passed at a meeting called on less than 21 days notice [section 81 sub-section (2)].

The notice of the meeting must contain the agenda, that is the statement of the business to be transacted at the meeting [section 79 (IB)] and a notice must be served in the manner provided in articles 112-116 of Table A. The notice must be served either personally or by sending it by post and in the case of any shareholder not having a registered address in British India, by advertisement. A meeting can not therefore be convened by advertisement only even though permitted by the articles, since article 112 of Table A overrides any such clause in the articles of a company. But accidental omission to give notice or non receipt of notice by any member would not invalidate the proceedings of any meeting.

Quorum

In order to constitute a meeting a quorum of members must be present. The number of members required to form a quorum is fixed by the Articles. If there be no provision in the Articles, five members of a public company, and in the case of a private company two members are required for a quorum. [sec. 79 (2) (b)].

Sometimes the Articles provide for a quorum of persons "present in person" or "present in person or by proxy." In the former case, the number fixed for a quorum must be *personally present* at the meeting and in the latter case a quorum is considered to be present if

the number of members *present in person together with* the number of *those who have sent in duly executed proxy forms* make up the number. But in the absence of any provision in the Articles the quorum, under [see 79 (2) (b)], must consist of members personally present.

But supposing a single person holds proxy from the requisite number of members he alone cannot constitute a quourm, for one person is not a 'meeting'.(t) There must be at least two persons present and they together with the persons for whom they hold proxy must constitute a quorum.

So where a *meeting* of members of a particular class is required by law and a special majority is necessary, as under sec. 153, the assent of a single member holding the requisite majority of shares would be insufficient. Though where all the shares of a particular class are held by one person a reslution signed by that person is equivalent to a resolution signed by shareholders of that class.(u)

Meeting without due quorum

If a quorum be not present in the meeting, *the meeting cannot proceed to business.* If any *meeting is held without a proper quorum,* the proceedings of such meeting *become invalid.* But usually the Articles provide that if a quorum is not present, the meeting is to stand adjourned, say, for a week, and that at the adjourned meeting, no quorum is required and such members as are present may validly do the business of the meeting. Such a provision is effective. The Articles may provide for particular quorums for particular kinds of business.

Merely because the usual quorum of members is present, it does not follow that the meeting is competent to transact any business whatsoever. The Articles may require a special quorum in some special case, *e. g.*, for removing Managing Agents appointed at the foundation of the company. Apart from that, the Act (*e. g.*, sec. 153) lays down that special resolutions for interfering with the special rights of any class of shareholder cannot be passed unless a majority of shareholders, holding three-fourths of the shares of the class affected, vote for it. It is obvious that a resolution of this character cannot be passed at any meeting unless members holding not less than three-fourths of the shares of that class are present.

It is a convenient practice to take the signatures of the members attending the meeting in a book kept for the purpose. It would be satisfactory evidence of the existence of a quorum at any meeting if a question is raised later on.

Chairman

Generally the Articles of Association provide that the Chairman of the Board of Directors, if any, shall be the chairman of the General Meetings and in his absence or refusal to act as such, the members *may appoint any of those* present in the meeting to work as chairman of the meeting (see Table A., Art 53-54).

In the absence of any provision in the Articles any member elected by the members present in the meeting may be the chairman thereof [section 79 (2) (c)].

(t) *Sharpe* v *Dawes*. 2 Q B D. 26.
(u) *East* v. *Bennett Bros.*, (1911) 1 Ch. 163.

Duties of Chairman.

The duty of the chairman is to secure orderly conduct of the business of a meeting. For such purpose he has *prima facie* authority to decide all questions of order which incidentally arise and necessarily require decision at the time of the meeting.(v) So far as the meeting is concerned the *decision of the chairman on a point of order is final*, although, if the matter comes up before a Court, the Court has power to decide on merits whether the decision of the Chairman was correct.(w) The Articles may, however, make any other provision, as for instance, for taking the sense of the meeting on questions of order, and when such provision is made in the Articles, the decision of the Chairman may be challenged in accordance therewith. In most cases, however, it will be found more covenient to leave the authority absolutely to the Chairman. The Articles may also make detailed provision with regard to the procedure at meetings and rules of order. But it is more convenient on the whole to leave the matter in the hands of the Chairman. In the absence of any provision in the Articles, the Chairman has the power *to close a discussion* and *put the question to the vote* provided that there has been a fair discussion and the minority has had a fair hearing. (x)

It is not necessary that everybody should be allowed to speak as long as he likes. On the contrary "if at any meeting the Chairman perceives that the time of the meeting is being wasted by a cantankerous shareholder and that the meeting wants to vote he may move or get some one else to move, 'that the question be now put' and, if this is decided in the affirmative, will act accordingly. A meeting is not bound to hear a member, nor is the chairman bound to get him a hearing.

"A Chairman should rule a meeting fairly and firmly His duty is to keep order and see that the business is properly conducted". (Palmer, Company Precedents, 13th Ed , p 839)

Unless the Articles contain any regulations requiring notice of amendments, the Chairman cannot refuse to put an amendment and if a resolution is passed after the Chairman has improperly refused to put an amendment, the resolution is not binding.(x1)

Adjournment

The Chairman appears to have, at common law, a right to *adjourn a public meeting*.(y) But it seems that in the absence of any provisions in the Articles giving him such power, *the Chairman cannot adjourn the meeting* nor *dissolve it while any of the business* for which it was called *remains to be transacted*.(z) The *meeting may*, however, by a proper resolution *adjourn its session* and the Articles generally provide for such power by authorising the Chairman to adjourn the meeting with the consent of the meeting (see Table A., Art. 55). A Chairman *has no power to stop a meeting* at his own will and pleasure. Unless the Articles so provide

(v) *In re Indian Zoedone Co.*, 26 Ch. D. 70 (C.A.).

(w) *Henderson* v. *Bank of Australia*, 45 Ch.D. *330*

(x) *Wall* v. *London & Northern Corporation*, (1898) 2 Ch. 469

(x1) *Wall* v. *London and Northern Corporation*, supra.

(y) Buckley, *op cit.*, 11th Ed. p. 709

(z) *National Dwelling House Society* v. *Sykes*. (1894) 3 Ch. 159.

the meeting itself *can resolve to go on with the business for which it has been convened* and *appoint another Chairman* (a)

A resolution passed at an adjourned meeting is deemed to have been passed on the date on which it was passed and not on the previous date on which the meeting was originally adjourned. This has been clearly stated in sec. 119 of the English Act of 1929.

Section 81 sub-section 3 of the Act provides with regard to extraordinary resolutions that the *Chairmans' declaration* that a resolution is carried shall, unless a poll is demanded, be *conclusive evidence of the fact.* A similar provision with regard to ordinary resolutions is made in Art. 56 of Table A which is now deemed to be incorporated in all articles of association. Under section 83 of the Act a minute of the proceedings of meeting *signed by the Chairman*, or of the *Chairman of the next succeeding meeting shall be evidence* of the proceedings and under sub-section (3) of the section, there is a presumption in favour of regularity until the contrary is proved.

Declaration

The *normal procedure for determining the will of a meeting is by means of a resolution* ; but where a decision is recorded without a formal resolution and accepted by all persons present in the meeting it is not invalidated by the fact that there was no formal resolution. Where a resolution is moved, the decision is made by taking the votes of the members in the meeting.

The regular procedure for taking decisions by the meeting is by means of resolutions which are first of all proposed by some member. When the resolution is properly proposed any member may move an amendment, whereupon the amendment moved should be firstly put to the meeting. If any amendment is carried it does not mean that the original motion as amended by that amendment is forthwith carried. The effect of passing and amendment is only that the original motion is to be considered as amended. The chairman should therefore, after the amendment is carried, put the motion as amended before the meeting and take the sense of the meeting. It is quite conceivable that although the meeting may vote for the amendment it may vote by a majority against the resolution as amended altogether.

The chairman ought not to preside over a meeting when any matter affecting his own appointment or interest is being discussed. The usual procedure when such a motion is before the meeting is for the chairman to vacate the chair and nominate another person to act in his place during the period of discussion of that matter. It would seem that the fact of a person presiding at the meeting when a motion concening himself is being discussed altogether invalidates the proceeding.

Votes

The right of *voting at a meeting is a statutory right of a shareholder* and *no Articles of Association can take away such a right* though

(a) *National Dwelling House Society v. Sykes*, supra ; *Catesby v. Burnett*, (1916) 2 Ch. 325.

Voting is the Statutory right of a share-holder.

they may restrict it to some extent. Very commonly provision in the Articles of Association is found as to how votes are to be taken or counted (see Table A., Art. 60 *et seq*). In the absence of provision in the Articles to the contrary every member including a Preference shareholder *has at least one vote*, [sec. 79 (2) (d)] and under certain circumstances, as on a poll, he may have a vote for each share he holds. The Articles may restrict the voting right of a particular class of shareholders and give them only a qualified right of voting; *such restrictions are ordinarily made in cases of preferential and deferred shares.* A shareholder's vote is like his property, which he can use as he chooses and he is not bound to exercise it for the benefit of the company. He may vote purely for his own self-interest and the vote would not be invalidated thereby in the absence of fraud or duress. (b) If, for instance, by transferring his shares to other names, a member can increase his voting power, he is entitled to do so. (*Pender* v. *Lushington*, (1877) 6 Ch. D. 90). But the Articles can deprive a shareholder of his right to vote when he is in default in payment of a call Moreover, there is nothing in the Act to prevent the Articles from conferring the right of voting on non-members, *e.g.*, debenture-holders, and the Court has frequently sanctioned such a scheme of arrangement; but, of course, votes by non-members cannot be taken into account for the purposes of a special or extraordinary resolution, for the words of Section 81 of the Act render it necessary to count in such cases the votes *only of members* and of those members only who ar, entitled to vote—vide Palmer's Company Precedents, 13th Editione p. 684.

In order to enable a company to attend and vote at the meeting of another company of which it is a member, section 80 of the Act provides that it may, by a resolu tion of the Directors, authorise any of its officials or any other person to act as its representative at any meeting of another company in which it holds shares and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of the other company.

While there is some restriction in the Articles as to the right of voting, a shareholder, to secure votes in his favour, may transfer some of his shares to others, but before exercising any right of voting the transfers must be registered, otherwise the votes will be invalid. In some cases, the Articles provide that a shareholder cannot exercise his voting right unless he has been a member for a stated length of time. This seems difficult to reconcile with section 79 (1), (e), which provides that a shareholder who has been registered a member shall enjoy the same rights and be subject to the same liabilities as all other members of the same class. In may be argued however that the restriction is not on any particular group of shareholders but to all and binds all shareholder equally and is therefore not against the spirit of this section.

The Articles of a company may provide that if a shareholder's voting right is not contested in the meeting where he voted, then

(b) Buckley's Companies (Consolidation) Act, 11th Ed. p. 712.

the votes not disallowed at the meeting cannot afterwards be challenged.(c) But such a provision is unusual.

The votes in a meeting are generally taken in one of the two ways *viz.* by a *show of hands*, or *by poll*. (See Table A.. Arts. 56, 57 & 60 ; and sections 81 and 54 of the Act).

How to count votes.

By show of hands :—Whenever any matter is placed before the meeting for votes, in the first instance it is decided by a show of hands. This is the common law, which, unless excluded by the Articles of Association, applies automatically. But commonly the Articles also provide for it.

In taking votes by show of hands the duty of the Chairman is to count the hands held up and declare the result without necessarily stating the number of votes in favour of or against the resolution. When the number of votes on a show of hands is equal, the Chairman *has no casting vote*, unless power to give a casting vote is clearly given in the Articles of Association. A vote by show of hands is a rough and ready way of taking the sense of a meeting. In a show of hands each member is entitled to only one vote. His vote will not be counted with reference to the number of shares owned by him nor will the votes of members present by proxy be taken into consideration.(d) Each man votes only for himself and has only one vote.

By poll :—A poll may be demanded for two reasons. In the first place, it is a way of challenging the correctness of the Chairman's declaration about the sense of the meeting. In the second place, the poll may give an altogether different result by reason of the different principles on which votes are counted on a show of hands or by poll. On a show of hands each man has one vote. On a poll he usually has one vote for each share he holds and (if so provided in the Articles) he can also count on his side the votes of all the members for whom he holds a proxy form.

In the case of extraordinary resolutions sec. 81 provides for a poll though the mode of taking a poll is to be determined by the Articles of Association or by the Act (sub-sec. 5 and 6) and the Articles of Association generally provide a clause for taking votes by 'poll'. if demanded (see Table A., Art., 57).

The right to demand a poll is given statutory recognition under the amendment of 1936 by section 79. Sub-section (1) clause (c) of that section now provides that (i) five members present in person or by proxy or (ii) the chairman of the meeting or (iii) any member or members holding not less than one-tenth of the issued capital with voting rights are entitled to demand a poll. And in the case of a private company if not more than seven members are personally present one member and if more than seven members are present two members are entitled to demand a poll. This statutory provision overrides any provision in the articles and it is no longer possible to provide by the articles that a poll shall not be demanded with regard to any particular matter though it would seem that it is still

(c) Palmer's Company Law 9th Edition. page 170.
(d) *Ernest* v. *Loma Mines*, (1896) 2 Ch. 572 . (1897) 1 Ch. 1.

possible to provide by the articles that a poll may be demanded by a number of members less than that specified in this clause. For instance, the articles may provide that a poll may be demanded by any single member without any restriction on the number of shares that he holds.

This clause does not provide that on a poll votes may be given by proxy but sub-section (2) clause (e) which is to operate only in the absence of any provision in the articles to the contrary provides that vote may be given on a poll by proxy. Clauses (f) and (g) of sub-section (2) provide that the instrument appointing a proxy shall be in writing under the hand of the appointor or in the case of a corporation under the seal or under the hand of an officer or attorney duly authorised and further that a proxy must be a member of the company. These provisions will apply in the absence of anything to the contrary in the articles.

Poll

When a poll is demanded, the votes by the show of hands *become* ineffectual. On the demand of a poll it becomes the duty of the Chairman to grant it under the regulations of the Articles of Association. The Chairman fixes the time and place for taking of the poll. He may direct the taking of the poll then and there and this is commonly done except where the taking of the poll involves an elaborate scrutiny which requires time.

Mode of taking the poll.

The way in which the poll should be taken is very often left by the Articles to the discretion of the Chairman. A common way is to present a paper to each member present in the meeting with two columns headed as "for" and "against" on which the member puts his signature in the appropriate columns according to his judgment. The number of votes of each member and the votes he may represent by proxy are then added up, by reference to the Register of Members and the Chairman declares the result. There are other ways also, such as calling up the names of the members present and taking note of their votes given in response. The essential thing in a poll is to determine what the opinion of each particular member is and to decide the question upon the majority of votes so determined. The Articles may restrict the right of voting on a poll, if there be any call unpaid by any voter Scrutineers are sometimes appointed by the Chairman with the assent of the meeting to scrutinise and count the votes in a poll and report the result to the Chairman who declares it to the meeting.

If the taking of the poll is not completed within the day, on which the taking of poll is commenced, it must be continued on the following day, for the *Chairman is not entitled to close the meeting while the votes are coming in. A member may vote at a poll though he was not present when the poll was demanded* (e)

A poll however must be taken at the meeting It cannot be taken by sending voting papers by post to members (Gore-Brown's Handbook, 35th Ed., p. 367).

(e) *Campbell* v *Maund*, 5 Ad. & Ell. 879, 880.

Vote by ballot

Sometimes the Articles of Association provide for voting by ballot, when a poll is taken. The procedure of voting by ballot is that the ballot cards with the words "for" or "against" are given to each member present in the meeting. The member makes suitable marks to indicate his vote. The ballot card is then deposited in a box called the "ballot box" and when all the cards are deposited in it, the box is opened in the presence of a few representatives of the members. With reference to this ballot card a list is prepared of the members dividing them into two classes "for" or "against" and the votes are then counted as is done in case of a poll. The object of the ballot is to ensure secrecy in voting so that each member may vote with perfect freedom.

Proxies

Right of voting by proxy

To enable shareholders who cannot attend the meeting of the company to exercise his right of voting, the system of voting by proxy is adopted by all companies and is also contemplated by the Act. [see sec. 79 (1) (d), and sec. 81 (1).] Under the English Act and the Indian Act as it stood before the amendment, there would be no right to vote by proxy unless the articles provide for it. (f) The articles usually provide for such voting, (see Table A Art. 65. 66 and 67.). Section 79 (2) (e) (f) and (g). also provide for it where there is no provision in the articles to the contrary. It is practically unthinkable that the articles of any company should expressly provide *against* voting by proxy. it is therefore a purely academic question whether if the articles do make such a provision a member could nevertheless exercise his vote by proxy.

The answer to this academic question under the Act as amended is not free from difficulty. For section 79 (1) which applies to companies notwithstanding any provision of the articles to the contrary does not, like sec 79 (2) provide for *voting* by proxy, while, somewhat inconsistently, it provides in cl. (c) that five members present in person or *by proxy* can *demand a poll*. Then again while Articles 61 and 64 of Table A which authorise voting by proxy are not made compulsory by sec 17 of the Act, Art 66 which only provides for the deposit of proxy forms within a specified time has been made compulsory for every company by that section. The position is very confusing as it is, but the question, as already stated, is academic and not likely to arise.

Section 79 contemplates that the articles may provide where and how far votes may be given by proxy. If the articles forbid voting by proxy altogether, no vote can be given by proxy; but in the absence of any provision in the articles sub-section (2) (e) and (f) shall apply so that on a poll votes may be given either personally or by proxy and the instrument appointing a proxy shall be in writing

(f) Buckley's Companies (Consolidation) Act, 11th Ed., p 323, 715, *Harben* v. *Phillipps*, 21 C. D 14, 35. The Act provides for voting by proxy at meeting of creditors under sec 153, but no provision is made for voting at meetings of the company.

under the hand of the appointor or his attorney duly authorised in writing or if the appointor is a corporation either under the seal or under the hand of an officer or an attorney duly authorised and in such a case no person who is not a member can be appointed a proxy.

The articles may provide for the form of a proxy, but whatever the requirements of the articles may be, section 79 sub-section (1) (d) provides that if an instrument of proxy is in the form set out in Article 67 of Table A it will not be questioned *notwithstanding any special requirements of the articles.*(g)

Article 65 of Table A provides that the proxy must be a member of the company. This is also provided by section 79 (2) (g). But the articles may provide otherwise and if under them a non-member can become a proxy, such a provision would be perfectly valid. A vote may be given by a person holding the power of attorney which gives him the authority to vote. But if the articles provide that the proxy must be a member then it seems the attorney if he is not a member himself cannot vote under power though in the absence of anything to the contrary in the articles he may sign a valid proxy on behalf of his principal in favour of a member and a member holding such proxy would be entitled to vote.

Where there are several holders of shares the articles generally provide and ought to provide who may vote for such joint holders. Very often it is the member whose name apears first in the register and in such a case while all the joint shareholders may jointly execute a proxy the person who is under the articles entitled to vote on behalf of joint holders can alone appoint a valid proxy without reference to the other joint holders.

Stamp on proxy form.

The proxy form is required to be stamped with a two annas stamp (Revenue) if it is for use at any one meeting of the company (see Sch. 1Art. 52 of the Indian Stamp Act as amended by Bengal Act XLIII of 1923). Such an instrument of proxy would authorise a person to act at the meeting for which it purports to have been executed and at any adjourned session thereof if so stated in the instrument.(h) Unless there is anything in the Articles to the contrary there is nothing in the law to prevent a person authorising another to vote for him at more than one meeting or at meetings of the company generally. But such power must be stamped as a Power of Attorney under Article 48 of Schedule I of the Indian Stamp Act 1899.(i) A general authority or a power of this character stands on the same footing as an instrument of proxy and can be acted upon subject to all the restrictions in the Articles with regard to the use of a proxy.

Stamped proxies

The Directors may, at the expense of the company, send out stamped proxy forms to each member for his use. In a recent case the Court of Appeal in England held

(g) *Harben* v. *Phillips*, supra, So far as it lays down that a proxy form which is not attested where attestation is required by the Articles must be rejected has been qualified by this section to this extent that a proxy executed in accordance with Table A would be valid notwithstanding the articles.

(h) See Article 67 of Table A.

(i) The duty payable is as follows :—In C. P., Madras and Assam Rs. 7-8, Bengal, Bombay and Punjab Rs 10/-, other provinces Rs. 5/-.

that the Company not only (i) had the power to issue stamped proxy paper to its members, (ii) but that issue of such stamped papers to some and not to all shareholders also was purely a question of policy for the Company and could not be questioned in Court.(iii) The Articles of Association generally prescribe the proxy form. Form No. 34 in Appendix B is the most commonly used form.

Time-limit as to deposit of proxy.

Art. 66 of Table A which is now compulsory provides that a proxy form must be deposited at the registered office of the company not less than *seventy-two hours* before the meeting. They become invalid if *they do not reach the office within the prescribed time.*

Where the Articles require a proxy paper to be filed not less than, say, 72 hours before the time for holding the meeting, a proxy paper deposited after that but more than 72 hours before the time to which the meeting is adjourned or before taking a poll is invalid.(k)

"An adjourned meeting is considered for some purposes, a continuation of the original meeting. Hence, in the absence of special provision, notice of an adjourned meeting need not be sent to members [*Wills* v. *Murray* (1850) 4 Ex. Rep. 843] and proxies lodged between the dates of an original meeting and the adjournment thereof are invalid [*McLaren* v. *Thomson* (1917) 2 Ch. 41 and 261]"—Palmer's Company Precedents, 13th edition p. 674. This does not prevent however a shareholder from voting at the adjourned meeting although he was not present in the original meeting.

Proxy of member residing outside India.

Members residing away from India may vote by proxy executed by a person holding a General Power of Attorney or by sending a proxy form signed in proper time. Where such an instrument executed abroad is not properly stamped, it may, under section 18 of the Indian Stamp Act, be stamped within three months after it has been received in British India. Such a paper can therefore be validly acted upon even though it is unstamped, for the stamp may be affixed within three months.

Blank proxies.

Proxies may be executed in blank and filled in after execution by a person properly authorised to do so with the name of the proxy or the date of the meeting, even though the date of the meeting has not been fixed on the day of execution.(m)

Proxy by a company.

When the member is a company, the instrument of proxy should be signed by the officer duly authorised for the purpose and is generally required by the Articles to be sealed with its common seal (see Art. 63 of Table A).

(ii) Peel v L. & N. W. Ry (1907) I Ch 5

(iii) Wilson v L. M. & S. Ry (1940) 2A E. R 92

(k) *McLaren* v. *Thomson*, (1917) 9 Ch. 261; *Shaw* v. *Tati Concessions*, (1913) I Ch. 292. Proxy forms therefore generally contain the clause "or . .. ...hours before the adjourned meeting, as the case may be." But where it is desired to exclude the vote, the words following should be added, "and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting."

(m) *Ex parte Lancaster*, 5 C.D. 911; *Ernest* v. *Loma Mines*, (1896) 2 Ch. 572; *Sedgrove* v. *Bryden*, (1907) I Ch. 318.

A proxy is deemed to be revoked by the shareholder executing another proxy for the same meeting in favour of another person.(n)

Revocation of proxy.

The presence of the member at a meeting after executing a proxy for the same meeting does not necessarily revoke the proxy. But if he votes himself before the proxy has voted for him, that is an implied revocation of the proxy.(o) The death of the member *prima facie* avoids a proxy, unless the Articles provide, as they often do, that a proxy shall not be invalidated by the death of the executant until the company receives written notice of such death.(p)

Where the validity of a proxy is in question, it is for the Chairman to decide the matter, and his decision is not as a rule questioned by the Court.(q)

Procedure at Ordinary General Meetings

Purposes of an ordinary meeting

Generally the Articles of Association provide the following purposes for an ordinary General Meeting (*vide* Art. 50 of Table A)—

(1) to consider the accounts, balance-sheet, the ordinary report of the Directors and Auditors ,

(2) to sanction dividend ;

(3) to elect Directors in place of those who retire,

(4) to elect other officers such as Auditor etc. ; and

(5) to fix their remuneration,

Purposes of extra ordinary meeting

Any business except such as are mentioned as ordinary business by the Articles will be business for an extraordinary General meeting and the ordinary meeting shall have no power to discuss and consider them. The notice convening the meeting as given in Form No. 33 in Appendix B is required to state the nature of business to be transacted in the meeting [see sec. 79 (1) (b)], Table A, Art. 49.

Proceedings in ordinary meetings.

On the table of the ordinary meeting a copy of the balance-sheet and report and a list of members should be placed at the commencement of the meeting. If there are more than one ordinary meetings the balance-sheet need only be placed before the annual meeting unless the Articles provide for six monthly balance sheets, in which case there must be two ordinary meetings for considering them.

When the Chairman is appointed, the Chairman is required to read the notice of the Meeting and the reports of the Directors and Auditors as submitted before the meeting or he may call upon the Secretary to do so. Sometimes, to expedite the work of the meeting, the Chairman may ask the meeting if the notice and reports may be taken as read. A resolution is generally

(n) *Exparte Mure*, 2 Cox 72 , *Re Lucas*, 17 Jur 1186.
(o) *Knight* v. *Bulkely*, 5 Jur. (N S) 817.
(p) Palmer, Company Precedents 13th Ed 687. Sec 208 Contract Act.
(q) *Indian Zoedone Co.*, 26 Ch. D. 870 ; *Wall* v. *Exchange Co.* (1926) I Ch. 143.

noted down to the effect that "the notice and the report were read in the meeting or taken as read in the meeting."(r) The Chairman may introduce the report of the Directors in a speech in which he explains the position of the company and gives as much information about its affairs as he thinks fit.

The Agenda as given in the notice of the meeting are then discussed one by one and the resolutions are proposed. The resolutions may be proposed either by the Chairman or by some other member present in meeting under his direction. When the resolution has been formally proposed it is usually required to be seconded by some other person but a resolution may be put by the Chairman, although it is not seconded The motion is then left to the meeting for discussion. When it has been reasonably debated, the Chairman may close the discussion and put the resolution to the vote in the manner explained above. If there be any amendment to the resolution, the amending motion is first put to the vote On the result of the amending resolution the fate of the original depends If an amending resolution is carried, it implies that the meeting agrees to the original terms of the amendment but it does not imply that the resolution so amended is carried. The proper procedure, unless there is anything contrary to it in the Articles, is to put the amended resolution again as a substantive resolution. The meeting may very well agree to an amendment to the original resolution but vote against the amended resolution in the end. In this way the whole agenda is discussed and the resolutions are noted down with the names of persons who proposed and seconded the resolutions.

"No amendment can be moved which goes beyond the notice convening the meeting or, in the case of an ordinary meeting, beyond the scope of the ordinary business, which by the Articles may be transacted thereat, without special notice Thus in the case of an ordinary meeting, where a motion is submitted that the report and accounts be received and adopted, an amendment that the Directors be removed from office or that the Articles be altered, would be irregular , but an amendment to the effect that the accounts and the balance-sheet be received, but not adopted and that a committee of shareholders be appointed to look into them and report, would be competent. So too, if the meeting be convened to pass a resolution for increasing the capital, an amendment that the Directors be authorised to borrow, or that a dividend be declared would be irregular, for any such amendment is not within the notice In other words an amendment must be fairly relevant."—Palmer's Comp. Precedents, 13th Edition, p. 676.

Recording in minute book

When the meeting is over, the Secretary writes the minute book and gets it signed by the Chairman of the meeting or presents it before the Chairman of the next meeting for signature if the Articles so provide (*vide* sec 83 sub-section 2). But as General Meetings are not frequently held, it is desirable to get the proceedings recorded in the minute book and

(r) Vide Palmer's Shareholders' Directors and Voluntary Liquidator's Legal Companion, 31st Edition page 75, and Cole's Guide for the Company Secretary, pages 148 and 149.

signed by the Chairman of that very meeting. The minutes once made and signed should never be altered by striking out or adding anything. This may be a criminal offence if it amounts to wilful falsification of books (*vide* sec. 282).

The proceedings of an ordinary General Meeting may be recorded in the minute book as per form given in Form No. 35 in Appendix B.

Minute books

The Act requires books to be kept for the purpose of entering the proceedings of all meetings (*vide* sec. 83 sub-sec. 1). The proceedings of all the meetings should be recorded in these books. The minute books are *statutory books* and *must be duly recorded and preserved.*

Under section 81, Sub-section (4) the minute books are to be *open to inspection* by members at the registered office of the company during business hours subject to such reasonable restrictions as a Company may by its articles or by a resolution of the general meeting impose so that *not less than two hours each day* is allowed for inspection. Sub-section (5) provides that a member is entitled to copy of the proceedings on payment of costs not exceeding 6 annas for every hundred words within seven days of the application and the company and every officer who knowingly and wilfully defaults in giving the inspection or copies of books required by this section are made liable to a fine under sub-section (6). Further, the Court may compel immediate inspection or direct supply of copies required, by an order served on the Company.

Fate of balance-sheet if not adopted.

If the General Meeting does not accept the balance-sheet, a statement of the fact and of the reasons thereof shall be annexed to the balance-sheet and a copy thereof is required to be filed with the Registrar (*vide* sec 134 sub-sec. 1 and Chapter XIV). Within *twenty one days from the ordinary General Meeting a copy of the balance-sheet should be filed with Registrar.* But a private Company is not required to file a balance-sheet with the Registrar (*vide* sec 134, sub-sec 3).

Procedure at Extraordinary General Meeting.

An extraordinary General Meeting is any meeting other than an ordinary meeting as prescribed by the Articles It may be called by the Directors or on the requisition of the members as provided by section 78 of the Act. It may transact any business including matters described as ordinary business by the Articles. But an extraordinary resolution or a special resolution can normally be passed only by an extraordinary meeting.

Conducting of extraordinary meeting

The method of conducting an extraordinary meeting would be exactly the same as in the case of an ordinary meeting except that where a meeting is called upon a requisition under section 78 it will be proper for the Chairman to read the requisition at the opening of the meeting.

An Extraordinary General Meeting alone can pass an extraordi-

Necessity of Extraordinary meeting.

nary or special resolution. A meeting of shareholders called by the Court for giving effect to any arrangement with the creditors of the company under the provisions of sec. 153 is practically an extraordinary General Meeting.

Extraordinary Resolution

Section 81, sub-section 1 of the Act defines an extraordinary resolution thus. "A resolution shall be an extraordinary resolution when it has been *passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy* (where proxies are allowed) at a General Meeting of which *notice specifying the intention to propose* the resolution *as an extraordinary resolution* has been duly given."

Definition of extraordinary resolution

Hence, to pass an extraordinary resolution the following points should be borne in mind :—

Points to be observed in passing extraordinary resolution

(a) That the resolution shall be passed by a majority of not less than *three-fourths of such members entitled to vote as are present in person or by proxy*. Sometimes under the provisions of the Articles a member is not allowed to vote whose calls have not been paid or who has a share with qualified voting rights. For the purposes of this section where a member has sent in a proper proxy form, he is deemed to be present by proxy if his proxy is present

(b) That the *notice* of the meeting *must disclose the intention of proposing the resolution as an extraordinary resolution*. The notice for passing an extraordinary resolution should be in the following words, "the meeting is convened to consider the following and, if thought fit, to pass the same as an extraordinary resolution" setting forth the purport of the resolution, though the exact wording need not be given. But the wording of the notice should be such as to give a clear idea of the resolution to the members. "Notices should be so framed that those who run may read and that they should be construed in a sense in which businessmen to whom they are addressed would understand them"—(*Per* Lord Justice Bowen in *Alexander* v. *Simpson* 43 Ch. D. 139). An insufficient or misleading notice invalidates the resolution although passed by the requisite majority. A shareholder is bound by resolutions passed at general meetings as to the matters mentioned in the notice but he cannot in his absence and without his knowledge be taken to consent to any resolution, notice whereof was not given to him. "So, where a meeting was convened to consider resolutions for reconstruction and for winding up in regard thereto and at the meeting a naked resolution for a winding-up was passed, it was held to be invalid as a departure

from the scheme indicated by the notice"—*Teade* v. *Bishop Ltd.*, W.N. (1901) 52 ; 84 L.T. 561 and Palmer's Comp. Prec., 13th Edition, p. 676. But in *Thomson* v. *Henderson's Transvaal Estates Ltd.*, (1908) 1 Ch. 765, it was decided that where the notice specified several resolutions, some of which were *ultra vires*, and some *intra vires* and all were passed, the *intra vires* resolutions were good, though the others were bad.

Form No. 36 in Appendix B may be taken as a specimen of a notice of an extraordinary meeting to pass an extraordinary resolution.

Filing of extra-ordinary resolution.

Within *fifteen days from the passing of an extraordinary resolution, a copy of it*, either printed or type-written duly certified by an officer of the Company *shall be filed with the Registrar* pursuant to section 82 of the Act along with *a filing fee* of Rs 3/- A copy of such resolution is not required to be embodied in the Articles of Association as is required in the case of a special resolution, becuse Articles of Association are not affected or changed by an extraordinary resolution, but only by a special resolution (*vide* sec. 20, sub-sec. 1).(s)

Penalty

If any default has been made in filing such a resolution with the Registrar within the precribed time, the Company and the officers concerned shall be liable to a *fine* not exceeding Rs 20 *-a day* from the last date for the filing of such resolution (*vide* sec. 82, sub-secs. 4 and 6).

The extraordinary resolution must be filed with the Registrar, in Form No. VIII given in Appendix A.

Definition of special resolution.

Special resolution :—A special resolution has been defined by the Act by sec. 81, sub-sec. 2, which runs thus

A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extra-ordinary resolution and at a general meeting of which not less than twenty-one days' notice specifying the intention to propose the resolution as a special resolution has been given ,

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

The section makes an important departure from the law as it stood before the amendment of 1936 by providing that a special resolution shall be passed *in one meeting* and not in two meetings as under the previous law. Herein the new section follows section 117 subsection (2) of the English Act of 1929. The only thing which distinguishes a special resolution now from an extraordinary resolution is that the resolution should be passed at a general meeting of which *21 days' notice* has been given and the notice *specifies the intention to*

(s) But some such resolutions are now required by the English Act of 1929 sec. 118 to be embodied in the Articles and filed with the Registrar.

propose the resolution as a special resolution, while in the case of an extraordinary resolution the ordinary notice for general meeting is necessary. The proviso states however that if all the members entitled to attend and vote unanimously agree, a special resolution may be passed even without 21 days' notice.

A special resolution is required in the following among other cases :—

Necessity of special resolution.

(1) to *change* the *name* of the *company* (*vide* sec. 11 sub-sec. 4) ;

(2) to *alter* its *objects* and remove the *registered office* from *one province to another* subject to the *sanction of the Court* (*vide* sec. 12) ;

(3) to *reduce its capital* (*vide* sec. 55, sub-sec. 2) .

(4) to *convert* any portion of the *capital* uncalled into *reserved capital* (*vide* sec. 69) ;

(5) to *alter its Articles* (*vide* sec. 20) When any action is permitted by the Act, but exercisable "if authorised by the Articles," *e.g.*, increasing capital, consolidating capital etc in sec 50 and where the Articles do not give the power, such power must be taken by amendment of the Articles by special resolution before it can be exercised

(6) To appoint Inspectors under sec 142

(7) To wind up the company voluntarily under sec 203 sub-sec. 2.

(8) To authorise the doing of various acts by liquidator, *e.g.* under sec. 208C .

It will be noted that while the procedure for ordinary resolution of the company as laid down in section 79 sub-section (2) is subject to any provision in the Articles, in the case of extraordinary and special resolutions section 81 sub-sections (3-7) make special provisions by laying down (1) that a declaration of the chairman on a show of hands is conclusive unless poll is demanded, (s1) (2) that a poll may be demanded, (3) that the poll is to be taken in accordance with the articles in such manner as the chairman directs, (4) when poll is demanded each member would have as many votes as he is entitled to under the articles and (5) that the procedure for giving notice of meetings for passing extraordinary or special resolution shall be the procedure laid down in the articles for this purpose. Articles 112-116 of Table A have now been made compulsory.

A special resolution, when duly passed, *becomes as binding between the company and the shareholders* as the original Articles of Association (*vide* sec. 21). A special resolution *must be printed and a copy annexed to each copy of the Articles of Association*, which is issued after the date of the resolution (*vide* sec. 82).

Every member is entitled to such a copy on payment of a fee not exceeding one rupee. The printed copy of such a resolution shall

(s1) Where the chairman records the number of votes for and against and then erroneously declares the resolution carried the declaration is not conclusive. 14 C. W. N. 1137.

Right of getting a copy of special resolution.

be forwarded *to the Registrar within 15 days from the date of the passing* of the resolution (*vide* sec. 82) along with the *filing fee*. Form No. VIII in Appendix A should be adopted to prepare the notice in filing the special resolution with the Registrar.

If any default is made in complying with the requirements of this section the *company and the officers* concerned shall be liable to a *fine* not exceeding Rs. 20/- *per day* as long as the default continues. If default is made in annexing a copy of such resolution in each copy of Articles of Association, the company and every officer who knowingly commits the offence is liable to a *fine* not exceeding Rs. 10/-for *each copy* in respect of which the default is made.

Penalty.

Whenever any extraordinary or special resolution is adopted for *the voluntary winding up* of the company, such a resolution must be notified by the company within *ten days from the date of the passing* of the resolution in the local official gazette and also in some newspaper of the District where the Registered Office of the company is situate (*vide* sec. 206). In default, the company and the officer concerned are liable to a *fine* not exceeding Rs. 50/- per day. (For forms of winding up notices to be published in the gazette *vide* Chapter XVII.)

Special resolution for voluntary winding-up should be notified

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CHAPTER X

NOTICE

A company being a corporation of numerous members, endowed by law with certain powers of functioning as one person and certain other privileges, the law insists that whatever is done by the company should be done by common consent and that members and persons interested should know what things are contemplated.

Principles of the law regarding notice.

Notice is a substitute for knowledge. It would be intolerable if in every case a company were called upon to justify its actions by showing that every interested person had actual knowledge thereof. The law therefore treats *a notice as tantamount to knowledge in most cases*. A presumption arises, which is in some cases irrebuttable, that where a notice has been sent to a person of a particular matter, he knows about it. It is generally required that notice must be given, and the posting of notice in due course is all that the company is required to do in most cases. The law therefore insists *on strict compliance with regulations regarding issuing of notices.*

Notices required to be given by the company *must be given by the Directors*, in the absence of any provision in the Articles to the contrary. The Articles generally provide that they may be signed by a Director, Secretary or other authorised person and need not be under the common seal.

Who may issue.

Although the Secretary or other person may have power to authenticate notices, if notices have been issued without proper authority of Directors, they are invalid. Thus where the *Secretary issued notice* of a meeting on his own initiative or even after mentioning the matter to some Directors but *without any express approval by the Directors* and without a regular meeting of the Board, it was held invalid.(v) Such notice may however, be validated by subsequent ratification by the Board of Directors.(w) A notice issued under the orders of *de facto* Directors, who are not legally appointed, may be valid.(x)

If the Articles authorised the Managing Agents or the *Secretary* to issue notices, the sanction of Directors is not required and a notice issued by them would be perfectly valid.

The Articles contain detailed provisions as to how notices of meetings should be issued (see Table A, Art. 112) Section (81) (7) provides that *notices of meetings should be given in the manner provided by the Articles* or under the Act. Art. 112 of Table A which is now compulsory provides; "A notice may be given by the company to any member either *personally or by sending it by post* to him to his *registered address* or (if he has no registered address in British India) to the *address*, if any, in British India *supplied by him* to the company *for the giving of notices* to him. When a notice is sent by post, service of notice shall be deemed to have been effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Notice how issued ?

Notices by post

The effect of this clause in the regulations is to safeguard the company against its act being invalidated by absence of actual notice. The posting of the letter would ordinarily be *deemed to be sufficient notice, although it never reached its destination.* As to the time when the notice may be deemed to have reached the member, this clause only *raises a presumption* which can be rebutted by showing that it actually reached the addressee later than in due course of post. If the clause did not contain the expression, "unless the contrary is proved," the presumption as to the time when notice is given under this clause would have been irrebuttable.(y) The point to be borne in mind is that for convening a meeting of shareholders, notice must be served in the way provided for by Articles 112 to 116. No provission in the articles of association of a company can override this injunction of law and section 79 (1)(b) expressly provides that a notice of meeting must be served in the manner in which notices are required to be served by Table 'A' together with a statement of the business to be transacted at the meeting. Where a shareholder has not left an address in British India where notices can be served,

(v) *State of Wyoming Synd.* (1901) 2 Ch 431, *Haycroft Gold Co.*, (1900) 2 Ch. 230

(w) *Hooper v. Kerr*, 83 L T. 729.

(x) *Boschoek Co. v Fuke*, (1906) 1 Ch. 148.

(y) R. v *Westminister Union*, (1917), K. B. 832.

a notice addressed to him may be advertised, but a general advertisement intended as a notice of meeting for all shareholders cannot be taken as valid notice for a meeting.

Notice on deceased shareholder.

Notice served in the manner specified in the Articles *on a deceased shareholder* is effective. (z) But Table A, Art. 116 provides for notice to the persons entitled to a share on the shareholder's death, and it seems that *notices must be served on such persons even before they have been registered* as members, if the company had notice of the death of a shareholder.

In case of members residing abroad there are English decisions to the effect that absence of notices on such members does not invalidate a resolution (See *Re Union Hill etc* Co. 22 L. J. 400, *Re Newcastle Football Co.* 1932 W. N. 109 *Re Warden* v *Hotchkiss Ld.* (1945) 1A E R 507.) Our Articles 112-116 of Table A however, which are compulsory under sec 17 provide that in their case notice must be served at registered addresses in India and where there is no such registered address in British India, it must be done by advertisement (Art 113).

By advertisment

The law provides in some cases that notices must be given by *advertisement in papers* (see sec. 206 and Art 113) and in some cases the Articles provide that notice should also be given by advertisement by way of extra caution. Again section 37 authorises a company to close the register of members by giving seven days previous notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate. Generally speaking, the notice by advertisement is made supplementary to notices to individuals and is only intended to reach persons interested, whose names and addresses may not be known, as for instance, holders of share-warrants, holders of debenture bonds to bearer, creditors, etc Where notices are issued by advertisement the notice is *deemed to have been given on the* date on which the advertisement is published and not on date on which it reaches a person. (a) Under the new section 17 the provisions of Art. 112-116 of Table A have been made compulsory, so that now those provisions must be complied with notwithstanding anything to the contrary in the Company's articles.

Time of Notice of Meeting

The amended Act makes provisions for several periods of notice necessary for several kinds of meetings. Section 77 requires that at least 21 days before the meeting the statutory report must be circulated to the members.

For ordinary meetings section 79 sub-section (1) (a) provides that a notice must be served at least 14 days before the meeting and

(z) *James* v *Buena Ventura Synd.* (1896). 1 Ch 456 ; *New Zealand Gold Co.* v. *Peacock*, (1894). 1 Q. B. 622.

(a) *Mercantile Investment Co.* v. *International Co. of Mexico* (1893), 1 Ch. 484, 489n.

it must be served as provided by clauses (112-116) of the Articles. For extraordinary resolutions [section 81 sub-section (1)] and for requisition meetings [section 78 sub-section (4)], the same period of notice is necessary. But for passing a special resolution [section 81 sub-section (2)] at least 21 days' notice specifying the intention to propose a special resolution must be given.

Conditional notice

Subject to these lower limits the articles can provide for a longer notice and if they do so the notice must be served according to the Articles. Notices of meeting must be *unconditional*. A notice, specifying that a meeting to consider a particular matter will be held if a particular thing happens or does not happen, is invalid, unless the Articles expressly provide for such conditional notice.

Where notice is given of a meeting to be held unconditionally, the inclusion in it of a certain item of business to be taken up in a particular contingency would be valid.(d)

Calculation of time of notice.

When there is a time limit as to the issue of notices, there must be so many *clear days* between the date of notice and the date of the meeting—the day on which the notice is served and the date of the meeting will be excluded. Where notices are posted, the date of notice would but for article 114 be deemed to be the day on which it was posted, irrespective of the date which such notices may bear, but under Art. 114 of Table A the day on which the addressee is deemed to have received it is the day on which the notice would reach him in due course of post and as this article is now compulsory, this provision should be borne in mind. Where notices are given by advertisement, e.g for closure of Share Register under Section 37, the day of publication shall be deemed to be the date of notice.(e)

Contents of notice

The notice must mention the *date, time, hour and place and the business of the meeting*. The notice will be insufficient if it does not contain the requisite particulars. For a sample form of a notice see Form No. 33 in Appendix B.

Notice of closing Register.

It is usual to serve along with the notice for an ordinary meeting a notice regarding the closing of the register for a certain period before the meeting. Section 37 requires that a notice for the closing of the register must be advertised in some newspaper circulating in the district in which the registered office of the company is situated at least seven days before the closing. The maximum period for which the share register can be closed in any year is 45 days; but it cannot be closed for more than 30 days at a time (section 37).

Notice for Extraordinary or Special Resolution

As already noticed a notice for a general meeting to pass an extraordinary resolution or a special resolution must specify the

(d) *Kapuela Land Co., supra.*
(e) *Mercantile Investment Co v. International Co. of Mexico.*, (1893), 1 Ch. 484.

For extra-ordinary resolutions.

intention to move the resolution as an extraordinary or a special resolution as the case may be. It is safe, if not exactly compulsory, to give the exact words of the resolution to be proposed in the notice, though at the meeting amendments may be proposed and if an amendment is carried the resolution as amended will have to be put and carried by the requisite majority.

Special resolution.

In the case of a special resolution it is necessary that the notice should be given at least 21 days before the meeting.

Notice of Call

Notice of calls

The notice for paying a call on shares generally bears the date on which the resolution about the call is made. Such a notice should bear the following particulars(f):—

1. the *amount payable* on each share ;
2. the *time by which the call is to be paid* ;
3. the *place of payment* of the call.
4. the *person to whom* the call is *to be paid* ;
5. the rate of *interest to be paid on failure* of the due payment of the call.

A form for a call notice has been given in Form No. 19A in Appendix B.

Subsequent notices, such as reminders, lapse notice and forfeiture notice, are usually issued in enforcing payment of a call

The notices must be very carefully drawn up as any irregularity in the composition may invalidate the forfeiture if the company takes that step.

Notices out of India

The Articles of Association must now contain provisions as to the mode of issuing notices to those who reside outside British India as in Table A., Art. 113 The Articles should also provide, as they generally do, that a non-resident shareholder should supply an address in British India where notice should be sent, and that if no such address is supplied an advertisment in a newspaper circulating in the neighbourhood of the registered office of the company would now be deemed to be sufficient notice. Where an address is supplied under this clause notices will be sent there. Such a clause in the Articles should be strictly adhered to.

Notices abroad

Upon a winding-up, the liquidator is generally required to follow the provisions of the Articles of Association with regard to

b(f) Palmer's Company Law, 6th Edition, page 147 and Gore-Brown's Handbook on Joint-stock Companies, 34th Edition, page 183 and Table A clause 12-17.

notices of meeting, notices of demand to contributories etc. (see post under *Winding-up*).

Where there are joint-holders, a notice issued to the holder named first in the Register would be sufficient notice to all joint holders (Table A Art. 114). Article 115 provides for the service of notice to the representatives of a deceased or insolvent member and Article 116 affirms that the only persons who are entitled to receive notice of every general meeting are (1) members including holders of share warrants who have registered address in British India and (2) representatives of deceased or insolvent member.

CHAPTER XI.

DIRECTORS AND PROMOTERS

A company, though a legal person, can function only through agents and usually these persons by whom it acts or by whom its business is carried on or superintended are called Directors. Under section 2 of the Act "Director includes any person occupying the position of a Director by whatever name called." Hence, if the Articles provide a "council" or governing body" to look after its affairs, and to direct, carry on or supervise its business, such body will be Directors under the definition of the Act. Section 83 (A) provides that every company shall have at least three directors. This section is not applicable to private companies except a private company which is a subsidiary company to a public company so that it might be supposed that a private company need have no directors as was undoubtedly the position before the amendment of the Act of 1936. Under the amended Act of 1936 however although section 83 A is not applicable to private companies, article 71 of Table A which has been made compulsory under section 17 even for private companies, provides, that the business of the company shall be managed by directors. Again, article 95 which is now compulsory even for private companies provides that no dividend can exceed the amount recommended by directors. So that after this amendment it would appear that private companies are required to have directors although Section 83A specifically states that the provisions of the section do not apply to private companies.

Directors.

Who may be Director

There are no restrictions in the Act as to who can be a Director. A Director need not even be a natural person. A company may be appointed Director unless there is anything to the contrary in the Articles. In that case the person nominated under sec. 80 of the Act to represent the company may act as Director. (g) Cases where this question may arise must be extremely rare. They may arise where one company not only holds shares in others but also has the right under the articles of the company to be on the Board of Directors. In such cases however the articles usually provide that the other company should have the right to nominate one or more directors so that no question

Who may be a Director

(g) *Bulayaee Market etc.*, (1907) 2 Ch. 458.

of the company itself becoming the director arises. Unless the Articles provide otherwise, therefore a *person who does not hold even any share* in the company *may be appointed a Director.*

Usually, however, the *Articles of Association provide that each Director should subscribe* a certain number of shares. In that case, if the Articles provide for the appointment of first Directors, no person can be appointed a Director unless before the registration of the Articles he has by himself or by his agent either *signed the Memorandum for a number of shares* not less than his qualification or *filed with the Registrar a contract in writing* to take from the company and pay for his qualification shares (sec. 84). And section 85 provides that the qualification *shares of a Director must be taken within two months of his appointment* or such time as may be fixed by the regulations. The effect of this is that a person, who does not possess the qualification shares, may, if the Articles do not otherwise provide, be appointed and act as Director from the date of his appointment, and, if he does not acquire the qualification shares within the prescribed time his office becomes vacated [section 86 I, sub-sec 1]. Similarly, if at any time after becoming a Director he ceases to hold the qualification shares his office is vacated. A penalty not exceeding Rs. 50/- a day is prescribed for a person who acts as Director of a company without acquiring the qualification shares within the prescribed period (sec. 85 sub-sec 2).

Share qualification.

Penalty.

Much will depend upon how the clause in the Articles providing for the qualification shares is worded. Thus, if the qualification clause provides that *"no person shall be eligible"* as a Director it would mean that the clause *has no application to the signatories in the Memorandum or the first Directors* named in the Articles as the case may be, who become Directors without election. Such Directors need not then have the share qualification.(h) In such a case it also follows that the *election of a person who had not got the share qualification* at the date of his election *would be void*, (i) and section 85, in so far as it gives a Director a time of two months or less to acquire the qualification shares would not apply. On the other hand, if the clause provides that "no person shall be a Director of the company etc." or "the qualification for a Director shall be the holding of so many shares" the Director appointed under the Articles as well as the subsequent Directors are required to take the qualification shares, and in their case the time allowed by section 85 would be available. In the case of the *original Directors* referred to in sec. 84 the qualification shares are required to be *taken from the company*, which means that a purchase of shares from another member is not sufficient. In the case of *other Directors* section 85 only contemplates

Meaning of qualification clause.

(h) *Stock's Case* 4 De. G. J. & S 526 ; *Forbes' Case*, 8 Ch. 768

(i) *Brown's Case*, 9 Ch. 102 at p. 109 ; *Miller's Case*, 3 C. D. 661 ; *Hemley's Case*, 5 C. D. 705 ; *Baber's Case*, 5 C. D. 963 ; *Jenner's Case*, 7 C D. 132 . *Channel Collieries* v. *Dover Ry.*, (1914) 2 Ch. 506.

that he shall have such shares and the Director *is not required to take the shares from the company*.(j)

Number of Directors

Number of Directors

There must be *at least three Directors* in a public company (*vide* section 83 A). But the *Articles may provide a larger number* as minimum, in which case the number of Directors must come up to that number.

There may be any number of Directors in a company provided the provision of sections 83-A and 83-B have been complied with. But the adoption of a large Board of Directors is not desirable as it weakens individual responsibility.(k)

There are some other practical difficulties also, as for example, in getting signatures on a Prospectus, or other documents which require the signatures of all Directors. Three to nine Directors would seem to be a reasonible number. The Articles, generally fix the minimum and the maximum number of Directors. Where through inadvertence or otherwise a provision as to the number and qualification of Directors is not contained in the Articles of Association, the subscribers to the Memorandum may, before any allotment has been made, pass a special resolution fixing the minimum and the maximum number of Directors with such qualification attached as they may choose or they may alter any provision of the Articles on this point, as they have got power to change Articles on all other matters, being the only members of the company before allotment.

Where the minimum number of Directors *falls below the number prescribed by the Articles of Association, the remaining Directors prima facie cannot act* unless the Articles enable the remaining Directors to act notwithstanding the vacancy. The Articles of Association generally contain a provision empowering the remaining Directors to act for the limited purpose of appointing Directors (see Table A Art. 89) and furthermore empowers the remaining Directors to fill up such casual vacancies (see Table A Art. 89). Such provisions are of great practical value. Section 83 B (1) (iii) also provides that in the absence of any regulation in the articles, any casual vacancy may be filled up by the Directors but so that the substituted Director shall be subject to retirement on the same day on which the Director in whose place he is appointed would be due for retirement.

Where the Articles prescribe a maximum number of Directors without the qualification "unless otherwise determined by the General meeting" which is often found, the maximum prescribed cannot be exceeded by the company without altering the articles. This would be so notwithstanding a separate clause authorising the General meeting to increase or reduce the number of directors, which must be understood to authorise only increase or reduction within the maximum and minimum fixed by the Article (a)

(j) *Browne's Case*, 9 Ch 102, *Miller's Case*, 3 C. D. 661, 667.
(k) Palmer's Comp Law, 9th Ed p 182
(a) Ramkisen Das v. Satya Charan 50 CWN 310

First Directors

In the absence of anything to the contrary in the Articles, the subscribers of the Memorandum shall be deemed to be the Directors of the company under section 83 B (1) (i) and they automatically become Directors according to the provisions of the Statute. Such Directors are called "provisional Directors" and the Articles generally provide that such Directors will require no share qualification for their post, and they will be replaced by the first Directors of the company within a specified period from the date of the incorporation of the company.

Provisional Directors

When the first Directors are named by the Articles of Association, a *list of such Directors is required to be filed* with the Registrar at the time of the registration of the company, (sec. 84 sub-sec. 2). The form as given in Form No. X in Appendix A is used to prepare this list of Directors. The list should be very carefully prepared as, if there be any variation between this list and the actual list of consent of the Directors to act as such (sec. 84 sub-sec. 1 cl. (i)), then the person who files this list will be liable to a fine not exceeding Rs. 500/- (sec. 84 sub-sec. 2).

Filing of list of first Directors with Registrar

The first Directors who are named in the Articles of Association or any Director proposed in any prospectus of the company is required before the registration of the company to file with the Registrar (a) a consent in writing to act as directors, (b) evidence of his having the share qualification consisting of (i) a signature in the memorandum for a number of shares not less than his qualification shares; or (ii) an affidavit to the effect that a number of shares not less than his qualification are registered in his name or (iii) a contract in writing to take from the company and pay for his qualification shares.

Consent and contract to take shares

These are necessary only where the articles fix a minimum qualification for directors (section 84, sub-sec (1)).

These two documents are also required to be *filed, along with the list of the names of Directors*, with the Registrar on registration of the company under the provisions of section 84 of the Act. The statutory forms as given in Forms No. IX and XI are used for consent and contract of the Directors respectively. The consent and contract of Directors or affidavit are also required to be filed under the provisions of sec. 84, sub-section (1) before any such Director can be named on any Prospectus issued by or on behalf of the company within one year (see sub-sec. (3)) from the date of the commencement of business.

The above documents require a filing fee of Rs. 3 for each document. (see Table B).

Under the amended section 87 the company is required to keep at its registered office a register of its directors, managers and managing agents containing the particulars mentioned therein and under sub-section (2) the company is required to send to the Registrar a return in the prescribed form containing the particulars in the register as well as

Register of Directors

notification in the prescribed form of any change in the directors, in either case within 14 days.

The Register of Directors must show the following particulars regarding each director :—

(a) The full name, former name or surname if any, and residential address, nationality of origin, new nationality if any, business occupation and particulars of other directorships.

(b) In the case of a corporation, the corporate name, registered or principal office and particulars of its directors with address and nationality of each.

(c) In the case of a firm, similar particulars about the partners and the dates on which each became a partner.

This register like the minute books of general meetings is required to be open to the inspection of members and made subject to the right of members to take copies and a penalty is imposed for refusal under sub-sections (3-5) of section 87.

Changes in Directorate

The Articles of Association must now provide that the first Directors shall retire from their post on the day of the first ordinary general meeting of the company, when the members will appoint another set of Directors to replace them (Table A Art. 78) but that retiring Directors will be eligible for re-appointment. Art. 78 of Table A having now been made compulsory, the first Directors will have to retire under clause 78 of Table A., but the said clause will have no application in regard to the Directors who are named in the Articles of Association as non-retiring Directors. Under the new section 83 B (2) the number of such non-retiring directors *must not exceed one-third* of the total number.

Retirement of first Directors

Change of Directors

Rotation of Directors

The Articles of Association also generally provide and are now required under sec 17 and Art. 78 of Table A to provide that a *certain part of the Directorate being not less than one third of the total number will retire* from their post in *each year* and the members will appoint Directors in the ordinary General Meeting of that year to replace the retiring Directors. Such number is fixed at one-third or nearest to one-third of the whole body of Directors (Table A, Art. 78). The names of the retiring Directors are given in the notice calling the ordinary General Meeting. But such Directors are eligible for re-election. If any new man is to be appointed in the place of a retiring Director, the Articles of Association often provide that the name of such person should be proposed by a shareholder before the specified time of issuing the notice of meeting, so that the name of the proposed Director may be given in the notice of the meeting.

A permanent set of Directors is not at all desirable in a business, as such Directors may abuse the powers conferred on them. Hence, annual retirement of a part of the Directorate is desirable, as in that

case the shareholders will get an opportunity to introduce new persons into the concern to give new ideas and suggestions. On the other hand, the wholesale withdrawal of the Directorate is very undesirable as it may cause a complete breach of continuity in the Directorate, and in the absence of any member of the old Board with knowledge of past affairs of the company, the work of the company may suffer and much time may be wasted.

It is usual however in many companies to have a provision in the articles that certain directors who have more or less a vested interest in the company should not be liable to retirement. This rule is generally found in the case of directors nominated by managing agents or managers or managing directors. Such a provision is permissible but under the present section 83B sub-section (2) the number of such directors who are not liable to retirement by rotation must not be more than one-third of the total number of directors.

Clauses 78-82 of Table A which provide for the rotation of directors have now been made compulsory so that every company must now provide by its articles for retirement by rotation of at least one-third of its directors every year. This provision however is not applicable to private companies. (See sec. 17). Under Art 82, if at a meeting at which an election of Directors ought to take place, the places of the vacating directors are not filled up the meeting stands adjourned to the same day in the next week at the sametime and place. If at such adjourned meeting the places are not filled up, the retiring directors whose places have not been filled up shall be deemed to have been re-elected.

The provision of this clause is imperative, so that it is not competent to the general meeting to adjourn the meeting for election of directors to any other day and the adjourned meeting must be held as prescribed here. No further notification for the purpose is necessary, and, if the general meeting does not fill up the vacancies no matter for what reason the retiring directors are automatically deemed *re-elected*, that is elected for another fresh term.

What happens if one of the retiring directors is a candidate for re-election and his name being proposed is voted against, but no other person is elected in his place at that or at the adjourned, meeting? Romer J in a recent case [(1945) A. E. R 522) holds that where a retiring director has been voted down this article does not operate and he cannot be deemed re-elected.

Casual vaccancy.

There may be a casual vacancy in the Board of Directors for many reasons, such as resignation. disqualification, death, insolvency, disability or continuous non-attendance (as provided by the new sec 86 I or by the Articles.) When such a vacancy occurs, the continuing Directors, unless otherwise provided by the Articles of Association may elect others to fill up the vacancy and the new Director so appointed will be entitled to work for the period for which his predecessor was entitled if so laid down in the Articles [see 83B (iii) and Table A. Art, 84.] But if the number or directors falls below

the minimum number of Directors for the constitution of the Board under the provisions of the Articles of Association, the remaining Directors cannot elect others to fill up the vacancies as under the regulations such a Board is incapable of doing any valid act on behalf of the Company. But the Articles may provide that in such a case or where no minimum number of Directors is fixed and the number falls below the required quorum, the remaining Directors can act only for the purpose of appointing other Directors and calling a General Meeting and for no other purpose (Table A, Art. 89). It is also generally provided by the Articles of Association that the continuing Directors shall be entitled to continue the business of the company notwithstanding any vacancy in the Board. Such a clause is effective as long as the minimum number of the Directors does not fall below the minimum number prescribed by the Articles, or if there is no such provision, so long as the number does not fall below the quorum for a meeting of Directors.

On retirement of the whole Board

If all the Directors retire or resign or become disqualified under the provisions of section 86 I the members under the provisions of section 79 may call a General Meeting of the company to elect fresh Directors or where there is a Managing Agency, the Managing Agents even if they are not members may call such emergency General Meeting to elect Directors in place of those who go out if the Articles so provide.

Change in Board

A notice of change of Directors is always required to be filed under the provisions of section 87 whenever there is any change. The form as given in Form No. XII in Appendix A is used to notify the change of Directors.

Register of Directors

Section 87 of the Act requires every company to keep *a Register of Directors* and *to file with the Registrar a copy* of the said register each year along with the list of members, summary of capital and the balance sheet. The Form No XII in Appendix A is also the prescribed form for a Register of Directors. Any change in the Directorate should be recorded in this Register of Directors and the change notified to the Registrar under the provisions of the said section in manner as provided before. A list of Directors prepared from this Register which is to be filed along with the documents as prescribed by section 32 is required to be given under Form E in Sch. III of the Act

Penalty.

The company and the defaulting officers shall be liable to a fine up to Rs. 50 for each day for default in complying with section 87.

Qualification Shares

Qualification

The Director may own the qualification shares *in his own name or jointly with others* if there be no contrary provision in the Articles of Association. (1)

(1) *Pullrock v Richmond Mining Co.*, 9 C.D 610; see Buckley's *Companies Act*, 10th Ed. p 174

Shares to which the Director is entitled as a trustee and not in his own right will be regarded as sufficient for qualification, as under section 33, trusts are not recognised by the company and a trustee is regarded as a legal owner of the shares. Even where the clause provides that the Director must hold "the shares in his own right" it has been held that the clause means that he is not to hold as personal representative or trustee in bankruptcy, but not that the company is to look behind the register and enquire whether the registered shareholder is the beneficial owner (m)

Directors cannot take qualification shares or any share as a present from the promoter for his consent to act as a Director. Such a transaction is a gross breach of trust on the part of the Director, and the Director is bound to make good any loss to the company for such breach of trust. Nor can a company give a loan to a Director for purchasing qualification share S.c. 86D forbids making a loan to a director altogether and sec. 54A prohibits any financial assistance to any one for buying its shares.

If the defaulting Director acts notwithstanding his non-acquisition of qualifying shares, he will be held liable to a fine not exceeding Rs 50/- for every day under clause 2 of section 85.

Director's liability to take qualifying shares

The taking of qualifying shares is not absolutely compulsory for a Director He may not take the shares, if he resigns the post within the period within which the qualifying shares must be acquired In such a case he cannot be compelled to take the shares. But if after expiration of the prescribed time of acquiring the share qualification he does not resign, he would be liable to take those shares as he has been estopped by his own action and the company or the Liquidator may realise the value of the shares, although under sec. 86 J his place as Director should have been vacated.(n)

Remuneration of Directiors

Remuneration

Directors are not *not entitled to any remuneration unless it is authorised by the Articles of Association.* (o) But the Articles generally provide expressly for payment of remuneration to the Directors for their services and fix the amount of such remuneration or prescribe the minimum and the maximum amount that can be paid as remuneration to a Director leaving the power to fix the amount to the shareholders in General Meeting, or generally authorise the company to fix the remuneration at a General Meeting, (see Table A, Art 69). Where the Directors are entitled to a remuneration, such remuneration may be paid out of the funds of the company and there is *no presumption that the remuneration should be paid out of the profits only.* So unless the Articles expressly provide that remuneration is to be paid out of profits only, it *can be paid out of the capital.* (p)

(m) *Glosy Paper Mills Co., (Dunster's Case).* (1894) 3 Ch 473, *Grundy v. Briggs* (1910) 1 Ch 444

(n) Palmer's Company, Law 9th Ed. page 18 To this extent *Isaac's Case,* 1892), 2 Ch '58 is still good law, though its applicability has been qualified by sec 84 of the Act.

(o) *Dunstan v. Imperial Gas Light.* 3 B. & Ad. 125; *Geo Newman & Co.,* (1895) 1 Ch 674; *Young v Naval Society,* (1905) K B 687. *Hoechiest & Co., v. Euke,* (1906), 1 Ch 148.

(p) *Lundy Granite Co.* 26 L. J 673 which is a very strong case.

Directors' right to remuneration.

A Director may sue for remuneration agreed to be paid to him by the company and may *claim as an ordinary creditor* (p) in a winding-up, provided that the Directors have not, by a previous resolution of the Board, renounced the right to such remuneration. (r) Such resolution may, however, be subsequently rescinded, in which case they will be entitled to remuneration from the date of the rescission. (s)

Limitation on payment of Director's remuneration

A Director *must not take any remuneration in excess* of the amount payable under the regulations and if any such amount is taken then *all* the Directors become *jointly and severally liable to make good the amount*, but the company in General Meeting may ratify the payment of such excess remuneration.(t) Directors cannot take their remuneration free of income tax which is paid out of the funds of the company and must not take any travelling expenses to attend Board Meetings unless specially authorised by the Articles or by a resolution of the General Meeting. Such expenses are taken to be covered by the remuneration as fixed by the Articles of Association.(u)

There is no law as to amount of remuneration that can be paid to a Director or the mode of its payment The company is at liberty to fix any reasonable amount. This may be in the shape of a lump sum payable to Directors for a year or a sum payable for each meeting or a fixed fee or a fixed proportion of the profits as annual remuneration payable for attending Board meetings The Articles may provide the extra payment of a certain percentage of the net income to the Directors as bonus The Directors are not entitled to any such Bonus without explicit provision in the Articles of Association or sanction by the shareholders in General Meeting. The Directors may forego remuneration for a certain meeting or for a certain period by a resolution before such remuneration has become due But like any other agreement a renunciation of a remuneration or fee already earned cannot be binding on the Board, if it is made without consideration A resolution to take no remuneration may be rescinded, and *from the date of such rescission* it will cease to operate (v)

Where a Director vacates office in the middle of a year there is a conflict amongst the authorities as to whether he is entitled to his remuneration for the part of the year, and most cases go upon the special words of the Articles in each case The difficulty arises only in cases where the remuneration is payable to the Director at a certain amount or rate per year. There is no difficulty, however, where the remuneration is payable at so much for each meeting of the Board attended, in which case, the Director is undoubtedly entitled to such remuneration for the time during which he has served. (w)

(q) *Ex parte Beckwith* (1898), 1 ch 324, *Dover Coal Field* (1907), 2 Ch. 76, (1908) 1 Ch 65, see however *Ex parte Cannon* where the remuneration was left by the Articles entirely at the mercy of shareholders

(r) *McConnell's Claim*, (1901), 1 Ch 729

(s) *Consolidated Nickel Mines*, (1914), 1 Ch 388.

(t) Vide Palmer's Company Law, 9th Edition Page 186.

(u) *Young v Naval Society*, (1905), 1 K B. 687; (travelling allowances), *Boschoek v. Fuke* (1906), 1 Ch. 148. (Income-tax)

(v) *McConnell's Case* supra, *Consolidated Nickel Mines* supra.

(w) *See* Buckley, *op cit*, 11th Ed p. 720

Managing Directors' right to remuneration. The Managing Director or the Director who is the representative of the firm of the Managing Agents, may participate equally with the other Directors in getting remuneration or fees as Director under the provisions of the Articles of Association, unless there be any contrary provision.

Director' right for extra remuneration for extra work. The Directors may appoint, by a resolution of the Board meeting, some of them to do *some special work which may cause them some loss* of time or money. In the absence of a clause in the Memorandum or Articles, Directors are *not entitled to any remuneration* for any such extra work done by them. Where express provision for extra remuneration is made by the Memorandum or Articles, the Directors can by their own resolution pay any one of them extra remuneration for special work. It is probable that *a resolution of an annual meeting* of shareholders can entitle a director to extra remuneration even without provision for it in the Articles.(x) A provision to the effect is also generally found in the Articles of Association and it is desirable to have one.

New Limitations in respect of Directors

Section 86A—86I introduced by the amending Act of 1936 impose very important limitations on the rights and capacity of directors

Insolvency. Section 86A provides that an undischarged insolvent who under section 86I is incompetent to act as a director is liable to imprisonment for a time not exceedinng two years or to a fine if he acts as a director.

Assignment of office By section 86B provision is made against the assignment of the office of a director or manager by a director. Even if the articles provide that a director should have the power to assign his office as such to another person this section provides that such powers would be of no effect unless and until it is approved by a special resolution of the Company. But where the director has to be absent from the district where the meetings of directors are usually held for not less than three months he may have the power with the approval of the Board of directors to appoint an alternate or substitute director during his absence and such appointment will not be deemed to be an assignment of the office. It is further provided that the office of such alternate or substitute director is vacated upon the return of the absent director.

Indemnity Section 86C makes any provision in the articles or in any contract illegal and void by which a director, manager or officer of the Company or the auditor of the Company is indemnified against any liability which would attach to him by law for any negligence, default, breach of duty or breach of trust committed by him.

(x) See *Date Plant Ltd.*, 43 C. D. 255.

Such indemnity may however be given under proviso (c) of the section in respect of any liability incurred by him for defending himself in any civil or criminal proceeding where the judgment is in his favour.

The proviso also saves from the operation of the section any provision for indemnities which have become effective before the passing of the amendment and also for indemnities already in existence and also for a period of six months from the passing of the Act of 1936 of any indemnity clause which was in effect before passing of the Act.

Loans to Directors & c

By section 86D *loans by the company to a director are absolutely forbidden* This prohibition extends not only to loans but also to guarantees for any loan by the director and it also extends to similar loans and guarantees to a firm of which such director is a partner or a private company of which such director is a director. A contravention of this provisions made subject to a fine up to Rs. 500 and if default is made in repayment of the loan or in discharging the guarantee every director of a company guilty of such contravention is personally liable jointly and severally for the amount unpaid.

This section does *not* apply to *private* companies except a private company which is a subsidiary company of a public company and it does not also apply to *banking* companies.

Holding office of profit

Section 86E absolutely *forbids* a director to hold an *office of profit* under the company *except* that of *managing director, manager* or *legal* or *technical adviser* or a *banker*. This prohibition extends not only to a director but also to a firm of which the director is a partner and a private company of which such director is a director The proviso saves from the operation of this section any office of profit held by persons who are elected or appointed directors before the passing of the Act of 1936 and who held the office at the commencement of the Act. It is further provided that the office of a *managing agent* is not to be deemed an office of profit under the company.

Contracts with company

Section 86F *prohibits* a director of a company or a firm of which such director is a partner or any partner of such firm or any private company of which he is a member or a director *to enter into any contracts* for the sale purchase or supply of goods and materials to the company except with the consent of the directors. The proviso saves contracts which were already in force before the commencement of the Act of 1936.

Removal of director

Section 86G provides that a director *may be removed* before the expiry of his period of office *by an extraordinary resolution* of the company and when he is removed a substitute can be appointed by the company by an ordinary resolution. A Director who is so removed *cannot be re-appointed* a Director by the Board of Directors. This provision also is not applicable to directors who were already in office before the commencement of the Act of 1936 nor to any director who *is not liable to retirement by rotation.*

Section 86H *forbids* the directors without the sanction of the company in General Meeting (a) to *sell or dispose of the undertaking* of the company or (b) *remit any debt due by a director*. So that the undertaking of the company cannot be sold and a debt due by a director cannot be remitted except by the company at a General Meeting.

Section 86I now provides for the vacation of the office of director under certain circumstances (See below).

Determination of the office of Director

Subject to anything to the contrary in the Articles, a Director *may vacate his office by resignation at any time*, and authority for such resignation is usually found in the Articles of Association. In resigning, the Director may send a notice to the company intimating his intention in the manner provided by section 148 of the Act. The resignation once tendered *cannot be withdrawn by the Director without the consent of the company in the absence of any provision in the articles authorising withdrawal.*(y)

Resignation of Director.

Under the law as it stood before 1936, the Act only provided that the office of the director would be vacated only if he failed to obtain his qualification shares within the time specified. For the rest it was left to the articles to provide any further grounds for disqualification of directors.

Disqualification of Director.

The amended Act now provides by section 86G for the removal of a director by an extraordinary resolution of the company and section 86I gives a list of cases in which the office of the director would be vacated *ipso facto*. Section 861 runs as follows —

"861. (1) The office of a director shall be vacated if —

(*a*) he fails to obtain within the time specified in sub-section (1) of section 85, or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment, or

(*b*) he is found to be of unsound mind by a Court of competent jurisdiction, or

(*c*) he is adjudged an insolvent, or

(*d*) he fails to pay calls made on him in respect of shares held by him within six months from the date of such calls made, or

(*e*) he or any firm of which he is a partner or any private company of which he is a director without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker, or

(*f*) he absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months whichever is the longer without leave of absence from the board of directors, or

(y) *Vide* Gore-Brown's Handbook on Joint-stock Companies, 34th Edition, Page 298; *Glossop* v *O'ossop*, (1907), 2 Ch. 370.

(*g*) he or any firm of which he is a partner or any private company of which he is a director accepts a loan or guarantee, from the company in contravention of section 86D, or

(*h*) he acts in contravention of section 86F.

2. Nothing contained in this section shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on grounds additional to those specified in this section "

Article 77 of Table A which provides for the disqulification of directors but which is not compulsory has also been amended so as to include many of the items in section 86I.

Even where the Articles disqaualify a person on the score of his holding an office, without mentioning that it should be an office of profit, it has been held that to disqualify him the *office held must be one of profit.* Thus where a person appointed a Director acted as Secretary but did not draw any remuneration for the work he was not disqulified.(a)

Holding an Office.

A trustee of a deed covering the Company's debentures, nominated and paid by the Company, holds an office of profit, (b) but not a Solicitor. (c)

Where a Director enters into a contract with the company for his personal profit or participates in a profitable contract he is disqualified from acting as Director (d) unless the contract was entered into with the knowledge and consent of the Board of Directors. It is immaterial that no profits actually arise from the contract.(e)

Contracts with the Company

The principle of these rules is that a Director as holding a fiduciary position cannot obtain for himself any benefit by use of the resources of the company. If he does so, *he becomes a constructive trustee* in respect of the profit s) obtained and must account for it to the company. (f) It is immaterial that the profit is one which the company itself could not have made. (g) This, however, is a rule which applies only in the absence of a valid contract to the contrary. The *Articles may provide or contemp'ate that Directors should have the benefit of contracts with the company,*(h) provided sanction of Directors is obtained under section 86F.

Sections 91B and 91C of the Act also require that *the interest of the Director in any contract with* the company *must be disclosed* at the meeting of the Directors, that such interested Director *should not vote* on any such contract and that the *terms of any contract for the appoin'-*

(a) *Iron Ship Coting Co. vs Blunt*, L R. 3 C.P 484
(b) *Astley* v. *New Tirole*, (1899), 1 Ch 151
(c) *Harper's Trikat Machine*, (1912), W. N 263.
(d) *Todd* v. *Robinson*, C.B.D 729 , *Bodega Co*, (1904,) 1 Ch. 276 ; *Cory* v. *Harrison*, (1906), A.C. 274 , *Norton* v *Taylor*, (1606), A.C 378.
(e) *Star Steam Laundry*, (1913), W N. 39.
(f) *Imperial Mercantile Credit Ass.*, 6 Ch. 568, 566. L.R. 6 H.L. 189 , *James* v *Eve*, L.R. 6 L.H 325 ; *Benson* v. *Heathorn* 1 Y. & C Ch. 326, 341 . *Gluckstein* v. *Barnes*, (1900), A.C. 240
(g) *Boston Co.* v. *Ansell*, 39 C.D 339.
(h) See *Adamson's Case*, 18 Eq. 670.

ment of a Manager or Managing Agent in which contract any Director is in any way interested shall be communicated to the members within 21 days. These sections contemplate that the Articles may authorise or permit Directors to have the benefit of contracts with the company subject to these rules.

De facto Directors

Defective appointment.

A person, who has not been duly appointed, is not a Director and his purporting to act as such does not give the company any right of action against him unless it can show damage. But the company may bring an action to restrain such person from acting as a Director or representing himself as such.

Validity of acts of de *facto* Directors

But *to an outsider the action of such a* de facto *Director shall be valid* until and unless the contrary has been proved. (j) Under sub-sec. 3 of sec. 83 there is a presumption that Directors have been regularly appointed until the contrary is proved and even where the appointment is afterwards found to be irregular, sec 86 provides that "The acts of a Director shall be *valid notwithstanding any defect that may afterwards be discovered in his appointment* or qualification ; provided that nothing in his section shall be deemed to give validity to acts done by a Director after the appointment of such Director has been shown to ibe invalid "

So, until and unless the appointment of the Director has been proved defective, an outsider is protected from any loss and the company is bound to compensate an outsider for any loss arising out of the action of a *de facto* Director. But the proviso to the section makes this protection *inapplicable in respect of acts done after the Director's appointment has been proved de ective.* A clause in conformity with this section is generally put into the Articles and the object of such an Article and of the section is to make the honest actions of a *de facto* Director as good as the honest actions of duly qualified Directors so far as strangers are concerned.

It has been held that a call made by Directors, who had not been duly appointed or were disqualified, was valid. (k) And generally all acts done *bona fide* by a Director is valid in spite of defect in his appointment not only between the company and outsiders, but between company and shareholders. (l)

But neither the section nor the clause in the Articles protects a person who knows of the irregularity or defect in the appointment. The section and the clause is intended to protect outsiders who are not expected or bound to see to the regularity or irregularity of the "indoor management."

(j) *Vide*, Palmer's Company Law 9th Ed. page 191; *Hope Mills Ld. v. Sir Kowasji J., Readymoney*, 13 Bom L R 162 ; *Imperial Oil Soap*, 31 I.C. 595.

(k) Palmer's Company Law. 9th Edition, page 191.

(l) *Ram Narain v. Ram Kishen*, 10 I. C. 515 ; see however. 36 All. 412.

Contracts with Directors

As stated above, the Directors are prima facie not entitled to enter into any contract with the company and under the new section 86F a director of the company or the firm of which he is a partner, or any partner of such firm or private company of which he is a director or member is not competent to enter into contracts for the sale, purchase or supply of goods and materials with the company without the consent of the directors. The company is managed by the collective wisdom of its Directors and if all or any of such Directors be interested in a contract the company loses the benefit of its Directors' unbiassed wisdom (m) But the Articles of Association may have a *clause empowering a Director to enter into any contract* or to be interested in a contract with the company provided he *discloses the nature of his interest* (*vide* sec 91-A) to the Board of Directors enabling them to scrutinise the terms of the contract with more than usual care. Under the Act such interested Director *shall have no vote* (*vide* sec. 91-B) in the passing of such a resolution. Experience has shown that such a provision in the Articles is desirable, for it frequently happens that a company is largely benefited by being able to deal with one of its Directors.

Contracts by Directors with the company.

Under the amendment of 1936 section 91B is not applicable to a *private company* except a company which is the subsidiary company of a public company.

Unless the Articles confer such an express power on the Director of contracting with the company and unless he receives the consent of the directors in accordance with section 86F he cannot enter into any contract or be interested in any contract except taking shares and subscribing for debentures in the ordinary course of business. So strictly is this principle adhered to that *no question of fairness or unfairness* of the contract is allowed to be raised.

For violation of any requirements of section 91-B the defaulting Director is liable to a fine of Rs. 1,000.

Under sec. 91 C, every company is required *to communicate to each member the nature of interest* which a Director may have in any contract as a Manager or a Managing Agent or in any other capacity. The purpose may be served if the contents of such a contract and the nature of interest be given in the Prospectus or the Articles of Association. The existence of such contracts is also required to be stated in the Prospectus (see sec. 93). Otherwise a separate abstract and the memorandum of the contract or any variation thereof shall be sent to each member. For any default in complying with the provision of this section the company and every officer who knowingly allows the default shall be liable to a fine not exceeding Rs. 1,000.

Terms of contract with Directors to be disclosed to members.

(m) *Ramaswami Aiyar* v. *Madras Times Printing & Publishing Co.*, 38 Mad. 991

Sections 91A-91D relatingto contracts of directors as amended by the Act of 1936 now stand as follows :—

"91A. (1) Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement :

Provided that a general notice that a director is a director or a member of any specified company or is a member of any specified firm, and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regards any such transaction be sufficient disclosure within the meaning of this sub-section and after such general notice, it shall not be necessary to give any special notice relating to any particular transaction with such firm or company

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees

(3) A register shall be kept by the company in which shall be entered particulars of all contracts or arrangements to which sub-section (1) applies, and which shall be open to inspection by any member of the company at the registered office of the company during business hours

(4) Every officer of the company who knowingly and wilfully acts in contravention of the provisions of sub-section (3) shall be liable to a fine not exceeding five hundred rupees.

91B. (1) No director shall, as a director vote on any contract or arrangement in which he is either directly or indirectly concerned or interested nor shall his presence count for the purpose of forming a quorum at the time of any such vote and if he does so vote, his vote shall not be counted

Provided that the directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.

(3) This section shall not apply to a private company

Provided that where a private company is a subsidiary company of a public company, this section shall apply to all contracts or arrangements made on behalf of the subsidiary company with any person other than the holding company.

91C (1) Where a company enters into a contract for the appointment of a manager or managing agent of the company in which contract any director of the company is directly or indirectly concerned or interested, or varies any such existing contract, the company shall (within twenty-one days from the date of entering into the contract or the varying of the contract, send an abstract of the terms of such contract or variation, as the case may be, together with a memorandum clearly indicating the nature of the interest of the director in such contract, or in such variation, to every member , and the contract shall be open to the inspection of any member at the registered office of the company.

(2) If a company makes default in complying with the requirements of sub-section (1) it shall be liable to a fine not exceeding one thousand rupees; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

91D. (1) Every manager or other agent of a company other than a private company (not being the subsidiary company 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 has been made

(2) Every such manager or other agent shall forthwith deliver the memorandum aforesaid to the company (and send copies to the directors), and such memorandum shall be filed in the office of the company and laid before the directors at the next directors' meeting.

(3) If any such manager or other agent makes default in complying with the requirements of this section,

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

(b) such manager or other agent shall be liable to a fine not exceeding two hundred rupees.

Directors' Meeting

Prima facie one Director alone has no power to act on behalf of the company, unless such a Director has been specially deputed by the Board to do so. It is on the collective wisdom and opinion of the Directors that the management of the company rests. Hence, the Directors of the company shall act at a Board meeting unless the regulations otherwise provide.(n) If the Articles do not provide to the contrary, Directors may transact any business by signifying in writing the consent of *all* the Directors (o). A clause authorising the taking of the opinions of Directors by circular without a meeting is often adopted by the Articles of Association. Such a clause is desirable for facility of business, but where questions of principle or policy are involved it is always desirable that Directors should meet and discuss them. The power of voting by circular, if any, should be exercised only in emergencies and for business in the nature of routine work.

Proceedings of Directors.

As a general rule, a notice convening the meeting is required to be given to all the Directors at a reasonable time (p); but the Articles generally provide that no notice need be given to a Director who is away from the station. The question of notice may become immaterial if all the Directors are present at the meeting. By the provisions of the Articles of Association or by a resolution of the Directors, the meeting of the Board

Issuing of notice

(n) *Haycraft Gold Co.* (1900) 2 Ch. 230. But no act of Directors would be invalid against strangers dealing *bona fide* with them merely because they acted without meeting *Re Bank of Syria Owen & Ashworth's Claim*, 1901) 1 Ch. 115.

(o) *Collie's Claim* 12 Eq. 246 at p. 258

(p) *Halifax Sugar Co. v Pronckliyn*, 59 L.J. (Ch.) 591

may be held regularly at fixed times, say, on such and such a day of the week or the month ; in such cases no notice is required to be issued to convene the meeting. Unless specially provided by the Articles, the notice of the Directors' meeting need not specify the agenda of business to be transacted, as the Directors are expected to be cognisant of the affairs of the company as a whole and thus competent to consider any matter regarding the company without previous notice.

Agenda of meeting.

Though it is not compulsory to give the agenda to the Directors' meeting, yet it is desirable to give one with the notice.

Such an agenda paper is helpful in conducting the proceedings and in keeping order in the meeting. Usually, the Secretary prepares the agenda and notes them down in the left page of a book called "agenda book" keeping the right-hand side for the Chairman's use for recording the decision of the Board on each item.

Quorum.

The Articles of Association commonly fix, or empower the Directors to fix, the quorum required for a Board meeting, *i.e.*, the minimum number of Directors required to be present for passing a resolution and for the exercise of the powers vested in them collectively. A Director must not be counted for a quorum for consideration of a matter in which he is interested (sec. 91-B).(q) If the requisite quorum be not present or the minimum number of Directors falls below the number fixed for the quorum, no Board meeting can be held and no business can be transacted, provided, in the latter case, there be no clause in the Articles of Association empowering the remaining Directors to act in any matter notwithstanding any deficiency in the quorum.

"If no quorum has been fixed, the number, who usually act, will do. It must be borne in mind that a provision for a quorum does not dispense with the due convening of a meeting. The Directors must all be summoned." (r) If there is no quorum, the meeting is irregular and no business transacted at the meeting is valid or binding unless the Articles otherwise provide. (s)

A book of convenient size should be kept for use as the "Directors' Attendance Book" A page of this book should be devoted for each meeting of the Board. This book itself will be evidence as to the attendance of the due quorum. The signature of the attending Directors should be taken on this book. The book may be prepared in the form as given in Form No 43 in Appendix B.

Chairman

The Articles of Association sometimes nominate a permanent chairman for the Board meetings or authorise the Directors to appoint one of them to act as such in all their meetings. Where there is such a provision, the Director thus appointed, will be the chairman of all the Board meetings, and in his absence the Directors will be entitled to appoint some one of them to fill up

(q) *Greymouth Co.*, (1904) 1 Ch 32
(r) Palmer's Company Law 9th Ed., page 195.
(s) *Chowgamull* v. *Provincial Bank*, I. L. R 36 All 412 ; *N. E. Ins. Co.*, (1919) 1 Ch. 198.

the post. On any resolution on which such chairman cannot vote under sec. 91-B and in matters where he cannot be counted to form the quorum, his place will be occupied by another Director.

Where there is no such provision for a permanent chairman the Board before proceeding to the business of the meeting must appoint a chairman to conduct the proceedings of the meeting. He will also sign the proceedings book containing the minutes of the meeting under the provisions of sec. 83 sub-sec. 2. The minutes of meetings once recorded should not subsequently be altered in any way, and the Secretary must not do any such thing either by striking out or adding anything. (t) The signature of the chairman is also necessary to certify the copies of resolutions which are required to be submitted to an outsider, who intends to carry on any transaction with the company.

Minutes of proceedings.

At the close of the meeting, the Secretary will draft the minutes of the meeting in terms of the decision of the Board as recorded on the "agenda book." It is not desirable that the Secretary should record anything which does not appear on the agenda book, but he, being the best informant of the company's affairs, should request the chairman in the meeting to make necessary corrections and entries in order to prevent any awkward omissions, irregularities or ambiguous entries; otherwise troubles may ensue. When the resolutions have been passed they should be transferred from the agenda book to the proceedings book which is a statutory book and is required to be kept under sec. 83 and they become binding. The resolutions should be framed with great care and precision, as they are *prima facie* evidence of the Board's transactions (*vide* sec. 83, sub-sec. 3). If there be any resolution that cannot be acted upon or which requires ratification, the thing can be amended or ratified by a subsequent resolution.

Under the amendment of 1936 section 83 sub-sections (4-6) provide that the minutes of proceedings of general meetings unlike those of the directors are to be open to inspection by any member and any member would be entitled to copies thereof within seven days of demand on payment of fees subject to limitations specified therein and any refusal of such inspection of such copies is punishable as an offence. The proceedings of a Board meeting are however open to inspection by any director.

Resolutions

It is impossible to give any idea as to the nature of resolutions which can be passed by a Board meeting. They are multifarious. The Directors are quite competent to pass any resolution that has been initiated from honest motive for the benefit of the company, provided they do not exceed their powers as prescribed by the statute, the Memorandum or Articles of Association.

Committee

The Directors, for some specified object, sometimes appoint one or more of them to form a committee, delegating some of their powers to such committee. If so authorised by the Articles (see Table A, Art. 91 and Art. 72) such delegation is

(t) Palmer's Company Law, 9th Edition, page 247.

valid and the action of such a committee is effective. But in the absence of such provision in the Articles, Directors have no authority to delegate their powers to anybody.

The Directors, in meeting, may appoint such a committee and delegate to it such power as they may desire, and record a resolution to the effect. The question as to how far powers may be delegated to a small committee is not free from difficulty. It is doubtful if the Board can delegate all their powers to a committee, even if so empowered by the Articles and in the event of any fraud or act of negligence by the committee, the other members of the Board will not escape liability by pleading ignorance.

The committee, when appointed, fix their quorum and the procedure for their action amongst themselves. The Directors in meeting may also fix the quorum of such committee when they appoint one. A committee may also be appointed by the Articles of Association for some specified purpose.

Powers of Directors.

The Articles of Association give the Directors a number of specific powers scattered up and down in various clauses and a general clause like Art. 71 of Table A is now required to be added giving to the Directors power to manage the business of the company and exercise all powers which are not required either by the Act or Articles to be exercised by the company in General Meeting. Sometimes the Articles particularly mention some powers as exercisable by the Directors, *e.g* to acquire property, to mortgage, to appoint officers and so forth. Such clauses are not necessary as they would be covered by a general clause like Art. 71 of Table A and they are often found inconvenient and should be avoided. The power should be given in general terms to avoid risks of acts of Directors becoming *ultra vires*, and, if it is intended that the Directors should not have certain special powers, it would be more advisable to enumerate them as exceptions. *Apart from such clauses in the Articles the Directors have no power except such as are contemplated by the Act itself.* The effect of Art. 71 is to *vest management in the Directors* and not in the company at a General Meeting andt he *shareholders cannot by a resolution passed* at a General Meeting *give any direction which will bind the Directors* as regards the management of the business of the company ; nor can they over-rule any decision of the Directors with regard to such matter.(u) No doubt, where the Directors were acting *mala fide* or where there is a complete deadlock owing to differences among Directors, the shareholders may under very exceptional circumstances interfere and the Court may interfere to constitute a governing body where dissensions amongst the Directors make it impossible for them to carry on the business of the company properly. (v)

Exceptional cases.

Exceptional cases.

On the other hand, if the Articles provide that the Directors

(u) *Automatic Filler* v. *Cuninghame*, (1906) 2 Ch. 34 ; *Gramophone Ld.* v. *Stanley*, (1908) 2 K.B 89 ; *Salmon* v. *Quin*, (1909) 1 Ch. 311 ; (1909), A.C. 442.

(v) *Marshall's Value Co.* v. *Manning*, (1909) 1 Ch. 267 ; *Barron* v. *Potter*, (1914) 1 Ch. 895 ; *Pentlandstone* v. *Cooke*, 16 Eq. 298 ; see *Harben* v. *Phillips*, 23 C. D. 14.

Company cannot authorise acts beyond the powers of Directors

shall not have the power to do certain acts, the *shareholders cannot by a resolution* of a General Meeting *authorise the Directors to do any particular act* of that description, otherwise than after passing a special resolution altering the articles. They can, however, *adopt such act* of the Directors done by them in excess of their powers by a subsequent ordinary resolution so that it becomes binding upon the company.(w)

Position of Directors

The position of a Director is different from that of a mere Agent. He has been variously described as like a managing partner, agent and trustee, "but each of these expressions is used not as exhaustive of their powers and responsibilities but as indicating useful points of view from which they may for the moment and for the particular purpose be considered" (x)

Bona fide acts of Directors how far binding

The general authority of Directors under Art. 71 of Table A extends to all acts which are reasonably necessary for the management of the business of the company, and where any act is done by the Directors, it is binding upon the company in dealings with a stranger acting *bona fide*, even if there is any irregularity in such act, provided that the act done is not altogether *ultra vires* the company. (y) Where the Directors do any act in relation to shareholders which are not strictly within the scope of their authority, though *intra vires* the company, such acts can only be voidable. But no act of the Directors can be binding upon the company if it is altogether *ultra vires* the company.(z)

The general authority of the Directors include a power to give a gratuity to the company's servants in a prosperous year or pension to the family of a deceased servant upon the principle that it may be for the advancement of the company. (a) Such power does not include the fixing of the remuneration of the Directors (b)

Where Directors act in excess of their powers the company may in some circumstances be bound by estoppel so that they cannot claim any relief against any strangers affected by it. This, however, does not take away the right of the company to compensation against the Directors if the company suffers any loss by such acts.

Further, a Director individually has no power as he is only one of a body of Directors, except such power as is delegated by them to him or vested in him individually by the Articles, e.g., power given to the Managing Director. "Whatever authority is given by shareholders to Directors is given to them as a body, and not to each of them indivdiually." *Per* Turner L.J. *Nicol's Case* (1859) 3 DeG. and J.440.

(w) *Grant v United Kingdom Switchback Co.*, 49 C.D. 135.
(x) Buckley, *op. cit.* 11th Ed. p 724.
(y) *Per* Romilly M R. in *Spackman v. Evans*, L.R. 3 H.L. at p. 224.
(z) See *Pickering v Stephenson*, 14 Eq 322
(a) *Hampson v Price's Candle Co.* 24 W.R 754; *Henderson v. Bank of Australasia*, 40 C.D 170. not however, if the undertaking of the company has been sold. *Hutton v West Cork Ry Co.* 23 C D 654
(b) *Foster v Foster*, (1916) 1 Ch. 532, this also follows from section 91B of the Indian Companies Act.

Liabilities

The Directors are, on the one hand, the agents of the company and, on the other, trustees for shareholders in respect of the management of the company and the exercise of the powers vested in them.

Liability as Agent

As agents they are not personally liable for breach of any contract made by them on behalf of the company, provided that the contract purported to be one between the company and the other party or the other party to the contract understood the contract to have been made with the company.

Thus where a contract was made by the Directors with the plaintiff to allot shares to him, no personal action for damages or specific performance by transfer to the plaintiff of some shares out of those allotted to the Directors would lie unless the Directors can be charged with breach of trust (c)

Where, however, the Directors purport to contract on their own behalf or have otherwise undertaken a personal responsibility they are personally liable. The distinction is rather fine and depends upon the interpretation of the contract. Thus, it has been held that where the contract says, "We the Directors of the A. B Co Ld hereby agree etc" the contract does not purport to bind the company and the Directors are liable (d) On the contrary, on a similar contract where the intention to contract on behalf of the company was clear, the Directors were held not to be personally liable e) If in contracting on behalf of the company the Directors misdescribed the company, the Directors who signed the contract may be personally liable upon it (f) Under section 74 sub-sec (2) directors of a limited company like any other officer are personally liable on a contract made by an instrument in which the name of the company is not described as 'limited" and are, in addition, liable to a fine not exceeding rupees five hundred. *Every possible care should be taken therefore to see that in all contracts made on behalf of the company the name of the company is correctly given*

Torts.

As agents of the company, the Directors may *make the company liable for any tort* committed by them on the principle *qui facit per alium facit per se*, but the *liability of the company does not take away the personal liability of the Directors* for their wrongful acts, as it is a general principle that whoever commits a wrong is liable for it himself, whoever else may also be liable. A Director is thus liable personally for any fraud, trespass, infringement of patent or such other wrong provided that he was a party to the act. He is not, however, liable for a wrongful act of his co-directors unless he has expressly or impliedly authorised it. (g)

(c) *Ferguson v. Wilson*, 2 Ch. 77 ; see also *Wilson v. Lord Bury*, 5 Q.B.D. 518.
(d) *Aggs v. Nicholson*, I. H. & N. 165 ; *Mc Collin v. Gilpin*, 5 Q.B.D. 390.
(e) *Gadd v. Haughton*, I Ex. D 357.
(f) See Palmer's Company Precedent, Ninth Edition Vol. 1. p. 491.
(g) *Cargil v. Bower*, 10 C.D 502 ; *Land Credit Co. of Ireland v. Lord, Fermoy*, L.R. 5 Ch. 772 ; *Dovey v. Cory* (1901) A.C 177 . *Prefontaene v. Grenier* (1907) A.C. 101. Other cases on the subject are *Salomon v Salomon Co.*, (1897) A C. 22 ; *Rainham Chemical Works*, (1921) 2A. C. 465 ; *British Thomson Houston Co., Ld.*, (1924) Ch. 33 , where Directors were held not liable for infringement of a patent merely by reason of their position as Directors, even where they were the sole Director and Shareholders of the infringing Co.

Being trustees for the company the Directors are bound to exercise the powers vested in them *in the interest of shareholders* and as trustees they are *liable for the misuse* of their powers as Directors. (h)

Liability as Trustees.

Under sec. 235, the Court has the power, upon winding up, to order the Directors to make good any sum for which they may be liable by reason of the injury done to the company by abuse of their powers. But apart from that, even where the company is carrying on its work the Directors may be sued for damages in respect of any such abuse of their powers.

Cases of personal liability

Thus where Directors made improper profits by way of *bribe or otherwise* in *allotting shares*, (i) or by use of their position made a *secret profit* on transactions in shares of the company (j): or where they subscribed *ultra vires* on behalf of the company to shares in a company promoted by them (k); or where they *improperly paid money* to a bank to induce them to open an account (l) and in other cases where they *illegally appropriated the funds* of the company to improper purposes (m), Directors have been held personally liable to make good the loss. All these are merely illustrations of the general principle that a person holding a fiduciary position is bound to account to the beneficiary for all profits made by him by using his position as trustee although the profit was one which could not have been made by the beneficiary himself (n) and the trustee is responsible for all loss to the trust caused by breach of trust or other illegal or *ultra vires* acts.

Negligence

But Directors are not liable in all cases to the same extent as trustees. Thus they *cannot be sued for negligence exactly on the footing of trustees.* They are not ordinarily liable for loss caused to the company for want of diligence in suing.(o)

Wilful default.

The distinction however seems to lie only in respect of negligence and innocent mistakes in respect of which Directors are treated with greater indulgence than trustees. *In respect of wilful default or dishonesty* their liability is exactly the same as that of trustee.(p)

Where an act is done by the Directors in the honest and reasonable belief that it would be beneficial to the company, the Directors are not necessarily liable, merely because it incidentally leads to their own profit also. (q)

Directors are trustees for shareholders as a body, but they are *not trustees for each shareholder.* Their duty as trustee imposes upon them the obligation to disclose to the shareholders all the facts in their knowledge with reference to any transaction between them personally and the company. They are not under

(h) *Charitable Corporation* v *Sutton*, 2 Atk 400.
(i) *Madrid Bank* v. *Pelly*, 7 Eq. 442.
(j) *Parker* v. *Mckenna*, 10 Ch 96; *Land Credit Co. of Ireland*, 8 Eq. 7; 5 Ch. 763.
(k) *Joint Stock Discount Co.*, 8 Eq 381.
(l) *Reese River Mining Co.* (1867) W. N. (139) *General Exchange Bank* v *Horner*, 9 Eq. 480; *Imperial Mercantile Credit Association*, 19 W.R. 979.
(m) *Gray* v *Lewis* 8 Eq 526: 8 Ch. 1035.
(n) See Underhill on Trusts and White and Tudor, Leading Cases under *Constructive Trusts.*
(o) *Forest of Dean, Coal Co.*, 10 C.D. 450.
(p) Buckley, *op. cit.*, 11th Ed. page 728. *et seq.*
(q) *Forest of Dean Coal Co.*, supra.

the same obligation to each individual shareholder with reference to any particular transaction with him Thus where the Directors bought the shares of a member without disclosing to him all the facts within their knowledge which affected the value of the shares, the Directors were held not accountable for the profit made by such non-disclosure. (r) Similarly where a Director sold his own shares to the plaintiff, knowing that the shares were worthless and withholding the knowledge from the plaintiff, without making any active misrepresentation, it was held that the Director was not liable for damage (s)

Degree of care and negligence

Directors as agents as well as trustees are bound to *exercise their powers with reasonable diligence and care*, and, in the absence of such care, as in the circumstances of the case they may be expected to exercise, they are liable in damages for negligence. Negligence presupposes a duty of *care* and in order to make a person liable for negligence, it is necessary to establish that *in the circumstances of the case there was a duty of care* imposed upon him. In every case of negligence of Directors, therefore, it is necessary to consider to what extent the Directors were bound to take care.

Cases on negligence.

It has sometimes been said in decided cases that Directors are only liable for gross negligence as distinguished from ordinary negligence(t). But having regard to the absence in English Law of different degrees of care which different persons are bound to take, as, for instance, in Roman Law, it is difficult to understand what gross negligence means (u) The law as it can be gathered from a study of all the cases on the subject seems to be this—the Directors are not bound to take all possible care but only *such care, as having regard to the circumstances of the particular case, they may be reasonably expected to take*. Ordinarily speaking they are bound to use such care and prudence as they would exercise in their own affairs. Unless fraud is established against them (v) they are not responsible for mere error of judgment where they have acted *bona fide* (w) Thus where a bank sustained heavy losses by the issue of a fraudulent Balance-sheet and improper advance of money to customers due to the fraud of the manager and the chairman, the House of Lords held that the Directors who had acted *bona fide* on the faith of the fraudulent Balance-sheet were not liable. Lord Davey observed in his judgment, "I think the respondent Cory was bound to give his attention and exercise his judgment as a man of business *on matters which were brought before the board* at the meetings which he attended But I think he was entitled to rely upon the judgment, information and advice of the Chairman and General Manager as to whose integrity and competence he had no reasonable suspicions. It was the duty of the General Manager and possibly the Chairman to go carefully through the returns of the Branches and bring before the Board any matter

(r) *Percival* v. *Wright*, (1902) 2 Ch. 421.

(s) *Wilson* v. *Macaulffe*, 1. L R. 18 All 56; L. R 26 Ind. App 6.

(t) *Lagunas Nitrate Co.* v *Lagunas Syndicate*, (1899) 2 Ch 392; *National Bank of Wales*, (1899) 2 Ch. 629, on appeal sub-nom. *Dovey* v *Cory*, infra.

(u) See Per Rolfe B in *Wilson* v. *Brett*, 11 M & W. 115; Ere. C.J in 35 L.J. p. 324.

(v) *Turquand* v. *Marshall*, 4 Ch. 376 at p 386.

(w) *Brighton Brewery Co. (Hunt's Case)*, 16 W.R. 472; *German Mining Co.*, 4 De G. M. & G. 19,54; *Sheffield Building Society* v. *Aislewood*, 44 C.D. 412; James L J. and Brett L. J. in *Marzetti's Case*, 28 W R. 542.

requiring consideration. But the respondent was not, in my opinion, guilty of negligence in not examining them for himself notwithstanding that they were laid on the table of the Board for reference" (x) Directors have been held not liable, if in the exercise of their discretion and acting *bona fide* they allow a call to remain unpaid,(y) or if they do not sue for a debt, (z) nor are they liable for mere imprudence or error of judgment, for instance, in making an improvident loan, if they are acting *bona fide* (a) In this respect they are distinguished from trustees on whom the rules of Equity have placed a much heavier burden of liability for negligence than is known to Common Law (b) But as pointed out by Lord Hatherly, L C., in *Overend Gurney Co v Gibb* (a), Directors are not exonerated from liability unless they have used ordinary prudence which can be properly and legitimately expected from any person in the conduct of affairs of the world. Thus if the Directors fail to realise arrears of calls, or debts due to the Company, except upon a proper consideration and on reasonable grounds they would certainly be liable. (c) It would seem also that if, in a matter which can only be properly decided upon with the advice of experts the Directors act without taking expert advice, they would be liable for any loss which follows, unless the matter was so trivial as not to justify the outlay in taking expert advice.

Duty to make enquiries.

Directors are not liable for errors of judgment but they are *liable if they do not make enquiries* where ordinary prudence requires them to make an enquiry. So if a Director signs a cheque for the company, he is liable if he made no enquiry as to the purpose for which the cheque was being given (d) or (it seems) without reference to vouchers.

Failure to attend meetings.

Directors are not ordinarily liable for acts of co-directors, nor are they bound for acts done at meetings at which they are not present; but if a director has *systematically neglected to attend* and left the management to others he may be liable for breaches of trust committed by co-directors. (e)

General and statutory liabilities.

For wrongful or negligent acts the Directors are liable under the ordinary law to prosecution for criminal offences or suits for civil damages at the instance of the party affected, if the act complained of comes within the mischief of the general law. In addition, the Act imposes some statutory liabilities on Directors, officers, the company, its liquidator and other persons for omissions and commissions. It is desirable that the Directors and the officers of the company should keep themselves fully alive to those liabilities in order to be saved

(x) *Dovey* v. *Cory*, (1901) A.C. 35.
(y) *In re Liverpool Household Stores*, 59 L J Ch. 618
(z) *In re Forest of Dean Coal Mining Co*., 10 C D. 450
(a) *Marsett's Case*, supra; *Turquand* v. *Marshall*, 4 Ch. 376; *Overend Gurney & Co.*, L.R 5 H. L. 480.
(b) James L J in *Marsett's Case*, supra
(c) *New Mashonaland Co*., (1892) 3 Ch. 577. *Re Leeds Co*., 36 C.D. 787.
(d) *Joint Stock Discount Co*. v *Brown* 8 Eq. 381.
(e) Per Lord Hardwick, L C., *Charitable Corpor*. v. *Sutton*, 8 Alk. 405. In *Parry's Case*, 34 L. T. 716; *In re Forest of Dean Co*., 10 C. D. 452; *Re Denham & Co*., 25 C. D. 752. *Marquise of Bute's Case*, (1892) 2 Ch 100. Directors were exonerated. But the principle of liability for total non-attendance was not really negatived in these cases.

from any unpleasant consequences which may ensue for violation of those statutory duties. Where the law imposes a duty on the Directors, failure to perform the duty not only involves the penalty imposed by the Act, but the defaulting Director will also be liable to civil actions at the instance of the company or any other person who has suffered loss by such default.

Civil and Criminal liabilities of Directors

Criminal liability of directors.

The Directors are criminally liable in England under the Larceny Act for fraudulent misrepresentation in any written statement or account published by them with intent to induce any person to become shareholder or to be interested in the property of the Company. The Larceny Act is not applicable to India; but any fraudulent misrepresentation in any Return, Report, Prospectus or other documents with the object of defrauding the public would come within the provisions of the Indian Penal Code. They might be prosecuted under sec. 415 or 418 of the Indian Penal Code.(f) In addition, sec. 282 of the Indian Companies Act imposes upon any person, "who in any return, report, certificate, balance-sheet or other document required by or for the purposes of the provisions of this Act wilfully makes a statement false in any material particular knowing it to be false" a liability to imprisonment for three years and also a fine.

There may be cases in which Directors who deliberately pay dividends out of capital are liable not only in a civil action but also in a criminal action for conspiracy. (g)

Contribution between Directors where both parties are guilty of fraud.

If a Director is made liable to the company for mis-application of the Company's funds he is entitled to contribution as against his co-directors. (h) But where the liability has been incurred by a tortious act, such as fraud, the general principle that there can be no contribution as between tort-feasors applies. As observed above, section 100 of the Act which imposes a special liability on Directors in respect of misrepresentation in the Prospectus lays down that a Director who becomes liable to make any payment under this section can recover contribution unless the person who has been made liable was guilty of fraudulent misrepresentation and the other Director was not. The words of the section seem to contemplate that if all the Directors have been guilty of fraud in making untrue statements in the Prospectus, an action for contribution would lie under this section, at the instance of any Director who has been made liable. But this seems doubtful. It is more likely that as that case is not expressly provided for by this section the plea of *ex turpi causa non oritur actio* would defeat the suit of the plaintiff, who has been guilty of fraud, for contribution.

(f) *Queen Empress* v. *Moss*, I L R 16 All p. 88.

(g) *Burnes* v. *Pennell*, 2 H, L C p. 497, *R.* v. *Esdaile*, 1 F. & F. 213. *Queen Empress* v. *Moss* Supra.

(h) *Ramskill* v. *Edwards* 31 C. D. 100.

The remedy of a Company against a delinquent Director for any offence, whilst the Company is a going concern, is by action in a Court of law. During winding up, civil liabilities may be enforced by the Court in a summary way by orders on any Director or officer of the company. Under sec. 237 the Court may order the Liquidator to prosecute an offending Director past or present for any criminal offence committed by him. See also chapter on winding up.

Civil remedies against Directors

Remedy against a delinquent Director in cases other than those coming under section 100 may be prayed for by any shareholder, creditor, liquidator, receiver, contributory or the Registrar of Joint Stock Companies according to the nature of the case.

Directors, being agents of the company, are by law entitled to indemnity in respect of all liabilities properly incurred by them in the management of the company, and no express provision for such indemnity is required in the Articles of Association, though such a clause is very commonly found in the Articles. The Directors are not however entitled to be paid their travelling expenses in attending Board meetings, if not authorised by the Articles of Association. Sometimes Articles of Association contain clauses indemnifying the Directors against all liabilities except dishonesty. Such clauses would now be invalid if they contravence sec 86C.

Indemnity.

The Directors are agents of the company and responsible to the shareholders for its funds and properties. But for facility and convenience the Directors always delegate some of their powers to some person or persons, and the Articles of Association usually give the Directors such powers of delegation ; but the delegation of power will not prevent the Directors exercising the powers in regard to the matter delegated. The delegation is sometimes made through the Articles of Association and sometimes otherwise. It is generally made to the *Secretary, Manager, Managing Director or Managing Agents.* Delegation of powers by the Directors will not, however, take away the responsibility of the Directors and they will generally continue to be responsible for all acts of persons to whom powers are delegated in the same manner as if the acts were done by themselves.

Delegation of powers.

The delegation of power is usually made by a duly executed Power of Attorney as given in Form No. 45 or by adding proper clauses in the agreement of appointment of such officer.

The following table shows all the statutory penalties imposed by the Act on Directors, Officers and others. A careful examination of these is recommended to all persons connected with companies.

TABLE OF PENALTIES

Section.	Nature of offence.	Persons liable.	Penalty.
4. (5)	Being member of an illegal association.	Every person.	Fine up to Rs. 1000/-,

Section.	Nature of offence.	Persons liable.	Penalty.
25.(2)	Default in supplying Memorandum and Articles of association at the request of a member.	Company.	Fine upto Rs. 10/-
25A. (2)	Issuing of memorandum or articles without amendment.	Company and the officer in default.	Rs. 10/- for each copy.
31. (2)	Default in keeping the register of members.	Company and every officer (including director) who knowingly or wilfully commits the default.	Fine not exceeding Rs. 50/- for *every day* during which the default continues.
31A.(3)	Default in keeping index of members.	Company and officer in default.	Fine up to Rs. 50/-
32. (5)	Default in preparing, preserving and filing the annual list and summary of capital with the Registrar within twenty one days from the date of the ordinary general meeting of the year.	Company and every officer who knowingly or wilfully authorises the default.	Fine not exceeding Rs. 50/- for *every day* during which the default continues.
34 (5)	Default in notifying refusal of registration of transfer.	Company, director, manager, secretary or other officer in default.	Fine up to Rs. 50/- per diem
36. (3)	Refusing inspection of the register of members, or supplying copies within 10 days of demand.	Company and every officer who knowingly authorises or permits the refusal.	Fine not exceeding Rs. 20/- for *every day* during which the refusal continues.
41. (3)	Default in complying with the requirements as to keeping British Register	Company.	Do
47. (2)	Default in entering in the register when Share-warrants are issued.	Company and every Officer who knowingly or wilfully permits or continues the default.	Fine not exceeding Rs. 10/- for each copy of Memorandum issued without alteration.
51. (2)	Default in giving notice to the Registrar of consolidation of share capital, conversion of shares into stock etc.	Company and every officer who knowingly or wilfully authorises the dufault	Fine not exceeding Rs. 50/- for *every day* during which the default continuse.
53. (3)	Default in giving notice to the Registrar of increase of share capital or of member.	Do	Do
54A (3)	Purchasing shares or lending money for the purchase of shares of the company.	Company and officer in default.	Fine up to Rs. 1000/-

Section.	Nature of offence	Persons liable.	Penalty.
62. (2)	Default in embodying the minute of reduction of share capital in the corresponding part of Memorandum before they are issued after registration of such minute	Company and every officer who knowingly or wilfully authorises the default.	Fine not exceeding Rs. 50/- for *every day* during which the default continues.
64	For wilfully concealing the name of any creditor entitled to object in connection with the reduction of capital or wilfully misrepresenting nature of the amount of the debt or claim of any creditor or abetting the offence	Every officer who wilfully commits the offence	Imprisonment up to one year or with fine or both.
66A.(5)	Default in forwarding copy of orders varying the rights of special classes of shareholders	Company and officer in default	Fine up to Rs 50/-
70. (3	Default in embodying special resolution making liability of Director unlimited in each copy of Memorandum	Company and every officer who knowingly and wilfully authorises the default	Fine not exceeding Rs 10 - for each copy of Memorandum which is issued without such special resolutions
72 (4)	Carrying on business without having a registered office or without notifying the situation and change of registered office.	Company	Fine not exceeding Rs 50 - for *every day* during which the default continues.
74 (1)	Not affixing or painting name of Co. outside office or place of business	Company and every officer who knowingly or wilfully authorises or permits the default	Do.
74. (2)	Using irregular seal using bill-heads, letter-paper and other official publication or signing hundi cheque, etc for and on behalf of the Company without mentioning the name of the Company as specified in sec 73	Every officer of the Company who commits the offence	Fine not exceeding Rs 500/- and to make good the loss or damage to the party concerned.
75. (2)	For publication of the authorised capital without mentioning the subscribed and paid up capital in notices, advertisements or other official publications.	Company and every officer who is knowingly a party to the default	Fine not exceeding Rs 1 000/-.
76. (2)	Default in convening the Annual General Meeting	Company and every officer who is knowingly a party to the default.	Fine not exceeding Rs. 500/-
77 (10)	Default in complying with the requirements of sec. 77 as regards the statutory report.	Every Director who knowingly or wilfully authorises or permits the default.	Fine not exceeding Rs. 500/-.

Section.	Nature of offence.	Persons liable.	Penalty.
82. (4)	Default in filing special or extraordinary resolution with the Registrar within the prescribed time.	Company and every officer who k nowingly or wilfully authorises or permits the default.	Fine not exceeding Rs. 20/-for *every day* during which the default continues.
82. (5)	Default in embodying a copy of special resolution in each copy of Articles or in forwarding copy in print to a member when required.	Do.	Fine not exceeding Rs. 10/- for each copy in respect of which the default is made.
82. (6)	Authorising or permitting company's default in embodying special resolution in the articles.	Officer in default.	Fine up to Rs. 10/- for each copy.
83. (6)	Refusing inspection of or default in furnishing minutes of general meeting	Company and every officer knowingly and wilfully in default.	Fine not exceeding Rs. 25/- for *every day* during which the default continues.
84. (2)	For giving in the list of Directors filed under sec. 84 the name of a person who has not consented to act as Director.	The applicant who submits the list to Registrar.	Fine not exceeding Rs 500/-
85 (2)	For acting as a Director without acquiring share qualification after two months from his appointment.	Director who acts as such.	Fine not exceeding Rs 50/-for *every day* during which the default continues.
86A	Undischarged insolvent acting as director managing agent or manager	Persons so acting.	Imprisonment up to 2 years or fine up to Rs 1000/-or both.
86D.(2)	Making loan or guarantee to a director etc.	Director in default	Fine up to Rs. 500/- and liability to pay the amount of loan unpaid.
87.(4)	Refusing inspection or omission of keeping registers of director or sending returns to the Registrar.	Company and officer in default.	Fine of Rs. 50/-
87D.(3)	Making a loan to a managing agent or to a partner of his firm	Director who is a party thereto.	Fine up to Rs. 500/- and liability for the loan, if not repaid.
87E. (2)	Making loan or guarantee to any company under the same management.	Director or officer in default	Fine up to Rs. 1000/- and liability for the loan.
91-A.(2)	Non-disclosure by a Director of his interest in contract or arrangement.	Director who makes the default.	Fine not exceeding Rs 1,000/-.

Section.	Nature of offence.	Persons liable.	Penalty.
91-B(2)	For voting on a resolution by interested Director as Director.	Director who contravenes the law.	Fine not exceeding Rs. 1,000/-
91-C(2)	Default in sending to every member abstract of terms of contract for the appointment of a Manager (Managing Agent) of the company in which a Director is interested or any variation of any such contract, along with a Memorandum of the nature of interest of the Director.	The Company and every officer who knowingly or wilfully authorises or permits the default.	Do.
91-D(3)	Default in delivering the Memorandum of any contract entered into by any Manager or Agent, for or on behalf of the Company at the next Directors' meeting.	Manager or Agent, who makes the default.	Fine not exceeding Rs. 200/-.
92. (5)	For issuing prospectus before filing a copy with the Registrar.	Every officer, who is knowingly a party to the issue	Fine not exceeding Rs 50/-for *every day* until a copy is filed
97. (1)	Issuing prospectus not complying with the provisions of sections 93.	Every person responsible for issue.	Fine up to Rs. 50/- per diem until compliance with section 93
101. (2c)	Default in depositing money received from applicants for shares in a scheduled bank.	Company and officer in default.	Fine up to Rs. 500/-
103.(5)	For commencing business before the preliminary requirements have been fulfilled.	Every person, who is responsible for the contravention.	Fine not exceeding Rs. 500/-for *every day* during which the contravention continues.
104. (3)	Default in filing Return of allotment or in producing for inspection of Registrar contract for fully or partly paid up shares which such Return of allotment might contain.	Every officer, who knowingly is a party.	Fine not exceeding Rs. 500/-for *every day* during which the default continues.
105A(3)	Omitting particulars of issue of shares at a discount	Company and every officer responsible.	Fine of Rs. 50/-
105B(2)	Failure to include particulars of redeemable preference shares in balance-sheet.	Company and officer in default.	Fine up to Rs. 1000/-
108. (2)	Default in keeping ready, the certificate of shares or debentures within three months from the date of issue unless the conditions of issue otherwise provide.	Company and every officer who is knowingly a party.	Fine not exceeding Rs. 50/-for *every day* during which the contravention continues.

Section.	Nature of offence	Persons liable	Penalty.
109A (2)	Default in delivering to the Registrar particulars of the charge of properties purchased.	Company and other officer.	Fine up to Rs. 500/-
118, (2)	Default in filing with the Registrar notice of order or of appointment of any Receiver within 15 days from the date of such order or appointment.	Person who has obtained the order for appointment of receiver or who has appointed a receiver under any power.	Fine not exceeding Rs. 50/-for *every day* during which the default continues.
119, (2)	Default in filing with the Registrar statement of receipts and payments in prescribed form by the Receiver in due time under sec. 119.	Receiver who makes the default, the company, director, managing agent, secretary and other officer in default.	Fine not exceeding Rs. 500/-
122, (1) & (2)	Default in filing with the Registrar for registration of any mortgage or charge created by the Company or of issues of debentures.	Company, and every officer or other person who is knowingly a party.	Fine not exceeding Rs. 500/-for *every day* during which the default continues, and under sub-sec. 2 of sec 122 fine not exceeding Rs. 1,000/-
122, (3)	For delivering any debenture or debenture stock without a copy of the certificate of registration endorsed upon it.	Any person, who knowingly or wilfully authorises the default	Fine not exceeding Rs, 1,000/-
123, (2)	Default in granting inspection of instrument and Register of mortgages or charges.	Director, Manager or other officer of the company knowingly or wilfully authorising the default.	Fine not exceeding Rs. 500/-
124, (2)	Default in granting inspection of instrument and Register of mortgages or charges.	Company and every officer who knowingly authorises the default	Fine not exceeding Rs 50/-for refusal and Rs. 20/- for *every day* during which the default continues.
125, (3)	Default in granting inspection of the Register of holders of debentures or in granting a copy thereof or of the Trust Deed on payment of the prescribed fees.	Do	Do
130, (4)	Default in complying with the provisions of section 130 regarding keeping of accounts.	Managing Agent, partner or director of the firm or managing agents, directors in default.	Fine up to Rs. 1.000/-
131A (3)	Default in attaching to the balance-sheet a report of directors.	Every director in default.	Do

Section.	Nature of offence.	Persons liable.	Penalty.
133, (3)	Issuing, circulating or publishing balance-sheet not signed in manner as required by s-c 131, 132,132A & 133 before circulation	Company and every officer who is knowingly a party to such issue.	Fine not exceeding Rs 500/-.
134, (4)	Default in forwarding the balance-sheet to the Registrar.	Company and officer in default.	Fine up to Rs 50/- for every day of default.
136, (4)	Default on the part of a Banking, Insurance or Provident Company in displaying a statement in a conspicuous place of business in Form G of the Act and default in giving a copy thereof to every member or creditoron payment of a fee of As 8.	Company and every officer who knowingly and willfully commits the offence.	Fine not exceeding Rs 50/- for *every day* during which the default continues.
137, (3)	Default in supplying any information or explanation as may be required by the Registar.	Any person who refuses or neglects to furnish such information or explanation	Fine not exceeding Rs 50/- for each offence.
140, (3)	Refusal to produce any book or document to the Inspector appointed by Government.	Any person who commits the offence.	Fine not exceeding Rs. 50/-.
142, (3)	Refusal to produce any book or document or to answer any question to the inspector appointed by special resolution of the Company,	All persons who are or have been officers of the Company who refused production of books or to answer any question	Do.
145, (5)	Non-compliance of auditor's report with section 145.	Auditor in default.	Fine up to Rs 100/-
147	For carrying on business with fewer than seven or in Private company fewer than two members for more than six months.	Every person who was member of the company.	Severally liable for the payment of the whole debt contracted during that time.
153, (iv)	Default in filing with the Registrar and attaching to copies of memorandum an order under section 153.	Company and officer in default.	Fine up to Rs. 10/- for each copy of memorandum issued.
153A (3)	Default in delivering copy of the order to the Registrar.	Do.	Fine up to Rs. 50/-
154 (2)	Default in filing prospectus of a private company converted into a public company.	Company and advisor in default.	Fine up to Rs. 500/-
177A (5)	Knowingly and wilfully making default in making a statement to the liquidator	Every person responsible.	Fine up to Rs. 100/- per day.

Section	Nature of offence.	Persons liable.	Penalty.
177A(7)	False claim to be creditor or contributory.	Person making the claim.	Punishment for the offence under section 182 I.P.C.
194. (3)	Default in reporting to the Registrar the order of the Court regarding dissolution of the Company within 15 days from the date of the order.	The official liquidator making default.	Fine not exceeding Rs 50/- for *every day* during which the default continues.
206. (2)	Default in notifying the resolution for winding up a Company in the local official gazette and in some newspaper of the district where the registered office is situate within 10 days from the date of the resolution.	Company and every person who knowingly or wilfully commits the offence.	Do
208. D	Default in calling general meeting by the liquidator	Liquidator.	Fine up to Rs. 100/-
208E(3) & 209H(3)	Default in filing with the Registrar copy of the final account.	Do	Fine up to Rs. 50/- for *every day* during which default continues.
208E(5)	Omission to file order deferring dissolution to the Registrar	Petitioner for order.	Fine up to Rs 50/- for every day of default.
209A(6)	Default in complying with section 209A regarding meeting of creditors.	Company or director or directors or officers in default.	Fine up to Rs 1000/-
209G	Failure to call a meeting of the company and creditors by the liquidator annually when liquidation extends over a year	Liquidator	Fine up to Rs 100/
214(2)	Failure of the liquidator in a Voluntary winding up to give notice of his appointment to Registrar within 21 days	Liquidator.	Fine up to Rs. 50/- for every day of default
236	In an winding up if it be proved that any books, papers or securities have been destroyed mutilated or altered, or that any false or fraudulent entry has been made in any register, book of account or document	Director, manager, officer or contributory	Liable to imprisonment up to seven years and also to a fine.
239	For giving false evidence in a winding up, on any matter of the Company.	Any person who may commit the offence.	Do
238(A)	(a) Failure to discover to the Liquidator, the particulars of the property of the company.	Past or present Director, Managing Agent; Manager of the company being wound up.	Imprisonment up to two years.

Section.	Nature of offence.	Persons liable	Penalty.
238(A).	(b) Failure to deliver to the liquidator the property of the company in his custody.	Past or present Director, Managing Agent, Manager of the company being wound up.	Imprisonment up to two years.
	(c) Failure to discover to the liquidator books and papers of the company.	Do.	Do.
	(d) Concealing any property valued at Rs. 100/- or more or any debt due to the company within a year before winding up.	Do.	Do.
	(e) Fraudulently removing any property valued at Rs. 100/- or upwards within the same time.	Do.	Do.
	(f) Making any material omission in any statement about the affairs of the company.	Do.	Do.
	(g) Failure to inform the liquidator of false debt proved to any person to his knowledge.	Do.	Do.
	(h) Preventing production of any book or paper affecting the property or affairs of the company.	Do.	Do.
	(i) Concealing destroying, mutilating, falsifying any books or papers or being privy to such concealment etc, within 12 months before such winding up.	Do.	Do.
	(j) Making or being privy to such making of "false entry in any book or Register within a year before the winding up.	Do.	Do.
	(k) Fraudulently parting with, altering or making any omission in a document or being privy to such an act within 12 months before winding up.	Do.	Do.
	(l) Attempt to account for property by fictitous losses or expenses.	Do.	Do.
	(m) Obtaining property for company by false representation or fraud.	Do.	Imprisoment up to five years.

Section.	Nature of offence.	Persons liable.	Penalty.
238(A).	(n) Obtaining on credit for or on behalf of company any property under false pretence twelve month before or after commencement of winding up.	Past or present Director, Managing Agent, Manager of the company being wound up.	Imprisonment up to five years.
	(o) Under similar circumstances pledging or disposing of company's property obtained on credit and not paid for	Do.	Do.
	(p) False representation or other fraud for obtaining consent of creditor of company to an agreement with reference to affairs of company or to winding up.	Do.	Imprisonment upto two years.
277, (6)	Default in complying with the requirements of sec 277 as regards Companies registered outside British India.	Company, every officer or agent of the Company.	Fine not exceeding Rs. 500/- or in the case of a continuing offence Rs. 50/- for *every day* during which the default continues.
277A(5)	Issue circulation or distribution of prospectus or form of application in contravention of sec. 277A.	Person responsible.'	Fine upto Rs. 5000/-
277L	Default in complying with sections 277G, 277H, 277J, 277K, 277L & 277M (by Banking Companies.)	Every director or other officer.	Fine upto Rs. 500/- per diem.
282	Wilfully making a false statement in any report, return certificate, balance-sheet or other document.	Person making it.	Fine & imprisonment upto 3 years.
282A	Wrongfully withholding any property of company.	Director, managing agent, manager or other officer or employee of the company.	Fine upto Rs. 1000/- or in default imprisonment upto two years.
282B(5)	Misapplication of securities deposited by employees of company.	Director, Managing Agent, Manager or other officer or employee responsible.	Fine upto Rs 500/-
283B(5)	Improper use of the word "Limited" in the name of unincorporated business.	Person doing so.	Fine upto Rs. 50/- per diem.

Articles about Directors.

In framing the Articles, the following matters should be dealt with in connection with clauses relating to Directors :—

Clauses in the Articles relating to Directors.

(1) Appointment and number of Directors: The maximum and the minimum numbers of Directors to be fixed and also if there should be any ex-officio Directors, appointed by the Managing Agents, where there are such. Care should be taken to see that the number of Directors who are not liable to retirement by rotation or who are not subject to election by shareholders do not exceed one-third of the total strength of the Board.

(2) The names of the first Directors and if they are removeable, either by rotation or by resolution of the Shareholders.

(3) Qualification of Directors: The number of qualifying shares to be held, if any and whether ex-officio Directors are exempted or not. Also, if any Director can act before acquiring qualifying shares and if so, the time limit for acquiring shares.

(4) Remuneration of Directors: Whether at a fixed fee per Board meeting or at a fixed rate per annum or at a fixed rate plus commission on profits and so on. Also, the rules for division of profits among the Directors.

(5) Whether Directors may act notwithstanding vacancy, *e.g.*, power to co-opt another Director when the number falls below the minimum fixed by the Articles.

(6) Circumstances under which the office of a Director is vacated.

(7) Whether a Director may contract with the company either as vendor, purchaser or otherwise when the statutory provisions regarding disclosure of interest and withdrawal from voting have been complied with.

(8) Rotation and retirement of Directors.

(9) Power should be taken in the Articles for the Company to increase or reduce the number of Directors in its General Meeting, without having to alter its Articles for this purpose. Power should also be taken to remove a Director by extraordinary resolution when necessary. See Sec. 86G.

(10) Notice required, if any, when a member is a candidate for the office of a Director, who has not been recommended by the existing Directors.

(11) Retiring Director to remain in office till successors are appointed.

(12) Powers of Directors: The Articles to decide which powers the company delegates to the Board and which powers it retains for itself. It is advisable to adopt a clause similar to Article 71 of Table A, by which the Directors are vested with general powers to act in all matters which are *intra vires* the Company with the exception of such acts which the Company is required to do itself under the provisions of the Companies Act and also such matters as affect

the very existence of the Company, *e.g.*, the power to sell the entire business and assets of the Company. See Sec. 86H.

(13) Whether the business of the company is to be carried on directly by the Directors or by a committee of Directors or by Managing Agents subject to the control of the Directors. If by Managing Agents, whether their appointment should be incorporated in the Articles or should be left to the Directors.

(14) Where Managing Agents, are appointed by the Articles—the powers which are given to them should be detailed and also how and when they are removeable and their remuneration.

(15) Power should be taken in the Articles for the Directors to establish local boards or agencies for managing any of the affairs of the Company in any specified area and to grant Powers of Attorney to any person or persons to exercise the right of the Directors with power of sub-delegation whenever necessary.

(16) Rules regarding Proceedings of Directors :—

(a) The minimum number of Directors' meetings to be held in each year.

(b) Who may summon the Directors' meeting.

(c) To determine the quorum necessary for a meeting.

(d) How questions to be decided—whether by votes or otherwise and in the event of equality of votes whether the Chairman should have a casting vote.

(e) Whether a Chairman should be appointed by the Articles, in which case he will not be removeable without altering Articles : Whether the ex-officio Director, if any, appointed by the Managing Agents should be the permanent Chairman or whether a Chairman should be elected by the Directors at each meeting.

(f) If a committee be appointed by the Directors to whom the powers vested in the Directors have been delegated, the rules for the guidance of the committee in its meetings and proceedings.

(g) Whether a resolution in writing signed by all the Directors although not passed in a meeting may be deemed as valid and effectual as a resolution passed at a formal meeting.

(17) Whether remuneration may be given to any Director for extra-service done to the Company, which he is not required to do in the ordinary course.

(18) Whether travelling expenses should be paid to the Directors for attending Board meetings.

(19) How far the Directors should be indemnified in respect of liabilities incurred for the Company and reimbursed for expenses undertaken for the benefit of the Company.

(20) Whether individual responsibility may rest with any Director for any loss to the Company, arising in the execution of the duties of his office, through an error of judgment or negligence but which is not due to his dishonesty.

CHAPTER XII.

SECRETARY, MANAGER, ETC.

The Act does not lay down what officers a company should have. In the eye of law, properly speaking the Directors are the persons in charge of the company's business and responsible for it. They may appoint such officers as may be necessary for the conduct of the business of the company, having regard to its needs and resources. When an officer is appointed he is made liable by the Act, in some cases, to penalties for breach of duty.

The business of every company may be placed broadly under two heads, (1) *the management* of the business, and (2) the *secretarial work.*

Division of function.

With regard to the management, a company has to do exactly what private business concerns of the same character have to do. But by reason of its being a company, it has a certain amount of work to do in order to comply with the requirements of the Companies Act and, generally, for the purpose of making its acts a proper expression of the corporate will of the shareholders. This part of the business may be characterised as the secretarial business.

Secretary

In a large business concern, where each part of the work is sufficiently onerous, the two functions are placed under different officers—the business management in charge of the Manager and the secretarial part in charge of the Secretary. In smaller concerns the two functions are sometimes united in the same person, and sometimes, a part-time Secretary is appointed to do the secretarial work. The two branches of the work are, however, essentially different in character. Wherever possible, therefore, a Secretary with a special knowledge of Company Law and Procedure and of the management of the secretary's office should be appointed. "The Secretary has a good deal of ground to cover to gain the necessary knowledge for the formation and management of the company..... ....He is associated with the whole of the business prior to its actual formation into a company. He will act as the general confidant of the founder or promoter, though his position will not officially exist until after the actual registration of the company, when he will be appointed by the Directors who have been chosen by the signatories to the Memorandum of Association for the conduct of the company's affairs."(j).

No definition of the official post of the Secretary is to be found in the Statute, though the post is in several instances recognised. See, for instance, sec. 2 sub sec. 11, sec. 115 and sec. 282].

(j) Coles, *Guide for the Company Secretary*, pp. 2-3.

The duties of the Secretary vary with thes ize and the nature of the company and the terms of his appointment. Ordinarily his duty is to remain present at all meetings of the company and to make proper minutes of the proceedings thereat; to record such proceedings in the minute books and get them signed by the chairman; to issue notices of all meetings, calls and other necessary matters under the directions of the Board to members and others; to conduct correspondence with all shareholders and other persons; to keep books of the company such as the register of members, the share ledger, the transfer book, the register of mortgages and charges and the minute books, and to certify transfers, to make transfers under the direction of the Board and make necessary returns to the Registrar of Joint-Stock Companies. In a company of a moderate size, he is responsible for accounts also and in a big company, though a separate man is appointed as Accountant, still a sound knowledge of accounts is valuable in the Secretary as he has to explain to the Board the financial position of the company and to check and supervise the work of the ministerial staff of the company. A Secretary should be an all-round man with a good working knowledge of Company Law and Procedure, office-management and company accounts. He is also generally required to sign or countersign the company's documents such as share-certificates, cheques. bills, pronotes and other contracts. In a trading, commercial or manufacturing concern, a Secretary is not expected to go into the details of the business though his clear idea of the business is helpful to the Board in conducting their business.

Duties of secretary.

The Secretary has no status or power given by Law. His functions, duties and powers are all *defined by the Articles or by resolutions of Directors* assigning him certain duties, (provided that such assignment is not *ultra vires* of the Directors), *or by convention.* We have attempted to define above only the duties which are normally assigned to a Secretary.

If the Articles do not assign any powers to the Secretary, he has none, except in so far as powers are delegated to him by the Directors. Before Directors can delegate any powers they must have power to do so under the Articles. If the Articles do not give the authority to the Directors to delegate their powers to the Secretary or any officer, no delegation can be made, on the principle, *delegatus non potest delegare.* The Secretary would then become a mere agent of the Directors, doing ministerial duties and acting under the orders of the Directors. His duties are in every case determined by the terms of the contract with him and by the practice of the office and usage of similar offices.

A Secretary is an agent and servant of the company and the general principles of liability of master for the acts of the servants apply in his case. He has no power, generally speaking, to bind the company by any contract made by him without the authority of the company while the company would be bound by any tort committed by him on third persons in the course of his employment. The non-liability of the company for contracts made by the Secretary in excess of his powers is, however, affected by the principle that when a per-

son holds out a servant as a person having general authority to do a class of transactions, third persons are entitled to presume that he has authority to do so. Thus as a general rule a company is not bound by any contract made by the Secretary without power, nor is the company bound by any representation by the Secretary which induces persons to buy shares or enter into any other contract with the company. But where the Secretary is held out as authorised to transact or make representations on account of the company, the company would be liable even for any fraudulent representation made by him. (k)

Statutory liabilities of Secretary.

The liabilities of a Secretary are very great and by his ignorance or oversight he may not only endanger himself but may drag the Directors along with him. A Secretary is personally heavily punishable for falsifying books or documents of the company (*vide* secs. 282, 236 and 237) He is responsible for making the statutory declaration in obtaining the certificate of incorporation, statutory declaration in obtaining the permission for commencement of business, making returns of allotments and signing the annual list of members, directors and secretary or manager, summary of share capital and balance-sheet and becomes liable to penalties for default in these connections. A Secretary may be held responsible along with the Directors for violation of the provisions of the Act where the officer of the company is punishable under the Statute.

Liabilities under the general law

Apart from these statutory liabilities he is liable under the general law for every wrongful act and every abuse of his position as Secretary. Being a chief officer of the company he stands in fiduciary relation to it and would be liable for misfeasance if he makes any improper profit by the use of his position as Secretary. Thus he is liable for misfeasance if he receives an improper commission on a transaction for the company.(l)

Criminal liability.

He is also accountable for all secret profits made by him in respect of contracts of the company, but he is not liable like Directors for any loss which may be incurred by the company by reason of any misapplication of any funds of the company even with his knowledge unless the misapplication was due to his own fraud or negligence.(m)

Under the general law he is also liable to prosecution for criminal breach of trust, cheating, conspiracy etc. in his dealings with the company.

Appointment.

The Secretary is often named and the terms of his appointment are given in the Articles of Association or he is appointed under an agreement subsequently, after the incorporation of the company. The fact that a Secretary is named in the

(k) *Lloyd v. Grace Smith & Co.*, (1912) A C. 725. where the liability of the principal in contract as well as in tort for a fraud committed by the agent has been placed on the same footing See however, *Ruben v. Great Fingall Consolidated*, (1906). A C 439 ; *The British Mutual Bank v Charnwood*, 18 QBD 714. in which the company was held not liable for fraudulent acts of the secretary beyond his authority.

(l) *Barrow's Case*, 28 W R P. 341 ; *Mckay's Case* 7 Ch. D. I.

(m) *Joint Stock Discount Co. v. Brown*, 8 Eq. 296.

Articles of Association does not give him any right to hold the office. The proper thing in any case is to have a resolution of the Directors appointing the Secretary and giving the terms and conditions of his appointment after the incorporation of the company. But if a person is named as a Secretary in the Articles of Association and the conditions of his appointment are given there and the Secretary is allowed by the Directors to do the work aftet incorporation, it is presumed that the appointment would be good, as the Directors will be taken to have entered into the contract by their conduct. It is not necessary that the contract appointing the Secretary should be in writing, though it would undoubtedly be convenient to reduce the conditions to writing.

Acts done before incorporation.

Although the Secretary acquires his status as such only after his appointment by the Directors irrespective of whether he has been named in the Articles or not, yet where a person is named as Secretary in the Articles, the Act gives him the power to sign and file with the Registrar certain papers on behalf of the company at the time of registration (sec. 72 sub-sec. 2. 84 sub-sec. 2, sec, 24 sub-sec. 2).

Dismissal.

In the absence of anything in the Arttcles to the contrary, the appointment of the Secretary, Manager or other officers rests with the Directors, and, in the absence of anything in the Articles or in the contract with the officers to the contrary,the Secretary like any other officer is liable to be dismissed by the Directors at any time, though, except where dismissal is incurred by misconduct or gross negligence, the officer is entitled to reasonable notice before he is dismissed.(n) The period of notice is generally prescribed by the contract. In the absence of contract a month's notice would generally be considered reasonable where the appointment is on a monthly salary. What is reasonable notice would depend upon circumstances of a particular case and the terms on which the office is held.

Manager

The Manager of a company like the Secretary is appointed by the Directors and the terms and conditions of appointment are determined by the contract with him. The Manager, also, is sometimes named in the Articles of Association in which case the Articles may be referred to for determing the terms of his appointment, if they are not laid down in any written agreement subsequently executed.

With regard to dismissal also his position is the same as that of the Secretary.

Managing Directors or Managing Agents

Sometimes the conduct of the business of the company is entrusted to a Managing Director or a Managing Agent or a firm of Managing Agents. The power to appoint a Managing Agent or a Managing

(n) *Boschoek Co.* v. *Fuke*, (1906). 1 Ch. 148

Director must be given by the Articles and the Directors have no power to appoint a Managing Director or Managing Agent apart from the Articles.(o) The power can be exercised only within limits fixed by the Articles. Any appointment in excess of the powers will be invalid. Where the power is to appoint for such term as they think fit and to revoke the appointment, the Directors can appoint a Managing Director for life. Unless an express power of revocation of appointment is reserved by the agreement, the company cannot dismiss the Managing Director except for misconduct, incompetence or such other offence, (p) and where the authority is given by the Articles to the Directors the powers cannot be excercised by the company at a general meeting nor can the company interfere with an appointment made by the Directors without altering the Articles. (q) But where the Managing Director can be regarded under law as Managing Agent, the limitations applying to the Managing Agent with regard to appointment and other matters, would apply equally to the Managing Director.

The principles of law relating to master and servant applies to that between the company and its managing agent. The managing agents can be dismissed by the company for *misconduct* notwithstanding a provision in the articles that they shall hold office until they resign, provided that the misconduct is such as seriously affect the company's business. Thus where disputes between partners of the managing agents were detrimental to the interest of the company, the company was entitled to dismiss the managing agents notwithstanding such provision in the articles. (q1)

But where the articles provide that the managing agent can only be removed by an extraordinary resolution of the company, they cannot be removed in any event by an ordinary resolution.(q2)

Sometimes appointments of the Managing Director or Managing Agents is provided for by the Articles of Association. In that case also an agreement has to be executed by the Directors after incorporation. Without such agreement the Managing Director or Agent named does not aquire right to appointment.(r)

MANAGER & MANAGING AGENT

Under the Act of 1936 the terms"manager" and"managing agent" have been as defined follows :—

"Manager" means a person who, subject to the control and direction of the directors, has the management of the whole 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 :

"Managing Agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the

(o) Palmer's Com. Law. 9th Ed., pp. 262, 263.
(p) *Nelson* v. *James Nelson & Sons.* (1913). 2 K. B. 471 ; (1914) 2 K. B. 770.
(q) *Thomas Logan Ld,* v. *Davis,* 104 L.T. 914 ; 105 L.T. 419.
(q1) *Tricumdas Mowryi* v. *Sholapur etc. Co.,* 48 C.W.N. 181 (P.C.)
(q2) *Ramkissendas* v. *S. C. Law,* 50 C.W N. 310.
(r) See supta p. 35.

company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement and includes any person, firm or company occupying such position by whatever name called :

If a person occupying the position of a managing agent calls himself a manager he shall nevertheless be regarded as managing agent and not as manager for the purpose of this Act." :

The points of difference between a manager and managing agent are :—

(1) a manager is an individual person while a managing agent may be a person, firm or a company ;

(2) a manager like a managing agent has the management of the whole affairs of the company ; but a managing agent has charge of the management always by virtue of an agreement whereas the manager may or may not be under a contract of service :

(3) a manager is wholly subject to the control and direction of the directors, but the managing agent is under such control subject to exceptions provided by the contract of managing agency. In other words, in respect of matters which by the agreement of managing agency is left exclusively in charge of the managing agents, they are not under the control of the directors, while a manager is always under such control.

In either case a person would be a manager or managing agent no matter by what name he is called provided he answers to this definition. Thus, as sub-section (9) expressedly provides, a director may be entrusted with the management of the whole affairs of the company subject to the control of directors, in which case he would be a manager within the definition. On the other hand, sometimes it will be found that persons who answer to the definition of manager are called by other names such as secretary and otherwise. Similarly, a person may be called a secretary or a manager but he may have been appointed under an agreement which gives him powers to act independently of the directorate in some matters. In such cases the manager or the secretary or director for the matter of that would be in fact a managing agent.

MANAGING DIRECTOR

A managing director is a person among the directors to whom the company has assigned the position of being in charge of the management of the company under article 72 of Table A. Such managing directors have such powers as may be delegated to them by the company or by the articles. If they are entrusted with the management of the whole affairs of the company they would come under the definition of manager. On the other hand there may be managing directors who are appointed under contracts and are not removable within the terms specified and who are under the agreement entitled to exercise powers in some matters independently of the Board of directors. Such managing directors would be managing agents under the amended Act.

New Provisions About Managing Agents

The Act as it stood before the amendment of 1936 did not specifically provide for managing agents. But after the amendment the Act now makes several specific provisions for managing agents.

Managing agents are thus *not to be regarded as persons holding office of profit* under the company under section 86E and sections 87A-87I make elaborate provisions with regard to managing agents.

Under section 87A it is provided that no managing agent shall be appointed for a term of more than 20 years at a time. With regard to existing agreements of managing agency for a longer term, sub-section (2) provides that they shall not continue to hold office after the expiry of 20 years from the commencement of the Act unless they are reappointed either on the expiry of 20 years or before such expiry. In the case of managing agent under any existing agreement it is further provided by sub-section (3) that the managing agent shall have a charge upon the assets of the company by way of indemnity for all liability or obligations properly incurred by him on behalf of the company subject to other existing charges and incumbrances and that the termination of the office of such managing agents shall not take effect until all monies payable to them on account of loans made by them to the company or for remuneration due up to the date of termination of their office are paid. This section it will be noticed does not apply to a private company which is not a subsidiary company to a public company.

Term of office.

Section 87B makes several important provisions with regard to managing agents.

Sec. 87B.

In the first place, it makes the office of managing agent *terminable,*

(a) by an ordinary resolution of the company with notice to the managing agent where the managing agent or if the managing agent is a firm or a company a member of such firm or company holding powers of attorney commits a *non-bailable offence* under the Indian Penal Code and

(b) where the managing agent is adjudged an *insolvent.*

Secondly, the section *invalidates a transfer of his office by a managing agent* unless approved by the company in general meeting. Where the managing agent is a firm a change of partnership of the firm is not under this section to operate as a transfer of the office so long as one of the original partners continues to be a member of the firm.

Thirdly, a *charge or assignment of the remuneration* of the managing agent or part thereof is likewise void as against the company.

Fourthly, where the *company is wound up* the managing agency terminates without prejudice to his rights to recover moneys recoverable by him from the company:

Provided if the winding up is found to be due to the negligence

or default of the managing agent he shall not be entitled to receive any compensation for the premature termination of his contract.

Fifthly, the appointment, remuneration or variation of the contract of managing agent made after the passing of the Act of 1936 shall not be valid unless *approved by a resolution of the company* at a general meeting.

These provisions are *not applicable to the managing agents* of the company appointed prior to the prospectus or statement in lieu of the prospectus in which such appointment is set forth

Section 87C places limitations on the remuneration of managing agents. In the case of managing agents appointed after the commencement of the Act of 1936 the remuneration is to be a sum based on a *fixed percentage on the net annual profits* of the company subject to a *minimum payment* in the case of absence or inadequacy of profits plus an office allowance the amount of which will be defined by the agreement.

Remuneration.

The principle is that ordinarily managing agents cannot be allowed by the agreement to have any remuneration otherwise than out of profits, though the exact percentage of profits which they may have is to be determined by the agreement. The agreement may however make this rule subject to a minimum allowance which may not be covered by profits in the case where there are no profits or where the profits are inadequate, that is, fall below the minimum fixed. It is intended that this minimum allowance should be a reasonably low figure, while primarily the Managing Agent should look to a share of the profits for his complete remuneration.

In addition to this remuneration out of the profits, the managing agent may be granted a *fixed office allowance.* It will be noticed that this sum so fixed is a lump sum intended to cover the outlay of the managing agents in maintaining the office and is not intended to be a part of the remuneration for the labour. It is conceived that the agreement may provide that all office expenses shall be paid by the company in which case it seems it would *not be open* to the company to give any office allowance to the managing agent over and above that ; where office allowance is granted, it will be irrespective of the company's making any profit or otherwise.

Sub-section (2) provides that any stipulation for any remuneration in addition to what has been described or remuneration of a different character will not be binding upon the company unless it is sanctioned by a *special resolution* of the company. It would seem even if the articles provide for a different kind or amount of remuneration such articles would not bind the company and the additional or special remuneration must be fixed by a special resolution.

The net profits for the purpose of this section is defined as follows :

"For the purposes of this section 'net profits' means the profits of the company calculated after allowing for all the usual *working charges, interest on loans* and *advances, repairs* and *outgoings, depreci-*

tion, bounties or *subsidies* received from Government or from a public body, *profits by way of premium* on shares sold, *profits on sale proceeds of forfeited shares* or profits *from the sale of the whole or part of the undertaking* of the company but *without any deduction in respect of income-tax or super-tax* or any other tax or duty on income or revenue or for expenditure by way of interest on debentures or otherwise on capital account or on account of any sum which may be set aside in each year out of the profits for reserve or any other special fund.

It will be noticed that the provision for excluding sums reserved for "any other tax or duty on income or *revenue*," in calculating the net profits on which Managing Agency commission is payable, would enable such commission to be computed before setting aside any amount for such contigencies as Excess Profits Tax or any other duty on revenue.

This section also is not applicable to private companies except a company which is subsidiary company of a public company. The section also excepts insurance companies from this section as insurance companies under the Insurance Act cannot have any managing agent.

Under section 87D a company is debarred from making a loan or guaranteeing any loan made by a third party to its managing agent or if the managing agent is a firm, to any partners thereof or where the managing agent is a private limited company, to any member or director of such private company. An exception is made however to allow credit to be held by a managing agent in a current account maintained by the managing agent in respect of deposits made by the company for the company's business, provided that credit balances are within limits previously approved by the Board of Directors. *Any contravention of this section will under any director* who is a party to such contravention, liable to a fine of Rs. 500/- and further, if default is made by the managing agent in repayment of the loan or discharging the guarantee the Director shall be liable jointly and severally for the amount unpaid.

Again, under sub-section (5), the managing agent or the firm of which he is a partner or any partner of such firm or when the managing agent is a private company, any member or Director of such private Company is prohibited from entering into any contract with the company for the sale, purchase or supply of goods and materials, except with the previous consent of three fourths of the directors present and entitled to vote on the resolution. The ex-officeo director, appointed by the managing agent will not be entitled to vote, being an interested director under section 91B. Any contract made in contravention of this sub-section will render the contract void and the managing agents will morover be required in view of its fiduciary relation to refund to the company any profits they may have made on the contract. The proviso to the sub-section saves existing contracts made prior to the introduction of this section. *This section does not apply to a private company except one which is subsidiary to a public company.*

Where a company has a managing agent, section 87E prohibits it from making a loan or guaranteeing a loan made, to any other company under the same management. When however a limited company is itself the managing agent of another company, the proviso to the section allows loans to be made and guarantees to be given in respect of loans by third parties to the company under its management. It further allows (a) loans made by a holding' company to its subsidiaries, (b) loans made by a subsidiary company to its 'holding' company and (c) guarantees given by a 'holding' company on behalf of a subsidiary. These exceptions are made in recognition of the fact that a managing agent, whether it is an individual, a firm or a limited company should do all in its power to render assistance to the company under its management and should not be prevented from doing so by any legal disability. Further, a subsidiary company may be regarded as a part and parcel of the 'holding' company and there should therefore be no embargo on their making of loans to each other.

To validate existing loans and guarantees, however, the section provides that after six months from the commencement of the Amendment Act 1936, existing loans and guarantees may only be renewed but that no fresh loans will be allowable.

For contravention of this rule any director or officer of the company who is knowingly and wilfully guilty is liable to a fine up to Rs. 1000/- and is also jointly and severally liable for any loss incurred by the company in respect of such loan or guarantee.

Section 87F and section 87G further extend the limitations on the powers of managing agents. The former prohibits a company from purchasing shares or debentures of another company under the same managing agency without a previous approval by *unanimous* decision of the Board of Directors of the purchasing company. This rule is not applicable, however, to a company whose business is dealing in and holding of shares, debentures and other securities.

Under section 87G a managing agent cannot on his own initiative issue debentures on behalf of the company and he cannot also, except with the authority of the directors and within the limits fixed by them, invest the funds of the company, notwithstanding any provision either in the articles or in any resolution of the company delegating these powers to managing agents.

Section 87H places an important limitation upon the powers of the managing agent. He is not to engage *on his own account* in any business which is of the same nature as and directly competes with the business carried on by a company under its management or by a subsidiary company of such company. The business carried on by him may be similar without offence if it does not directly compete with the business of the company under his management. It should be noted also that this section does not debar the managing agent from being the managing agent of another company which carries on business in competition with another company under his management, although such a position may be awkward and inconvenient.

Section 871 provides that the managing agent of a public company must not appoint more than one-third of the total number of directors. This provision is a counter part of section 83B which lays down that not less than two-thirds of the total number of directors shall be liable to retirement by rotation.

Powers

Subject to these statutory limitations, the powers of the Managing Director or Managing Agents are derived either from the Articles or by delegation from the Directors. It is open to the company by its Articles or by the Directors to define the powers and duties in such manner as they think fit. The office of a Managing Director or Managing Agent is one of very great trust and generally speaking the powers conferred upon them are very extensive. It is of the utmost importance, therefore, to exercise very great care in their selection. It must be remembered that confidence of intending shareholders of the company is likely to be greatly affected if unreasonably large powers are given to the Managing Director or Agent. On the other hand, it is necessary for convenience of business that when a Managing Director or Managing Agent is appointed he should be given wide powers for dealing with the ordinary business of the company. Thus, for instance' it would hardly be fair to a Managing Director or Agent, who is responsible for the efficient working of the company, not to give him full control over officers of the company. Very often Managing Agents are the persons, who have organised the company and brought it into existence and also provided or guaranteed a very substantial portion of capital. In such cases, naturally, the Managing Agents could be safely given larger powers than in others, because of their great stake in the company and also because the company would not have to depend very largely on the public for subscription of shares. It is generally in such cases on'y that the managing agency system can be profitably resorted to.

Where the Articles authorise the Directors to appoint the Managing Director or Managing Agent and define the powers which may be conferred on them, it does not by any means follow that all those powers should be given to the person appointed by the Directors. By agreement with the person appointed, the Directors may give him less powers. Persons dealing with a Managing Director or Managing Agent must look to the Articles to see whether, under them, he could have the power which he proposes to exercise. But if the Managing Director or Agent has not a power, though it is prescribed in the Articles, a third person dealing with him *bona fide* in the belief that he had such power is protected against any plea that the Managing Director or Agent did not have the power actually given to him.(s) The principle is that,as Lord Hatherley pointed out in another connection, out siders are bound to know the "external position of the company," but not its "indoor management."(t)

A Managing Director can only continue to be such so long as he is a Director. Generally speaking the Articles provide that the Mana-

(s) *Baqqrmaff v Rowatt's Wharf* (1896) 2 Ch 93 at p 102
(t) *Mahony v. East Holyford*, L. R. 7 H. L. at p 893.

ging Director shall not be subject to retirement by rotation of otherwise within the term of his appointment (Table A, Art. 72). But if the Articles do not contain any such clause, a Director who is appointed Managing Director would be liable to retirement just like the other Directors and if he is not re-elected, he ceases to be a Managing Director even though the term for which he was appointed has not expired. The agreement in such a case would be regarded as subject to the condition that he continues as Director. (u) Under sec. 87B the office of Managing Agent is vacated on conviction of a non-bailable offence and on being adjudged an insolvent. Sec 141A provides that upon conviction of an offence in relation to a company a Managing Agent or other officer is debarred from taking any part directly or indirectly in the management of any Company without leave of Court for five years.

Termination of office.

It is usually provided by the Articles authorising the appointment of Managing Agents that the Managing Agent or one or more of the members of the firm of Managing Agents shall be ex-officio Directors and that they should not be liable to retirement like the other Directors. Such a provision must now be subject to the limitation in sec.83B that not less than two thirds of the directors must be liable to retirement by rotation. A Managing Agent need not necessarily be a Director and without such provision in the Articles he would not be entitled to be one unless elected in due course by the shareholders.

The interest of the Managing Agent who is a Director and of the Managing Director under their contracts with the company must be disclosed in the Prospectus under sec. 92 and copies of the contracts must be circulated amongst the members under sec. 91-C.

Disclosure of interest.

CHAPTER XIII.

COMMON SEAL

Every company, under the provisions of the Act, is required to keep a seal (*vide* sec. 23, sub-sec. 2). Clause (b) of sub-sec. 1 of sec. 73 requires the name of the company to be engraved in legible characters on its seal and every officer of the company shall be liable to a fine not exceeding Rs. 500/- for use of any seal on any document purporting to be the seal of the company (*vide* sub-sec. 2 of sec. 74), which does not bear the name of the company in legible characters. The effect of this clause is not apparently to nullify as against a stranger an agreement or other transaction to which a seal purporting to be the common seal but not bearing the name of the company has been affixed. The company would apparently be bound notwithstanding the illegality of the seal.(v) This excessive caution in respect of the common seal is a survival of the Common Law doctrine, though at the present time, specially in India, the necessity for such a seal is very limited.

Nature of seal.

(u) *Blunt v. Stotesbury's* 24 T. L. R. p. 469.

(v) Pollock on Contract, p. 146.

The Articles of Association generally contain provisions as to the manner in which and the occasions on which the seal shall be used in terms almost identical with clause 76 of Table A. The seal should be used in the manner prescribed by the regulations of the company and the Directors should authorise some of them to sign and seal the documents which require to be sealed.

Seal how used.

The institution of the Common Seal is derived from the English Common Law under which, as a general rule, a corporation cannot enter into a contract otherwise than under its common seal except in respect of small matters of daily occurrence.(w) In course of time, however, a number of exceptions were gradually added as regards cases in which corporation could act without a seal. In respect of trading companies sec. 76 of the Companies (Consolidation) Act, 1908, of England, practically abrogated the Common Law rule, and authorised companies to make contracts in the same form in which a private person could, so that a company in England can bind itself by a contract in writing or even by a parol contract, except in cases where by English Law the contract has to be under seal in writing. Under the Indian Law, no contract of any private person is required to be under seal, so that the effect of sec. 88 which corresponds to sec. 76 of the English Act of 1908 is to *dispense altogether with the necessity of any contract under the common seal* of companies registered under the Indian Companies Act *except where the Act or the Articles require any instruments to be given under the common seal.*

Common Law rule about seals.

Except a share certificate no document in India is required to be executed under common seal of the Company by the Act, but the Company may by regulations require any documents to be executed under the Common Seal for the purpose of securing, in view of the vital importance of those documents, that, in respect of certain transactions, the Company should not be bound by any agreement not made with the solemnity and deliberation of an instrument under seal. For the regulations generally require (see Table A. Art. 76) that before the common seal can be affixed to a document there must be a resolution of the Directors, in the first place, authorising the affixing of the seal and secondly it must be affixed in the presence of two or more Directors. In making regulations requiring any documents to be under seal, a company should bear in mind the principles underlying the Common Law rule regarding seals. The necessity of a seal at Common Law has been thus stated judicially :—

What documents should be under seal.

"The seal is required as authenticating the concurrence of the whole body corporate. If the Legislature in erecting a body corporate invest any member of it either expressly or impliedly with authority to bind the whole body by his mere signature or otherwise, then undoubtedly the adding a seal would be a matter purely of form and not of substance. But in other cases the seal is the only authentic evidence of what the corporation has done or agreed to do."(x)

On the other hand, the necessity of affixing the seal in transactions of everyday occurrence would greatly hamper the prompt transaction of business by the company. So nothing should be

(w) Pollock on Contract, p. 146 seq.
(x) *Mayor of Ludlow* v. *Charlton*, 6 M. & W. 815 at p. 823

required to be under common seal except transactions of great importance to the company. Generally speaking, Indian companies, as a matter of practice rather than that of regulation, affix common seals to conveyances of immovable property, assignment of surrender of leasehold property, powers of attorney, debenture bonds and stock and so forth. In the absence of regulations, all this is neither necessary under the law, nor always convenient.

Where a company desires to have any class of instruments under the common seal, *they should be specified in the Articles.* Unless there are any such provisions in the Articles and a contract is made without affixing the common seal by the secretary or manager with a stranger acting *bona fide* even against the express orders of the Directors, the contract would bind the company, as a stranger is only expected to look to the Articles and not to the "indoor management" of the company.(y) A mere resolution of the Directors, therefore, as to what documents should be under common seal is altogether ineffectual as against strangers who have entered into informal contracts with the agents of the company in ignorance of such resolution.

Mode of affixing seals in Table A

Table A. Art. 76 provides, (1) that there should be a resolution of the board of directors authorising the affixing of the seal, (2) that the seal must be affixed in the presence of at least two Directors and of the Secretary or any other person appointed for the purpose and (3) the two Directors and the Secretary or other such person shall sign the instrument after the seal has been so affixed in their presence.

Where the Articles so provide, any seal affixed otherwise than in conformity with it is not the seal of the corporation A stranger who takes an instrument sealed without such authority cannot make the corporation liable unless either the document was not required by law to be under common seal, or the company was in any manner estopped by its own negligence. But where an instrument has the common seal affixed to it and is signed by the persons who are required by the Articles to attest it, a stranger has every right to assume the the seal has been affixed under proper authority and that everything required to be done has been regularly done Hence the contract could be enforced at the instance of a stranger who acts *bona fide* on the principle of *Royal British Bank* v. *Turquand*,(z)

Seal Book.

The Directors, who are empowered by the Board to sign and seal, should record the particulars of documents sealed in a book called the 'Seal Book, mentioning the date of the sealing, nature of documents, how and when sealing was authorised, the number of documents sealed, remarks and the initials of Secretary and Directors who were present in sealing, on each such entry in the Seal Book- Form No. 47 in Appendix B may be used for a Seal Book.

Custody.

As to the place of custody of the seal it should be decided by the Directors at their first meeting and the Directors should make special rules for it. The Directors are bound to take proper care of the custody of the seal so that it may not be affixed to any document without

(y) Lord Hatherley L.C. in L.R. 7 H.L. p 683 ; *Bank of Ireland* v. *Evans' Charities*. 5 H.L.C. 389.
(z) 6 *E. & B.* 327.

their consent. But they cannot be charged with misfeasance for not "locking it up and guarding it as a dangerous think." (a)

Material for seal.

The seal of a company is generally made on steel, brass or copper. It is frequently asked if the common seal can be made of "rubber stamp." We doubt very much if the rubber stamp would satisfy the purpose of the Act, sec. 73, sub-sec. 1, clause (b). Palmer says, "According to Johnson and Webster the word 'engrave' means (*inter alia*) to picture by incision on any matter; to impress deeply; to imprint. It is said, however, that the Registrar of Companies will not recognise a seal impressed by a rubber stamp." (b) Coles says, "It may here be interesting to note that a simple rubber stamp has been known to serve the purpose of the company's seal; but we strongly doubt the legality of such a form of seal in view of the wording of the Act (see sec 83-B Eng. corresponding to sec. 73-(b) of the Indian Act). In a Court of law an instrument bearing such imprint of rubber stamp as the seal of a company would run great risk of being regarded as void." (c) So we should not advise any company to use a simple rubber stamp as the common seal of the company.

Seals for foreign use.

Besides the common seal mentioned above, a company, under the provisions of sec. 91 if authorised by its Articles, may have a facsimile of the common seal in the territory, district or place beyond the limits of British India where such seal is to be used. The company having such seal may authorise, under its common seal, any person or persons, to execute deeds under this seal, and such contracts shall be binding on the company as if executed with the common seal of the company.

CHAPTER XIV.

BOOKS AND ACCOUNTS

Keeping accounts

Statutory provision for accounts.

Beyond providing by sec. 130 that every company shall keep proper books of accounts which shall exhibit full, true and complete accounts of the affairs and transactions of the company, and by sec. 131 and the following sections, that balances heets should be prepared and published in a particular manner, the Act as it stood before the amendment of 1936 said little further about accounts. Clause 109 of Table A lays down that the Directors shall cause true accounts to be kept of the sums of money received and expended by the company, and the matter in respect of which such receipt or expenditure takes place, and of the assets and liabilities of the company. But section 130 as amended in 1936 now provides as follows :—

(a) Every company shall cause to be kept proper books of account with respect to :—
Per Lord Macnaghten in *Ruben v Great Fingall*, 1906 A. C. at p. 494. They may entrust it to the secretary or other official without incurring risk. *Bank of Ireland v. Evan's Charities*, 5 H. L. C. 389.

(b) *Vide* Palmer's *Share-holder's, Director's and Voluntary Liquidators' Legal Companion*, 31st Edition. Page 108.

(c) *Vide* Cole's *Guide to the Company Secretary*, Page 68.

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place ;

(b) all sales and purchases of goods by the company ;

(c) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall be open to inspection by the directors during business hours

(3) In the case of a company managed by a managing agent, or where the managing agent is a firm or company, the partner or director of such firm or company and in any other case the director or directors who have knowingly by their act or omission been the cause of any default by the company in complying with the requirements of this section shall in respect of such offence be liable to a fine not exceeding one thousand rupees "

This does not necessarily indicate that three sets of books are required to be kept for the three items in sub-section (1). But whatever the forms in which books are kept there should be accounts showing separately the money received and spent, sales and purchases of goods and assets and liabilities of the company. The form of account for this purpose may be determined on the advice of accountants with reference to the nature of the business of the company.

Importance of accounts in limited concerns.

The importance of keeping proper accounts is great in every business, but it is greater in the case of limited companies. The proprietor of a private business may be justified in saying that he is satisfied with a certain way of keeping his books and, as he is not answerable to any one but himself, he can keep his books in whatever way he thinks best, without regard to the rules of accounting : but the Directors of a limited company, as agents and trustees, are bound to communicate the state of affairs to their principals—the shareholders—at least once in every year under the provisions of its Articles of Association and under sec. 131 of the Act. Such accounts are required to be audited by an auditor qualified under sec. 144 of the Indian Companies Act, 1913. The Auditor inspects the books and certifies the accounts at least once a year, and the auditor has also the right by sub-sec. 1 of sec. 145 of access at all times to the books and accounts and vouchers of the company, and to make reports to the members of the company on the accounts examined by him (*vide* sub-sec. 2 of sec 145). So the keeping of accounts according to approved methods of accountancy is a prime necessity for a company.

The books of a company are divisible into two great classes, viz.—

1. Statutory Books such as—Register of members (section 31), Index of members (sec 31A) Register of Directors (section 87), Shareholders' Minute Book and Directors' Minute Book (section 83) to record the minutes of the proceedings of general meetings and Directors' meetings, Register of Mortgages and Charges (section 112), Register of Debenture-holders, where Debentures are not issued to Bearer (section 125).

The Register of Members may be divided into several books, e.g. Share Ledger, Transfer Register and a Register showing the distinctive number of shares in consecutive order with the names of holders thereof in order that the particulars required by section 31 may be incorporated in the books with convenience and as under section 36 a shareholder may inspect the Share Register or ask for copies of any entries, he has a right of access to all subsidiary books, which together may be deemed as the Share Register. For example, when a shareholder demands a copy of the Register showing transfers registered between two given dates, although the information may be called from either the Share Register or Share Ledger, it is convenient to supply the information from the Share Transfer Register, which records all transfers in order of time.

2. The Financial Books or books of accounts, such as Ledger, Cash Books, Journal, Bills Payable Book, Bills Receivable Book etc.

The essential principles in company accounts are the following :—

Principle of accounting.

1. That the record be so explicit that, at any time, the exact nature of the transaction may readily be reckoned.

2. That the transactions be so classified that at any time the total result of such transactions or any particular class thereof during any given period may readily be ascertained.

3. That the amount of labour necessarily involved be reduced to a minimum.

The Accounts

Function of an accountant.

The function of an accountant in a company is, in the first place, to keep the books in order and, with regard to every item of income and expenditure, to see that the entry of it is in accordance with the regulations of the company and the Law. He has to make sure under what head a particular entry is to be made and, in every case, to ascertain whether the entry is vouched for or authenticated in accordance with the law or the regulations. Thus, every item of expenditure has to be passed by the person or persons having authority to sanction it. Even in respect of income it is not always that the accountant would be justified in crediting it without scrutiny. Thus, a call paid by a transferee, whose name has not yet been registered, cannot be accepted without risk of the company being bound by estoppel. No expenditure can be entered unless it is *intra vires* and is properly authorised. Thus brokerage on the sale of shares cannot be paid unless it is authorised by the Articles (supra p. 88). In making payments on account of preliminary expenses he has to see that the total amount has not exceeded the amount stated in the Prospectus (supra p. 41). As it would be his duty to justify and explain every item of accounts to the auditor, he should always be careful to see not only that each entry is supported by proper voucher, but also that the person authenticating the voucher has got authority under the Articles to authorise the expenditure. The accountant should therefore carefully study the Memorandum and Articles of Association and keep himself well informed about the minutes of each meeting.

Accountant's primary duty.

An accountant or secretary before entering into actual book-keeping should also see that the following points have been decided in the first meeting of the Board of Directors.

Quorum of Board.

1. *The fixing of quorum of the Board meeting or the meeting of any committee appointed by the Board, if no such quorum has been fixed by the Articles of Association :* - Any resolution passed, without a quorum, is invalid, and hence, cannot be acted upon. Thus, a resolution of a Board meeting where due quorum was not present, allotting some shares or making a call on the shareholders may be invalid. Hence, an accountant or secretary should be very particular on this point.

Banker.

2. *Nomination of the company's banker, if not named in the Prospectus of the company* :—This is not so very important in moffusil companies of small size, where they cannot avail themselves of the benefit of a bank owing to the absence of any in the locality. In the course of business the advantage of bank facilities is keenly felt in keeping the company's surplus fund, in overdrawing such accounts in times of financial emergency and in sending for collection or discount bills of exchange, hundis, and other negotiable instruments. The utility of having a banker is also felt in securing bank references to establish business relationship with a foreign firm.

Endorsement of cheques and bills

3. *The method in which cheques and bills are to be endorsed and signed on behalf of the company* (see sec. 89) :—This is important from the very beginning of the company, as cheques are frequently received for application deposit in lieu of cash payment. The cheques and other negotiable instruments cannot be cashed until the method of endorsing them has been decided upon. Irregular endorsement and signatures in drawing bills may lead to unnecessary delay in getting payment and undesirable consequences to the person who makes such endorsement or signature (see sec. 74 sub-sec. 2)

Appointment of Auditor.

4. *The appointment of Auditor* :—The first auditor, if there be any by that time, is to be named in the Prospectus and appointed by the Promoters or first Directors. Subsequently they are appointed at the ordinary general meeting by the shareholders. The accountant has to satisfy him about the propriety of the entries in the books and to satisfy all his queries. The accountant or the authorities of a company cannot refuse the right of access to the books at any time demanded by the auditor.

Appointment of officers.

5. *The appointment of other officers and the salaries to be allowed to each of them* :—At the close of the month the salary of the officers is required to be debited and for satisfaction of the auditor a resolution of the Board regarding the appointment and the salary attached thereto is necessary. Sometimes an additional allowance is granted to some officers, and such remuneration should also be embodied in a resolution.

6. *The method to be adopted as to the money received at the company's office* :—The Secretary, who usually signs receipts for money and the cashier, who is the custodian of the money should not be one and the same person. In some small companies it is frequently found that the same man keeps both the cash and accounts, though in companies of moderate or big size these are kept by two independent persons. The mischief of keeping the accounts and the cash in the hands of one and the same person is great, as it may lead to fraudulent payments and entries in the books. The division of cash and account into two departments is intended for check of the one by the other. The amalgamation of cash and account in one hand has always been decried by all eminent authors.

Method of receiving money at office.

Books and Entries

The primary books of a company are its Minute-books. Minute books are not directly required in book-keeping proper though frequent references to resolutions are required to be made in accounting.

Minute Books.

The next important book is the Register of Members. (See Appendix B, Form No. 21).

Register of Members.

Before formal entry in the Register of Members, the names of the applicants are recorded in the Application and Allotment Register (*vide* Form No. 12). The daily total of the receipts on application deposit and admission fee is to be credited to the respective accounts and when the allotment on those shares is made, the amount of application deposit is to be debited and transferred to the credit of the Capital A/c, by means of a Journal entry. In crediting the application deposit account it is not necessary to enter the name of each depositor in the cash book which may be ascertained by reference to the Application and Allotment Register ; but reference of the application numbers is generally found convenient.

Application and Allotment Register.

If any applicant is not granted allotment his deposit along with the admission fee should be refunded, debiting the "application deposit" and "admission fee" accounts after deducting the remittance cost, if any.

Account on refund of application money.

When the allotment has been made, proper entries should be made in the Register of Members and the amount of the deposit should appear there. The total of the amount received as exhibited by the Register of Members must tally with the amount of the balance of the capital account in General Ledger. Periodical checking system should be adopted to find out any discrepancy in regard to the figures appearing in the Ledger and the Register of Members.

The deposit on allotment and subsequent calls should be posted directly to the credit of the capital account, as the depositor has by that time become a full member.

In connection with the shares another account is sometimes required to be opened in the Ledger under the heading "calls in advance account" to record transactions of the amounts deposited by the shareholders as advance payments towards subsequent calls. A provision in the Articles of Association is generally found for such deposit along with a provision to pay some interest at a specified rate on such advance deposits. When such deposit is made, the amount should not directly be placed to the capital account as such amount has not been called and may not be called in future at all. When the amount is called the amount shall be debited to the "calls in advance account" and be transferred to the credit of the Capital A/c. If any interest is due on such deposit, the amount should be paid by debiting the "interest account."

Calls-in advance.

Shares of well-established companies are frequently issued at a premium. The amount of premium received is of the nature of a capital receipt and should therefore be retained in the business for use as working capital or utilised in writing off fictitious assets such as Preliminary Expenses, Goodwill etc. or for writing down fixed assets. Although there is nothing in the Act to prevent the company from treating the amount as Revenue Profit, unless there is provision in the Articles to the contrary, it is inadvisable to distribute the amount as Profits. It may however be specifically invested to increase the profits.

Under section 105A shares can now be issued also at a discount subject to the limitations in that section; and sub-section (2) of that section requires that the particulars of the discount allowed and of the amount not yet written off must be stated in the prospectus. For this purpose it would be necessary where shares are issued at a discount to have a separate head of account for the amount which will have to be written off from revenue profits in the course of time. If the company has by a resolution given any definite direction with regard to the writing off of the discount, the accountant must see to it that such directions are strictly followed. The accounting of such discount must partake of the character of accounting for preliminary expenses.

For account on reduction of capital, see page 80.

The Share Ledger, though not required to be kept by any provision of the Statute, is an indispensable book for the accountant or the secretary for ascertaining the exact position of each shareholder's account in regard to the amount due and paid by the shareholder, the number of shares acquired or disposed of and such other matters. A form of this book has been given in Form No. 22. A definite space, ordinarily a folio, is reserved for each member. The book is helpful in verifying the correctness of the balance of the 'capital a/c' in the Ledger. In verifying the correctness of the balance of General Ledger, it is required to prepare a list from the Share Ledger. If the balance of this list agrees with the balance of the "capital account." it shows that the entries in both the Share Ledger and the General Ledger have been correctly made, otherwise there must be some discrepancy in posting either of the above ledgers.

Share Ledger.

Instead of keeping two books—the register of members and the share ledger—the purpose may be served by one book—the Share Ledger only. And if the share ledger so kept has an alphabetical index it will satisfy sec. 31A regarding index of members.

Transfer of Shares.

For share transfers and forfeiture of shares, see pp. 139 and 147 respectively.

It is desirable to exercise the greatest care in making correct entries regarding shares, as on any error or omission in recording in the books, the company may be involved in costly legal proceedings.

Brokerage and commission.

It has now become almost a common custom to allow some brokerage on sale of shares and the Act also contains some sections in support of this. In accounting, the accountant should see that the amount allowed does not exceed the amount permitted by the Articles of Association or fixed by the resolution of the Board.

The commission or brokerage, however, cannot be paid out of the share money until after allotment, for under the amended section 101 sub-section (2B) all moneys received from applicants for shares have to be kept in a scheduled bank and under sub-section (4) of that section if allotment is not made within 180 days of the first issue of the prospectus the whole amount received has to be returned to the applicants for shares. It is only after the certificate to commence business is obtained under section 103 that the company can safely pay out the commission or brokerage.

Accounting of commission or brokerage.

The commission paid may be debited under "commission for sale of shares" account; or "brokerage on sale of shares" account. The balance of the commission account should be shown in the balance sheet (*vide* sec. 106). The commission thus paid is not required to be adjusted from the profit in the year but may be written off out of the profits of several years. Form F Schedule III(e) of the Act also provides that this amount should appear as an asset in the balance-sheet.

Preliminary expenses.

In connection with the floatation of a company some expenses are incurred as preliminary expenses. The expenses chargeable under this head have been given in page 46. The promoters, founders and first directors take the risk of meeting these expenses because, if the company cannot proceed to first allotment under the provisions of sub-sec. 4 of sec. 101 then the full amount of the application deposit has to be refunded so that the preliminary expenses fall on the promoters, founders and the first directors themselves. The "preliminary expenses" may be charged up to the date of the first allotment of shares or up to the date of the statutory meeting after which it is desirable that the expenses should be charged under different regular heads of expenditure. The preliminary expenses also need not be adjusted in one year but can be adjusted out of the profits of several years. Although, strictly speaking, the expenditure is of a capital nature, it is unrepre-

(e) See Form F in Appendix A.

sented by assets and should be written off as soon as possible out of the revenue. Usually they are wiped off in from three to five years. The balance of this account also is required to be shown in the balance-sheet as is required in the case of "commission on the sale of shares" (*vide* Form F of Schedule III of the Act, Appendix A).

The amount of preliminary expenses for a company to be started is now required to be estimated for determination of the minimum subscription upon which the company may proceed to allotment. [section 101 (2)(b)] And under section 93 sub-section (1)(i) the estimated amount of the preliminary expenses is required to be stated in the prospectus. It is necessary therefore to keep the preliminary expenses as far as possible within the bounds of the estimate given in the prospectus. A serious departure from the amount stated in the prospectus may amount to a misrepresentation for which the shareholder may have his remedies under section 100.

Register of Mortgages etc.

The other books such as register of mortgages and charges, list of directors etc., have nothing to do with actual book-keeping though the loan, for which the entry appears in the register of mortgages and charges has to be shown in the financial books.

Debenture account.

When debentures are issued, they may be issued at a premium or at a discount. The premia received should be treated in the same way as the premia received on issuing shares, *i. e.*, utilised be writing off fictitious assets. The amount of discount should be written off from revenue as soon as possible, since it does not represent any available asset.

Provision should be made for the redemption of Debentures on due date. This is done either by the creation of a sinking fund or by taking out an endowment Insurance Policy. When a sinking fund is created an amount is debited to the Profit and Loss Account each year and credited to the sinking fund account and an equivalent amount of cash is invested outside the business and allowed to accumulate at compound interest so as to produce funds for the repayment of Debenture Loan when the loan matures. It should be noted here that as this procedure involves appropriation of profit each year and not mere charge thereon there will be a balance standing to the credit of the sinking fund, when the investments are cashed and the loan is paid therefrom. This balance should be transferred to General Reserve Account and the sinking fund account should be closed.

Another method as indicated above is to take out an endowment policy with an Insurance Company for the amount of the Debentures.

Section 105B now provides for the issue of redeemable preference shares where a company is authorised by its articles to do so. Where such shares are issued, it would, under sub-section (1c) of that section, be necessary to build a capital redemption reserve fund to which a portion of the profits available for dividend will have to be transferred until it is equal to the amount required to be redeemed, unless the preference shares are redeemed from the proceeds of a fresh issue.

Where the Preference Shares are redeemed, the Preference Capital account would be debited and a corresponding amount would be credited to cash, so that the Capital Redemption reserve that has been built up will take the place of the Preference Capital and will not be available for distribution to the shareholders at any time except that the amount may be applied in the payment of bonus shares to the existing members, which shares will then take the place of Preference Capital redeemed. If no such bonus shares are issued, the Redemption Reserve would for all purposes be regarded as Capital and the provisions of section 55 and the following sections regarding reduction of capital will apply to this Reserve, if it is ever sought to be distributed. Even when Preference Capital is redeemed by the sale of fixed assets, sec. 105B (c) lays down that a Redemption Reserve Fund will have to be built, as otherwise it would be a Reduction of capital.

Preference share redemption account

Where the redemption of the preference shares is made by a fresh issue of shares at par, the premium if any payable on redemption cannot be paid out of such fresh issue but must be paid out of the profits. Care should therefore be taken to see that the entire sum obtained by the issue of new shares for the purposes of redemption is utilized for the redemption of the old shares at par and if any premium is payable that amount should be debited to the profits of the company It may be pointed out however that even where a company has not issued its Preference Capital as Redeemable Preference Shares, it may at any time pay off such Preference Capital by way of Reduction of Capital under section 55 with the necessary court sanction.

The financial books or books of accounts are the real books for recording receipts and payments and transfer of money or money's worth.

Financial Books

It is impossible to draw out a common method of keeping accounts for different classes of business. A banker will not keep his books and accounts in the same way as a manufacturer; an insurance company will not follow the principles of book-keeping of a club, and thus no two businesses can keep books in exactly the same way. But the ultimate object of book-keeping in all business is the same, and that has been chalked out by sec. 131 and clause 103 of Table A.

Balance-Sheet

The accounts culminate in a Balance-Sheet drawn up from time to time which is designed to show the actual financial position of the company at the date, after taking into account all assets and liabilities, including the profit and loss since the last balance sheet was prepared. The general policy of the law is not to interfere with the internal management of the company, but to ensure the fullest possible information to the members of the company and to all persons interested with regard to the state of affairs of the company consistent with its trade interest. It, therefore, attaches, the greatest importance to the *preparation* of a balance-sheeet and its *proper publication*.

Balance-sheet—policy of the law.

Statutory requirements about balance-sheet.

Section 131 as amended by the Act of 1936 now provides that a balance-sheet shall be prepared (a) at some date not later than 18 months after the incorporation of the company, (b) subsequently once at least in every calendar year and (c) the balance-sheet must show the account in the case of the first account, since the date of incorporation of the company and in the case of subsequent accounts since the preceding account, made up to a date not more than 9 months prior to the date of meeting or 12 months prior to such meeting in the case of a company carrying on business or having interest outside British India. The Registrar has power for special reasons to extend the period not exceeding 3 months.

Sub-sec. 2 lays down that the balance-sheet shall be *audited* as provided in sec. 145 of the Act, and the *auditor's report* under that section shall also be annexed to it or incorporated in it by reference. Sub-sec. 3 requires a copy of the audited balance-sheet to be *sent to each member* of the company not less than *fourteen days* before the date of the general meeting before which the balance-sheet is laid, and a copy of the balace-sheet together with the profit and loss account, auditor's report and Directors' report is also required to be *kept in the registered office* fourteen days before the meeting where it will be *open to inspection* of members. Section 135 entitles every member to receive a copy of the balance-sheet and the auditor's report on payment of a fee, and sec. 146 gives to holders of preference shares and debenture holders or their trustees the same right to receive and inspect the balance sheet as the holders of ordinary shares.

Contents.

Sec. 132 lays down the essential *contents of the balance sheet* and provides that the balance sheet shall as nearly as possible be in Form F of the Third Schedule of the Act which gives details of the form and contents. (See Form F in App. A).

Sub-sec. (3) has been added to the section by the Amendment Act. It provides that the *Profit and Loss Account* that is to accompany a balance sheet shall show all particulars regarding payments made to managing agents or directors whether as fees or percentage for remuneration and also, if required by a special resolution of the company, particulars of all payments made to the manager, if any. The profit and loss account shall also show the total amount of depreciation written off for the year and where any director, by virtue of his office, is appointed a director in any other company, the details of all remuneration received by him from such company, shall also require to be shown in a footnote or in a statement to be attached to the Profit and Loss Account.

Sec. 132 A which was introduced by the Amendment Act of 1936 enjoins that a holding company must annex to its Balance Sheet, the last audited balance sheet, profit and loss account and auditor's report of its subsidiary company or companies together with a signed statement by directors and managing agents indicating how the profits and losses of its subsidiaries have been dealt with in the accounts of the holding compny and in particular showing how and to what extent

provisions have been made in the accounts for the losses of its subsi diaries. An investment company whose principal business is the acquisition and holding of shares will not however be deemed to be a holding company although more than fifty per cent share capital of any particular company is held by it by way of investment.

[See Sec. 132A of the Act.]

Under sec. 133 the balance sheet is required to be *signed by the Directors* (and in the case of bankiag company also by the manager) the minimum number so required to sign, varying according as the company is a banking company or otherwise, with a special provision in sub-sec. 2 for cases in which the requisite number of directors are not in British India. Failure to comply with the provisions of section 131 to 132A is punishable with fine extending to five hundred rupees.

Signature.

In the case of all companies *other than private companies*, after the balance sheet has been considered by the company at a general meeting a copy of it signed by the manager or secretary of the company is required by sec. 134 to be *filed with the Registrar* with a fee of Rs. 3/-(*vide* Schedule I, Table B in Appendix A). This must be accompanied by the annual *list of members* and a *summary of capital* as required by section 32. If the *general meeting does not adopt* the balance sheet the fact and reasons therefor have to be mentioned in a statement filed along with the balance sheet.

Filing with Registrar.

In addition, Banking and Insurance and such other companies are required to prepare half-yearly statements on the first Monday in February and the first Monday in August every year, in Form G of the Third Schedule in appendix A under sec. 136 and to display it together with a copy of the last audited balance sheet laid before the company, in every place of business.

Banking & Insurance Cos.

These are all the statutory provisions with regard to balance sheets. They are absolutely mandatory and the violation of each of these rules involves heavy penalties on the company and the Directors and officers involved. Subject to these rules the company may make such provisions as it thinks fit by its regulations with regard to its accounts and its balance sheets, (see Table A Arts. 103 to 110). Thus sometimes companies have balance sheets prepared once every six months, and a company may very well provide that the balance sheet must be circulated not less than 15 or 20 days before the meeting or that the balance sheet should show particular items in greater detail than is required by the Act or Form F. And companies have sometimes to make such special provisions having regard to the special character of the company's business and to its special needs.

Scope of regulations re. balance sheet

The contents of balance sheet are generally described in sec. 132 as "a summary of the property and assets and of the capital and liabi-

Character & cotents of balance sheet.

lities of the company in accordance with the requirements indicated by the items contained in the form marked F in the Third Schedule giving such particulars as will disclose the general nature of these liabilities and assets and how the value of the fixed assets have been arrived at". The contents are further illustrated in detail in Form F of Schedule III in Appendix A, which must be followed by every company as far as possible.

Form of balance sheet.

The exact form which the balance sheet will take will have to be determined in each case by the particular character of the business concerned. Balance-sheets are prepared from the books of the company by expert accountants and it is desirable to follow the instructions of qualified accountants, for the preparation of a balance sheet is a highly technical work Some general features of a balance sheet may however be briefly indicated here. The balance sheet shows in two separate columns the assets and the liabbilities of the company. The liabilities include the paid up portion of the share capital which is due by the company to the members on dissolution. It also includes all claims against the company due at the date and the present value of debts falling due on a future date and includes likewise, all sums which have to be paid during the year on account of depreciation of capital stock, provision for pension or provident fund, for bad and doubtful debts, reserve against future contingencies, the balance of the profit and loss account when there is a profit, and so forth Every business concern has to make provisions for such contingencies and funds are built up for the purpose by making annual contributions out of the gross profits. The assets side of the balance sheet shows the value of all property owned by the company distinguished under appropriate heads, all sums due to the company by other persons, (which should be distinguished under the heads of good, bad and doubtful debts, and debts due from Directors and other officers of the company have to be separately shown), cash and other balances and the balance of profit and loss account when there is a loss. The totals of the two columns must tally, discrepancy between them being evidence of error

The balance sheet thus shows the exact position of the company on the day to which the accounts have been balanced and indicates whether the company is really working at a profit or otherwise, after provision has been made for all present, future or contingent liabilities of the company.

Profit and Loss Account

Profit & Loss a/c

The Act as it stood before the amendment of 1936 did not provide for a profit and loss account to be made out, though articles 106 and 107 of Table A provided for such profit and loss account. The Act as now amended provides by section 131 that a profit and loss account has to be circulated among members after being audited by the auditor and also sent to the Registrar. Consequential amendments have also been made in sections 133, 134 and 135 by including the profit and loss account along with the balance-sheet in every place where a balance-sheet is referred to.

Profit and loss account should show such amounts as have actually been earned or spent away with no probability of refund in any case. The expenses such as establishment, stationery, postage, auditors' and directors' fees, interest paid, general charges, taxes, and depreciations on live and dead stock, machinery, building etc., should be shown on expenditure side of the profit and loss account. Earnings from trading account, interest, commission and such other items should be shown on the earning side of profit and loss account. The difference of the totals of the earning and expenditure should be the profit or loss, as the case may be, and should be transferred to the balance sheet.

Contents of Profit and Loss account

Section 131A in the amended Act now requires the balance-sheet and profit and loss account to be accompanied by a report of the directors with regard to the state of the company's affairs as well as the amount if any which they recommend should be paid by way of dividend and the amount which they propose to carry to reserve fund. This report which as a matter of practice used to be issued with the balance-sheet before is now made a statutory duty to the directors under a penalty for default.

Report of Directors.

Another important feature of the amendment of 1936 is the requirement by section 132A that where a company holds shares either directly or through a nominee in one or more subsidiary companies there shall be annexed to the balance-sheet of the company holding such shares, th e lats balance-sheet, profit and loss account and the auditor's report of the *subsidiary company* or companies. In addition to these the company is required to furnish a statement signed by the persons who sign the balance-sheet of the holding company showing how the profit and losses of the subsidiary company or companies have been dealt with or taken into account by the holding company.

Annexures to the Balance-sheet-

Further, Article 97 of Table A which is now made compulsory by section 17 provides that the profit and loss account shall, in addition to the requirements of section 132, show, arranged under convenient heads, the amount of gross income, distinguishing the several sources from which it is derived and the amount of gross expenditure distinguishing the expenses of the establishment, salaries and other like matters. Where any expenditure is incurred, which may in fairness be distri buted over several years a portion only of such expenditure may be charged against the income of the year but in doing so, the whole amount should be shown separately with a statement of the reason why the whole amount was not charged in that year, provided that under section 17, a company may dispense with this latter requirement of showing reasons, if so empowered by the shareholders at a general meeting.

Passing the Balance Sheet

The balance sheet is placed before the annual general meeting together with the report of the auditor thereon under sec. 145 and the

General meeting —function re balance sheet.

annual report of the Directors. The shareholders may pass such resolution as they like with reference to the matters contained in them and, provided that the resolutions are within their powers, they will be binding on the Directors. *They may adopt or reject the balance sheet,* and it is certainly within their competence to direct obviously erroneous entries in the balance sheet to be rectified. If they are not satisfied that the balance sheet represents the correct state of affairs they have the power by special resolution to *appoint inspectors* to report on the correctness or otherwise of the balance sheet (sec. 142). To this extent the share-holders cannot be regarded as absolutely bound by the balance sheet audited by the auditors and presented by the Directors.

Yet a very anomalous situation is created by sec. 134 of the Act. Under this section the balance sheet is apparently required to be laid before the shareholders for their adoption. But whether they adopt or reject it, the balance sheet as it is, has to be filed with the Registrar. If it has been rejected, the only thing required is that it shall be accompanied by a statement of the fact. and the reason therefore. There is no further provision, as to what is to follow and there is no power or obligation under law to prepare a fresh or corrected balance sheet.

Anomaly in the law.

The only thing possible is that the Registrar, on receiving the rejected balance sheet with a statement showing the reasons for rejection, may under sec. 137 call for further information or explanation from the company, in the light of the reasons assigned by the members for the rejection of the balance sheet and on receipt of such information annex it to the balance sheet. The effect of this is that the rejected balance sheet, together with such explanations will represent the balance sheet of the company without any means of rectifying it. This seems to be an unsatisfactory state of affairs and it would be desirable to have some provision in the law authorising the Registrar or the company to reject the balance sheet to be filed.

Incometax and balance sheet.

A copy of the balance sheet and profit and loss a/c. is required to be filed with the Income-Tax Officer of the District along with the Income-Tax Return, for the verification of the Return.

Filing with the Registrar.

Within twenty-one days from the date of the general meeting in which the balance sheet has been considered, a copy of such balance sheet along with the list of members and directors and a summary of the share capital as provided by sec. 32 should be sent to the Registrar, being duly certified by the Secretary. In case of any default, the defaulting officer (which includes a firm of Managing agents) (f) will incur a fine not exceeding Rs. 50/-per day [sec 32 sub-sec. (4) sec. 134 sub-sec. (4)]. It must be shown however that the officer was a party to the default.(g) A Director who has resigned within one year is not so liable.(h)

(f) *Tota Ram* v. *Emp* 35 I C. 482.
(g) *Rajkumar* v. *Registrar*, 38 I.C. 437
(h) *Chandrabhan* v. *Emperor*, 23 I.C. 748

Dividend

When a company makes a profit, the whole or part of it may be divided amongst shareholders as provided by the Articles. The amount of profit so payable to shareholders is called a Dividend in common parlance. But the term has a wider meaning and includes, for instance, the sums which are paid to shareholders or creditors on liquidation. It has been defined as the sum paid and received as the quotient forming the share of the divisible sum payable to recipient.(i)

Definition.

Dividend is the share of the profits which is paid to a shareholder. The power to pay dividend out of the profits is contemplated by the Act as implied in the very nature of a company formed for the purpose of carrying on business for gain. (j) It does not follow, however, that the shareholders are necessarily entitled to a distribution of the whole of the profits, unless the Memorandum or the Articles expressly provide that the company shall distribute all the profits.(k) The Articles generally provide that a dividend may be declared by the company or in some cases by the Directors. But even apart from any such provision it would seem that whether the whole or any part of the profits should be distributed as dividend is a matter of internal management of the company which lies in the discretion of shareholders and the Court would not interfere with their discretion.(l)

What may be paid as dividend.

Under the law *no dividend can be paid out of caaital* as payment of such dividend out of capital would amount to reduction of capital which cannot be done even if such payment is authorised by the Memorandum or the Articles.(m) Profits which have been kept in reserve and utilised as assets are not however capital for the purposes of this rule. "The law is that when capital has once been subscribed upon the shares of the Company, the Company must at all costs keep the capital as subscribed intact and not treat as available to pay a dividend anything except that which remains after the whole of the subscribed capital has been treated as replaced in full. Premium received on issue of shares is also on the same footing as profit and subject always to whether there may be *something in the articles of association that interferes with it*, there is nothing legally wrong in a company dividing among its shareholders a premium obtained on the issue of shares" (ml). The articles however may forbid the distribution of premium income or any other reserve as dividend. Directors, who are parties to payment of dividend out of capital are personally liable to make it good to the company,(n) and they may be liable to criminal prose-

No dividend out of capital.

(i) *Lamplough* v. *Kent Waterworks*, (1904), A C. 27.
(j) Palmer's Comp Law, 9th Ed . p 213.
(k) *Ecling* v *Israel*, (918) I Ch 101.
(l) *Burland* v *Earle*, (1902), A C. 95
(m) On the principle see *Trevor* v. *Whitworth*, which was a case of the company purchasing its own shares, 12 A C 409 — Art 97 of Table A which forbids payment of dividend out of capital is now a compulsory Article under sec. 17 of the Act.
(ml) *Drown* v. *Gaumont etc. Corporation* (1937) 2 A.E. R 609, 617 see *Hoare's* case (1904) 2 Ch. 208
(n) *Flitcroft's Case*, 21 C.D. 519.

cution for conspiracy if they pay fictitious dividends in order to raise the price of shares ; and where a dividend is declared to be paid out of capital, the Court will restrain the Directors by injunction from paying it, on the application of a shareholder.

The Act however makes provision for payment of interest out of capital in cases where a company has issued shares for the purpose of raising money to defray the expenses of the construction of any plant which in the nature of things cannot be made profitable for a lengthy period, and where such payment of interest is made, the company is entitled to treat this as capital expenditure and charge the same to capital as part of the cost of construction. Sec. 107 lays down however that such payment can only be made if authorised by the articles and, where thus authorised, when previous sanction of the Local Government has been obtained, provided that the rate of interest should in no case exceed four per cent. per annum and that such payments should not extend beyond the close of the half-year next after the half-year during which the construction has been actually completed. The payment of interest out of capital in above cases shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid and the balance sheet must specifically show all details of payments.

The law provides that dividends shall not be paid otherwise than out of profit (see Table A, Art 97).

What is profit

But what is profit ?

Normally, profit would mean *the surplus available on the basis of a proper balance sheet* in which all the capital and stock has been valued at their present actual value and every depreciation has been allowed for. Such a balance would be the *net balance on the capital and the revenue accounts*

Loss on revenue a/c and profit on capital a/c.

It may be, however, that there is no available balance on the capital and the revenue accounts taken together But either there is a loss on capital account, by depreciation, destruction or wastage, while there is a profit on the revenue account, or there is a profit on the capital account by appreciation accretion etc, while there is a loss on the revenue account

In the second of these cases unless the loss on the revenue account is exceeded by the gain on the capital account there is really no profit and no dividend can be paid in any case, even if the Articles authorise such payment, as the payment would then necessarily come out of capital

But supposing that the gain on the capital a/c wipes off the loss on the revenue a/c and leaves a surplus, the Articles may provide that such surplus will be divisible. If the Articles provide that "no dividend shall be paid except out of profits *of the business*" no dividend can be paid in these circumstances, as the accretion to the capital is not profit *of the business* Much depends in such a case on what the business of the company, as laid down in the Memorandum, is. Thus it is quite conceivable that the business of the company may include dealing in capital stock. For instance, for a company formed for building houses for sale at profit, the the appreciation of the value of the building would be regarded as profit of the business. But where the Articles provide generally that dividends

shall be paid out of profits, without indicating the source of such profits, the profit from accretion to the capital can be distributed in dividends.(o)

Profit on revenue and loss on capital a/c.

In the first case *i. e*, where there is a profit on revenue account but a loss or destruction on the capital account, the question as to whether the profit on revenue account could be distributed in dividends, without recouping the loss on the capital account presents some difficulty. About this it must be premised in the first place that unless the Articles authorise such payment, no dividend can be paid. When the Articles authorise such payment, the question arises whether the payment in such cases is in fact payment out of capital and therefore *ultra vires* as being in effect a reduction of capital by the amount so paid out.

The older English cases (p) on the subject clearly indicate that until the loss in capital is made good and there is a net profit on the entire balance sheet there is no profit and therefore, any dividend paid would be paid out of capital and therefore *ultra vires* unless authorised by the Court.

Later cases, however, beginning with *Lee* v. *Neuchatel* (q) lay down that under some circumstances such payment may be justified.

The principle of these cases is that there is no obligation in every case to apply the profits of revenue account, in the first instance to recoupment of losses in the capital A distinction may be made between "fixed" and "circulating" capital The stock in trade of a drapery business is circulating capital, or property which is acquired out of capital for resale at a profit When there is a loss on resale these, there can be no doubt that the loss should go into the profit and loss account, and therefore the loss in capital would in this case have to be paid out of the profits Even where such goods have not actually been sold but have only depreciated in value, the loss in, revaluation of the capital account ought also to be paid out of other profits of the current business (r). On the contrary, where the capital is "fixed" or in other words they are meant not to be sold but retained and employed for profit, any depreciation in its value need not be considered in the profit and loss account The company would be justified in this case in showing the capital at its original value irrespective of its actual market price Thus a tramway company lays its lines at a time when such work is very costly Subsequently the market in the goods and labour goes down so that the value of the line at the then market rate would be much less than what it actually cost. The depreciation need not be shown as a loss to be paid out of profit before any dividend can be declared (s) So also where a company is authorised by its Memorandum to lay out its capital in wasting property, such as a leasehold which becomes less valuable every year, or a mine whose value depreciates every year

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(o) *Lubbock* v. *British Bank*, (1892), 2 Ch. 198; *Fister* v. *New Trinidad Co.* (1901), 1 Ch 208.

(p) *Hebly's Case*, 2 Eq. *Stringer's Case*, 4 Ch. 475; *Ranee's Case*, L.R. 6 Ch. 104; *Ebbw Vale Co.*, 4 C.D. 827, *Davieson* v. *Gilbies*, 16 C.D.; 347; *Oxford Building Society*, 35 C D. 582.

(q) 41 C.D. L; also *Verner* v. *General Commercial Trust*, (1894), 2 Ch. 268; *Wilmer* v *Macnamara*, (1895), 2 Ch 245; *Bosanquet* v. *St. John*. 77 L.J. 207; *National Bank of Wales*, (1899), 2 Ch 629.

(r) Palmer, Company Precedents Part 1, p. 806.

(s) *Verner* v. *General Trust*, (1894), 2 Ch. 268.

it is worked, it would be unreasonable to insist that the entire amount of the loss of capital must be recouped before any profit can be divided (t).

Principles established

Lee v. *Neuchatel*, *Verner* v. *General Trusts* and similar cases therefore lay down (i) that the capital account and revenue account may be treated as entirely separate and *loss on capital account need not be made good before a dividend is declared*, (*ii*) *thatt he capital account* should primarily *show how the capital has been spent and not what is the present value* of the assets which represent the capital on the date and (*iii*) that if the object of the company is to invest its capital in wasting property *even depreciation by waste need not necessarily be a revenue charge* and the regulations may provide that it need not be made good by the revenue profits.(u)

In *Dovey* v *Cory* (v) the question came up before the House of Lords. The decision of their lordships went on another question and this point was deliberately kept open

Should dividend be paid without recouping loss of capital.

The position therefore is not altogether free from doubt and while Palmer (w) is decidedly of opinion that *Lee* v. *Neuchatel* has laid down unsound law, Lord Wrenbury is of a decidedly contrary opinion.(x) Whatever the legal position, it may be safely laid down that *as a business proposition it is unsound as a rule to pay dividend out of revenue profits while there is a deficit in the capital account*, which has not been made good. Where depreciation in value of the fixed capital is temporary, it may be ignored in the expectation of a subsequent rise in values. Where such depreciation is considerable and cannot be considered temporary, the company may reduce its capital under sec. 55 and if the reduction is sanctioned it may then go on paying dividends out of revenue profits without the slightest difficulty. And at any rate until *Lee* v. *Neuchatel* is over-ruled, where the loss in capital is considerable, the company may be justified in spreading the *recoupment of the loss over a number of years* making it good by adequate annual contributions out of revenue profits and distribute the balance as dividend.

Where the Memorandum does not authorise investment in wasting property, suitable deductions must always be made from the gross revenue profit for reserve against capital lost by wastage before any real revenue profit is available.

Where a company declares a dividend without proper authority or is paying it out of capital *it can be restrained by injunction* at the

(t) *Lee* v. *Neuchatel* supra See however per Farwell J. in *Bond* v. *Barrow Steel Co*, (1902) 1 Ch 353, where with reference to the above case he observed, "The company's assets were larger than at its formation and the Court decided nothing more than the particular proposition that some companies with wasting assets need have no depreciation fund" *e.g.*, when inspite of depreciation the net value of the assets exceed the nominal capttal.

(u) For a full summary of points decided in these cases, see Palmer Company Law, 9th Ed., p 126 ; and a clear exposition from the opposite point of view, of these principles will be found in Buckley's Companies Act (11th Ed) p. 759 *et seq*

(v) (1901), A C. 25

(w) Palmer's Company Law, 9th Ed., p. 218 *et seq.*

(x) Buckley's Companies Act, 11th Ed., p. 759 *et seq.*

Injunction against payment out of capital

instance of any shareholder. But no mere creditor of the company unless he has a charge upon the capital can app'y for such injunction.(y) But a *shareholder who has, with full knowledge of fac s, received such dividend cannot at the same time sue* the Directors to compel them to replace the amount of dividend thus paid.(z)

Declaration of dividend.

As already stated, a right to dividend does not arise merely upon the accrual of a profit, excep: in the very exceptional case where the Articles declare that all the profits shall be divided among the shareholders. Generally speakingt he *Articles reserve a power in the company to declare a dividend and the right to a dividend does not arise until a dividend has been declared under the Articles.*

The Articles *must now* vest the power of declaring dividend in the *shareholders* at a general meeting (Table A, Art. 95, see sec. 17). The procedure in such a case is that the Directors in their report make re commendations regarding the disposal of the profits and a resolution is then passed in the general meeting declaring a dividend. Similarly the articles *must* provide (as in Table A, Art. 95) that *no dividend shall be declared in excess of the amount recommended by the Directors.* This is a wholesome rule. For it would be sound business to provide adequate reserves out of the profits of any year against prospective losses and unforeseen contingencies. The Directors in their recommendation apportion the profits between reserve and dividend with due regard to the requirements of the company and they are the best qualified to make the apportionment by reason for their knowledge of the condition of the business This limitation upon the powers of General Meeting is clearly limited to the total amount and not to the rates of dividend. Thus suppose the Directors recommended payment of 6%on one class of shares and 7% on another class making a total of Rs. 10,000, it is submitted that it would be open to the company unless otherwise barred by the articles to declare 6½%dividend on all shares if the total does not exceed Rs. 10,000.

The rate of dividend per share

The Articles generally specify the principles of distribution of the dividend among shareholders (see Table A, Art. 98). In the absence of any such article the dividend will be distributed *in proportion to the nominal value* of the shares of each sharedolder, for members are *prima facie* entitled to share in the profits in proportion to their interest therein. (a) But the rule in Table A and similar articles by which dividends are payable in proportion to the amounts paid on the shares is based on a more equitable principle, in as much as different shareholders may be not have paid the same amount per share and it stands to reason that the man who has paid more should get a larger dividend. Or it may provided, as Palmer recommends, that the profits shall be applied, in the first instance in paying dividend at a certain rate on the amount of

(y) *Mills* v. *Northern Ry* 5 Ch 621.
(z) *Towers* v. *African Tug Co.*, (1904), 1 Ch. 558.
(a) Palmer's Com. Law, 9th Ed p. 214

the paid up capital and that the surplus will be distributed in proportion to the nominal value of the shares.(b)

Articles should be strictly followed.

In every case care should be taken to see that the *provisions of the Articles as to the proportions in which dividends are payable are strictly followed.* The shareholders have no right to declare dividend to be distributed in any other way. Nor can they deprive any shareholder of the dividend unless the Articles authorise them to do so. Thus the Articles sometimes provide that no dividend shall be payable to any member who has not paid all calls. Unless the Articles so provide, a member in arrear cannot be kept out of sharing in the dividend, until the Directors declare his share forfeited.

Rights of preference shareholders

Care should also be taken to see that the resolution declaring the dividend does *not infringe the rights of preference shareholders* and other special classes of shareholders. They are entitled under their contract to receive a certain amount of dividend, generally a fixed amount per annum. Until this dividend is provided for, no dividend can be declared on ordinary shares.

The rights of preference shareholders are determined by the Memorandum or Articles of Association and they form the basis of a contract between them and the Company. Where they are entitled to a fixed rate of dividend the whole of the amount so payable must first be paid and only the surplus divided among other classes of shareholders. Their right to dividend may be cumulative, (c) in which case they are entitled to be paid not only their dividend for the year but also the deficits in the contracted dividend of previous years before anything is paid to ordinary shareholders. Where dividend is not cumulative, the preference shareholders are entitled to get only so much each year, upto the contracted rate, as is available out of the *profits of the year* and no deficits can be carried over as claims upon profits of subsequent years. (d)

The question whether Preference Dividend is payable without any deduction for income-tax or otherwise, should be explicitly determined in the Articles of Association In the absence of any clause to the effect, it would appear that the Preference Dividend is not free of tax and that the Company would be justified in deducting income tax borne by the company in respect of the amount of such Preference dividend. It generally happens that the Preference Dividend is declared "free of income tax" at the ordinary general meeting which declares the dividend and although there may be no provision in the Articles, the fact that the Ordinary Shareholders decide to pay Preference Dividend tax-free, entitles the Preference Shareholder to claim refund of tax in accordance with the Income-tax Act. See *infra* Chapter on Income Tax.

Sometimes preference shareholders have the right to participate with ordinary shareholders in surplus profits that remain after paying the ordinary and other shareholders upto a minimum rate.

(b) *Ibid.*
(c) See supra p. 79
(d) *Ibid.*

Where shares are issued with other special terms, they should be strictly followed in the distribution of the dividend, as the terms on which special classes of shares are issued are parts of the contract between such shareholders and the company and any violation of them will be a breach of contract and will entitle such shareholders to apply for an injuction, damages or other relief against the company.

Guaranteed dividend

Sometimes *dividends are guaranteed* by persons other than the company. The most familiar cases of guaranteed dividends in this country are those of Government and District Board guarantees to Railway companies, which are governed by the Indian Railways Act. But a vendor of a business of a company may guarantee the payment of a certain minimum dividend—say 4 per cent.—as an earnest of the vendor's confidence in the business. Such a guarantee does not affect the rules of the company in respect of declaration of dividend and does not entitle a company to declare any dividend except out of profits. Only, if the dividend earned is less than the guaranteed amount, the guarantor has to make good the deficit to the members. In such a case the members may in effect get a dividend though there has been an actual loss in the business. But this is not open to any objection as the dividend is not paid out of capital but is contributed by the guarantor.

A guarantee of this character raises subtle questions as to whether it is available if the company has stopped its business. As to this see Buckley *op cit* p. 668 *et seq.* Such a guarantee can be released by the company, though such release might adversely affect the shareholders.(e)

Form of resolution.

The resolution passing the payment of dividend may be recorded in any of the following forms according to circumstances.

"That a dividend at the rate of . . . % per annum, for the year ending on . . . . . be declared on the issued shares, and that such dividend be made payable on and after the

or

"That a dividend at the rate of . . . % per annum, less the amount of interim dividend paid on last be declared"

or

"That a dividend at per share, be declared"

or

"That a dividend at the rate of on the paid up capital be declared"

or

"That a dividend at the rate of be declared on the preference shares"

Capitalisation of dividend.

The dividend is ordinarily payable in cash and is not satisfied by any other equivalent payment such as the issue of debentures bearing interest (f) unless so authorised by the Articles Where the Articles allow the profits to be paid otherwise tean in cash it can be done. A common mode is the capitalisation of profits by the issue of

(e) *Sheffield Nickel Co* v. *Unwin*, 2 Q.B D 214.

(f) *Wood* v. *Odessa Waterworks*, 42 C D. 636.

paid up shares in lieu of dividend(g). But to ensure the validity of such capitalisation it is necessary in the first place to declare the dividend and then to transfer the amount payable as dividend to the shareholder to the capital account as money paid to the credit of the shareholder in respect of the new shares Otherwise a difficulty might arise, in as much as the shareholder is not entitled to the profits before a dividend is declared, and the issue of paid up shares without a declaration of dividend might be challenged as being without consideration and therefore, *ultra vires*.

Questions of some nicety may arise as to whether the capitalised dividend is to be regarded as capital—and therefore an accession to the original share, or as income, where the shares are held by a limited owner who is entitled only to the income and not the corpus of the property For a full discussion of this see Buckley Companies Act, 10th Ed, p. 658 *seq.*

Dividend Register.

When the dividend has been declared a book called the 'Dividend Register' should be opened to record the details of payment. The form as given in Form No. 48 in Appendix B may be adopted for a Dividend Register. The Dividend Register is not a statutory book but is convenient for keeping a proper record. It may be kept in the form mentioned or any other convenient form.

Dividend Warrant.

Any instruction as regards payment of any dividend should be noted on the margin against the name of the shareholder in the Dividend Register. The dividends of a company are generally paid through dividend Warrants.

Dividend warrants are issued in the form of a Pay Order on the Bankers of the Company. The Form generally adopted is as follows --

To . Co , Ltd.
. . BANK LIMITED.

Pay to.. .... or order
the sum of Rupees . ...only
and debit . ... Dividend Account

Managing Agents or Secretary or
Director as the case may be.

Attached to this dividend warrant is issued a certificate (see *infra*, Chapter on Income Tax) detailing the particulars in respect of which the warrant is issued and also certifying that Income Tax "has been or will be" paid on the profits of the company out of which the dividend is paid

But the method of paying dividend through Dividend Warrant is sometimes found inconvenient for shareholders in the mofussil where Bank facilities do not exist. To meet this difficulty some of the Indian companies have lately adopted the system of remitting the amount due for dividend by Postal Money Order,

(g) *Commissioners of I.R.* v. *Blott*, (1920), 2 K.B. 65 . (1921), 2 A.C. 171,

after deducting the M.O. commission. This system is most advantageous for mofussil customers. When the system of paying dividend by Postal Money Order is to be adopted, a separate certificate from the Company stating that the Income Tax on such amount of dividend "has been or will be" paid by the company, should be given to the recipient of such dividend to avoid penalty under provision of section 51 of the Indian Income Tax Act of 1922 and to help such shareholder in claiming relief against payment of further Income Tax on the amount of the dividend. (See *infra*, Chapter on Income Tax)

The amount due to a shareholder for dividend is a debt to him and he may sue to recover such amount after it has been declared.

Limitation

The amount becomes barred according to the Limitation Act after six years from the date on which it becomes due under Art. 116 (ti) and sometimes the Articles of Association also provide that the amount due as dividend shall be forfeited after the lapse of a specified period—say three years.

The company is not a trustee for the shareholder in respect of dividend not drawn, so the debt becomes barred by lapse of time under the Limitation Act.

The amount due as dividend does not carry any interest either against the company or against the Directors, and the Articles generally say so expressly.

Investigation by Registrar and by Central Government

There are provisions throughout the Act, for the filing of various documents, returns and Balance-Sheets with the Registrar and section 137 provides that if on the perusal of any such document, the registrar is of opinion that further information or explanation is necessary or when representation is made to the Registrar by any contributory or creditor by placing materials before him that the business of the company is carried on for a fraudulent purpose or in fraud of its creditors or clients, he may, in the former case, call on the company by a written order to furnish the information or explanation within a specified time and in the latter, ask for similar information, after giving the company an opportunity of being heard. Refusal to comply with this requirement of the Registrar is punishable with a fine of Rs. 50/- and the court may further compel the Company to produce the information asked for by the Registrar.

If the Registrar is of the opinion that the information given or the explanation offered discloses an unsatisfactory state of affairs or does not disclose all relevant facts, he shall report the circumstances of the case to the Central Government. On receipt of the report of the Registrar, the Central Government may appoint one or more inspectors, with power to inspect all books and documents of the Company and to examine on oath any person connected with the business of the Company, to investigate the affairs of the Company and to report to the Central Government. The Central Government may thereafter institute proceedings against any person suspected of a criminal offence in relation to the company and any director or other officer convicted on the prosecution shall be debarred from

(ti) *Ripon Press & Co.* v. *Nama Venkatarama* 42 Mad. 33 ; 48 I.C. 903.

taking any part in the management of any company for a period of five years, without the leave of the Court.

The appointment of Inspectors may also be made by the Central Government on the application of (a) members holding not less than one tenth of the shares issued, or (b) one-tenth of the share capital in the case of a banking company and (c) in the case of a company not having a share capital, one-fifth of the total members on the Register, provided that such application is supported by evidence to the satisfaction of the Central Government that the applicants are not actuated by malicious motives. The Central Government may further require the applicants to give Security for payment of the costs of the enquiry.

Again, under section 166, the Registrar is empowered to present a petition to the Court for the compulsory winding up of a company if it appears to him from the balance sheet filed by the company or from the report of an inspector appointed by the Central Government under section 138, that it is unable to pay its debts, provided he has obtained previous sanction of the Central Government to present such petition. The permission will not however be given by the Central Government without affording an opportunity to the company of being heard.

CHAPTER XV.

AUDITOR

Qualification of auditor.

While audit has always been regarded as an essential function in a company, sec. 141 of the Company's Act of 1913 for the first time laid down restrictions about the qualifications of Auditors.

Section 144, which deals with the appointment of auditors, has recently been amended and materially altered. Before the passing of Act No. XIX of 1930, section 144 required an auditor of a public company to hold a certificate from the Local Government and it also gave the Governor General in Council power to declare members of any institution or association as competent to Act as Auditors. Under this power, the Governor General in Council had authorised members of certain bodies to act as auditors e.g., (*a*) The Institute of Chartered Accountants of England and Wales, (*b*) The Society of Incorporated Accountants and Auditors, (*c*) The Society of Accountants in Edinburgh; (*d*) The Institute of Accountants and Actuaries in Glasgow (*e*) The Society of Accountants in Aberdeen, (*f*) The Institute of Chartered Accountants of Ireland. The section as it stands now transfers the powers of granting certificates from the Local Governments to the Central Government and no person can act as an auditor of public companies unless he has been granted a certificate by the Central Government. All certificates granted by the Local Governments and all declarations made by the Governor-General in Council prior to the amending Act are to be deemed as cancelled on the expiry of one year from the comcement of the Act. The Central Government

reserves the power to make rules providing for the grant of certificate and prescribing conditions and restrictions therefor.

Sub-section (2A) of section 144 provides that such rules may in particular (*a*) provide for the maintenance of a Register of Accountants entitled to apply for certificates, (*b*) prescribe the qualifications for enrolment on the Register and the circumstances for removal of names, (*c*) provide for the examination of candidates for enrolment, (*d*) provide for the establishment of an Indian Accountancy Board, to assist the Central Government in maintaining the standards of qualification and conduct of persons enrolled on the Register and (*e*) for the establishment of local Accountancy Boards at different centres.

After prescribing the necessary qualification for an auditor of public companies i.e., a grant of certificate as detailed above, which entitles the auditor to act as such throughout British India, the section lays down, (*vide* sub-section 5) that the following persons cannot be appointed auditors of a company :—(i) a director or officer of the company, (ii) a partner of such director or officer, (iii) in the case of a company other than a private company not being the subsidiary company of a public company any person in the employment of such director or officer, (iv) any person indebted to the company. And under the amended section 144 sub-section (5) it has been further provided that if any person after being appointed auditor becomes indebted to the company his appointment would *ipso facto* terminate.

First auditors

The first Auditors of the company may be appointed *by the Directors before the statutory meeting*, and, if so appointed they shall hold office *until the first annual general meeting*, unless previously removed by a resolution of the members of the company in general meeting in which case such members at that meeting may appoint Auditors. [Sec. 144 sub-sec. (7)].

Subsequent auditors—appointment

Subsequent Auditors are required to be appointed at *each annual general meeting, to hold office till the next annual general meeting* (sub-sec. 3). If it is contemplated to appoint a new Auditor in the place of the retiring Auditor, the procedure with regard to notices must be followed.

If no Auditor has been appointed at the annual general meeting, it would seem that the company *cannot appoint an Auditor at any subsequent meeting*. In such a contingency, the only procedure provided is to be found in sub-sec. 4, which authorises *the Central Government to appoint an Auditor* and fix his remuneration on the application of any member of the company.

Casual vacancy

But if an Auditor has been appointed at the annual general meeting and a *casual vacancy* arises thereafter, the *Directors* may fill the vacancy under sub-sec. 8.

Remuneration.

The remuneration of Auditors is fixed (i) in the case of Auditors appointed before the statutory meeting, *by the Directors* and, (ii) in any other case, except where an Auditor is appointed by the Government, *by the company*.

The Auditor is *not an officer of the company* (sec. 2 sub-sec. 11)

save in respect of sections 235, 236, and 237 of the Act under which he is liable to be proceeded against for misfeasance. He is rather a controlling authority appointed by the share-holders to check the work of the Directors so far as it concerns accounts and books of the company and transactions recorded therein. But auditors are servants of the company and the Court will not by a mandatory order compel the company to appoint an auditor against the will of its share-holders. (h)

Funct ion of audit or.

Under sec. 145, sub-sec. 1 every Auditor of the company has a *right of access at all times to the books and accounts, and vouchers* of the company, and shall be entitled to *require such information and explanations* as may be necessary for the performance of his duties, and under sub-sec. 2 of the said section 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 laid* before the company in general meeting during his tenure of office. In the report he shall state whether or not he has *obtained all the information and explanations* he has required, and whether in his opinion the *balance sheet and the profit and loss account have been drawn up in conformity with the law*, whether such *balance sheet exhibits a true and correct view of the state of the company's affairs* according to the best of his information and explanations given to him and as shown by the books of the company and whether in his opinion books of account have been kept by the company as required by section 130. The words "as shown by the books of the company" following upon the words "according to the best of his information and explanations given to him" do not impliedly exempt an Auditor from travelling outside the books. But an Auditor is bound by fair and reasonable examination of vouchers to see that there are not amongst the payments any acts which are unauthorised or contrary to the duty of the sanctioning authority or in any other way illegal.(i) And if as a reasonably prudent man he ought to conclude on his investigation that something is wrong it is his duty to call his employers' (share-holders') attention to the fact. Lindley L.J. said that "the auditor must take reasonable care to ascertain that the books themselves show the company's true position." (j)

Sub-section (4) of section 145 entitles the auditor to attend any general meeting of the company and to make any statement or explanation that he thinks fit, and sub-section (5) now imposes a penalty of a fine on an auditor who wilfully acts contrary to the section.

Articles on auditor.

The Articles of Association of a company generally provide for the appointment of an Auditor and a periodical audit of the accounts in terms identical with the provisions of the statute. The name of the Auditor must appear in a Prospectus [see cl. (m) of sub-sec, 1 of sec. 93,] if the Auditor has been appointed before the issue of such

Prospectus.

Prospectus.

(h) *Cuff v. London & Country Land Co.* (1912) 1 Ch. 440.
(i) *London & General Bank*, (1895) 2 Ch. 673, *Leeds Co. v. shepherd*, 36 C.D. 787; *Kingston Cotton Mills Co.* (1896); 1 Ch. 331; 2 Ch. 279.
(j) *Kingston Cotton Mills Co.* (1896). 2 Ch. 279.

An Auditor who accepts office is bound to conform to the terms of the Articles of Association. "Auditors," said Lindley L. J., "are in my opinion bound to see what exceptional duties, if any, are cast upon them by the Articles of the company whose accounts they are called upon to audit. *Ignorance of the Articles or of exceptional duties enforced by them would not afford any legal jurisdiction for not observing them.*" (k) So an auditor should take care to scrutinise the Articles and Memorandum of Association and the Prospectus of the company.

Duty to know articles.

The scope of the duties of an Auditor is determined by his obligation to give a report on the financial position of the company at the date of the report. Whatever enquiry it is necessary for him to make for the purpose having regard to the ordinary course of business of auditors, he is bound to make, and failure on his part to make such enquiries as an expert in his position would ordinarily consider it reasonable to make, would be a breach of duty. How far this liability goes would have to be determined more or less with reference to the particular facts and circumstances of each case.

Scope of duties

The question as to how far an Auditor is bound to verify valuation of assets of the company has been subject to some discussion. The law on this subject has been laid down in two cases, *London and General Bank* (No. 2) (l) and *Kingston Cotton Mill Co.* (No. 2) (m) The net effect of these decisions is practically to lay down that the Auditor has to exercise ordinary prudence and that while there is no absolute duty on him to check every valuation of assets, he is bound to satisfy himself that the valuation is accurate, when he finds any reason for suspecting inaccuracy. Between these limits he is bound to exercise reasonable care and skill and, wherever, in his opinion, assets are over-valued it is his duty to say so in his report.

Valuation of assets

There is not the same obligation in the case of undervaluation. The Directors are at liberty, in their discretion, to undervalue their assets as a measure of caution against future fluctuations in value.

But an Auditor is not expected to give advice either to Directors or shareholders as to what they ought to do or as to the propriety or impropriety of making loans with or without security or whether the business of the company is being conducted prudently or imprudently, profitably or unprofitably. It is not his business to determine whether the dividends are properly or improperly declared, commercially speaking, provided he has discharged his duties to the shareholders. His business is only to state the true financial position of the company at the time of audit.

Not duty to give advice

The principle of the Indian Companies Act is that affairs of the company should be managed by the shareholders themselves and no outsider should interfere with their action unless prayed for in emer-

(k) *Kingston Cotton Mills Co.* supra *Republic of Bolivia Synd.* (1914), 1 Ch. 139.
(l) (1895) 2 Ch. 673.
(m) (1896) 2 Ch. 279.

gent cases. Accordingly the Auditor being an outsider, in his official function should not interfere with the company if the accounts and the balance sheet exhibit the true affairs of the company. However, the Auditor is frequently consulted as regards accounts and books and the method of recording transactions whenever the authorities of the company feel any difficulty ; and the Auditor, though not bound to do so, usually imparts instructions in those matters as an expert.

Report of auditor.

On every balance sheet the Auditor is required to make a report to the shareholders about the financial state of the company. His report may be conditional *i. e.*, subject to some remarks or unconditional. The unconditional report is generally made in the following words :—

'I have examined the books and accounts of the company and statements received from the agencies), and the above balance sheet is in my opinion a full and fair balance sheet containing the particulars required by the regulations of the company, and is properly drawn up in conformity with the Act "

Character of the report.

The report of the Auditor must be full and clear statement of his views with regard to the financial position of the Company He must give information to the shareholders It is not sufficient that he says just enough to arouse enquiry He must convey the necessary information about the relevant facts in clear and express terms (n) Where the information might jeopardise the trade interests of the company, the Auditor may be make a confidential report to the shareholders which will not be circulated, but to the existence of which the attention of shareholders must be drawn in the published report and which must be accessible to them.

While it is the duty of the Auditor to make a reasonably complete enquiry into the affairs of the company and, in his report, to give a fair and truthful estimate of the financial position of the company, it is equally his duty not to divulge secrets which might affect the trade interests of the company It is a very delicate duty which the Auditor has to perform. He is, in the words of Lopes L J., the watch-dog but not a blood hound of the company. His duty is to guard the financial interests of the company by reporting relavnt facts to the shareholders. But he is not bound to follow every little item in the accounts with suspicion, and, while in the interests of the shareholders he must disclose material facts, he must not do it in such a manner as to bring down the business of the company. He must keep secrets except where secrecy is detrimental to the interests of the shareholders

Secret reserves.

A notable case which has been discussed by Palmer is that of secret reserves. Banks and financial companies often keep secret reserves out of undivided profits which are not shown in the balance sheet, in order to provide against extraordinary situations Where the Articles give the Directors the power to create such secret reserves, there is no doubt that the Directors have the power to keep such a reserve without showing it in the balance sheet. And if the secret is kept from the Auditor also, there is no difficulty in his giving the necessary certificate on the balance sheet. But the question is whether the Auditor who knows about the secret reserve, can certify

(n) *London and General Bank*. (No 2), supra.

that "the balance sheet is properly drawn so as to exhibit a true and correct view of the company's affairs," as he is required to do by law. It is clear that strictly speaking the Auditor cannot do so. The question has not yet been actually decided It has been held, however, that there is nothing illegal in the Directors making a low valuation of assets in order to create a reserve for future contingencies (o) and thus indirectly creating a secret reserve.

Auditor's liability

Breach of duty by an Auditor may maee him liable to damages in a civil action or to criminal prosecution according to the nature of the case. He is also liable to fine under section 145 (5) for wilfully acting contrary to that section.

Criminal

In addition to *penalties for offences provided by the ordinary criminal law* of which an Auditor may be guilty in the course of his duty, the Companies Act imposes some *special liabilities*. Under section 282 if an Auditor " *wilfully* makes a statment, *false in any material particular, knowing it to be false*" in any return, report, certificate or balance-sheet or other document required by, or for the purposes of any of the provisions of the Act, he is punishable with imprisonment upto three years and also to a fine. Sec. 236 provides a penalty upto seven years imprisonment and fine to any officer (including an Auditor, *vide* sec. 2 sub-sec. 11) of any *company under liquidation* who *destroys, mutilates, alters* or *falsifies* or *fraudulently secretes* any books, papers or securities or makes or is privy to the making of any *false entry* in any register, book of account or document belonging to the company with *intent of defraud or deceive* any person.

Even apart from liquidation the Auditor may become liable criminally for *conspiracy* with Directors for committing any offence, or for *aiding and abetting* offence by Directors punishable under the Indian Penal Code. In winding up by the Court or under supervision by the Court the prosecution may be made by the official liquidator under orders of the Court at the expense of the company under liquidation under sec. 237 of the Act.

Civil.

The *civil liability* of the auditors arises wherever the auditor has committed *a breach of his legal duties* or done any act which is a *wrong under the general law* where, by reason of the wrongful act or breach of duty, any person has *suffered loss or damage*. Where by reason of the breach of duty of the auditor, the company has suffered loss as, for instance, by paying dividend *out of capital*, the auditor may be sued *by the company* (p)

Any *person who has been misled by a false balance-sheet* which has been certified by an auditor in breach of his duty may also sue the auditor. The auditor is liable in every case to the person or persons damnified by acts which are either wrongful or negligent where the loss complained of is a natural or probable consqeuence of the act or omission of the auditor.

A breach of duty on the part of the auditor may be a *misfeasance*

(o) *Young v Brownlee & Co*, (1911). S.C. 677.
(p) *Leeds Estate v. Shepherd*, 36 Ch. D. 787.

on his part for which he may under sec, 235 be made liable to pay compensation to a company being wound up. (q) For the purposes of this section an auditor is an "officer" of the company [sec. 2 sub-sec. (11)]. The English Act does not define 'officer' and there it has been held that an auditor who is called in to do a particular piece of business is not an 'officer' of the company and therefore not liable under this section. (r) Having regard to sec. 2 sub-sec, 11 which clearly indicates that "an auditor' is an "officer" within the meaning of this section it would appear that the exception made by the English case would not apply in India.

Misfeasance proceedings.

Under the section the auditor would be liable only if misfeasance is made out. *An innocent mistake*, without any breach of duty *would not be a misfeasance.* Nor would any relief be available under this section if remedy by suit against the misfeasance complained of has already been *barred by limitation* [sec. 235 sub-sec. (3)].

CHAPTER XVI.

BORROWING POWERS—DEBENTURES

In modern trade, no business can be carried on without credit. The organisation of credit in modern times has made possible for trading concerns to multiply their resources and increase their business beyond the limits set by their own capital. The organisation that is behind credit is such that it enables persons to carry on business of any considerable magnitude without invested capital.

Forms of credit

The primary form in which money can be borrowed by a trading company, in common with all other people, is by taking the money in exchange for a promise to pay, supported perhaps by some pledge or other form of security. This form of credit creates a personal obligation between the debtor and the creditor by reason of which the latter can sue the former for the debt. In this form the scope of credit is very restricted. A greater elasticity was given to credit when the right of the creditor, originally purely personal to himself, came to be recognised as transferable, so that the transferee became entitled to sue the debtor in the same way as the creditor.

Transfers became facilitated when mere parol promises or bonds were replaced by *negotiable instruments.* As a result of a long history, certain documents, by which a debtor promises to pay to the creditor, have become negotiable or transferable from person to person by mere delivery of possession or by indorsement Such instruments are promissory notes, Bills of Exchange and other instruments negotiable by usage or custom (see sec. 13 and the saving clause in sec. 1 of the Negotiable Instruments Act).

Negotiable Instruments.

(q) *London & General Bank*, supra ; *Kingston Cotton Mill*, supra.

(r) *Western Countries Steam Co*, (1897). 1 Ch. 617, 620.

These instruments make it possible for a trader to tap a wider range of persons than would be possible otherwise, for negotiable instruments pass from hand to hand and are discounted by banks. In this way a good deal more of the resources of the money market is placed at the disposal of a debtor than could be obtained from a non-transferable credit from an individual party. Still negotiable instruments are primarily transactions between the debtor and an individual creditor and involves a personal contract of the two parties. A much wider range of credit is assured by the issue of *debentures*, a form of credit which is becoming exceedingly popular in commercial circles to-day.

Debentures.

Debentures are *issued to the public* and are open to subscription by the public. They are negotiated in the Stock Exchange like shares. They involve *no personal contact* between the debtor and the creditor and they enable the debtor to tap the resources of a large and undefined body of creditors instead of having to rely on the available resources of a limited number of persons. It practically enables the company to have most of the advantages of share capital, with this difference that the share capital is a permanent liability, while a debenture may be, and usually is, temporary and that while the dividend payable to shareholders is undefined and embraces the entire divisible profits, the debenture holders are only entitled to a determinate rate of interest. Besides, the debenture holder has not any of the rights of the shareholder and on winding up, ranks as creditor while a shareholder is a contributory.

Power to issue debentures

A company has no powers beyond what are given to it by its Memorandum of Association either expressly or by necessary implication. A corporation therefore has *no power to borrow unless the power has been so given.* (s)

Presumed in trading companies.

But a *trading company is prima facie authorised* to borrow, by its very character, and it has been laid down in several cases that *a trading company has implied power to borrow* unless expressly prohibited by the Memorandum. (t)

Limit of power to borrow or of giving security

The extent of the powers is determined by the Memorandum. A power to borrow does not necessarily imply a power to borrow without limit or in any of the various forms mentioned above. But *a power to borrow, express or implied, implies a power to issue debentures and to secure the debt* by mortgage or charge over the assets. (u) But the question as to whether a power may be implied or whether such power is contrary to any clause in the Memorandum may often arise and it is always advisable to have *an express clause* in the Memorandum giving definite powers to borrow. For form see Form

(s) The *dicta in Patent File Co.*, 6 Ch 83 to the contrary, are not good law. See *Ashbury v Riche*, L.R 7 H L 653 ; *Reg v Reed* 5 QB.D 483.

(t) Per Cotton L J. in *Reg. v. Reed*, supra, *Re, Badger*, (1905), 1 Ch 568 : Buckley on Companies Act, 10th Ed. at p. 225, *General Auction Co. v. Smith*, (1891), 3 Ch. 432.

(u) Palmer Company Precedent, III p 46 ; *Australian & Co v Mounsey*, 4 K. & J. 733 ; *Bryn v Metropolitan* 3 De G. & J. 123 ; *General Auction Co.*, (1891), 3 Ch. 432, *Patent File Co.* supra.

No. 3 in Appendix B, cl. 3 (g)]. Where no power is given in the Memorandum, or where the power is unduly restricted, the company can apply to alter the Memorandum under sec. 12 of the Act. (v)

Power how exercised.

The mode of exercising the borrowing powers is regulated, subject to the provisions of the Memorandum, by the Articles of Association. Where the Articles of Association, like Table A make no provisions with regard to borrowing powers, but have clause like cl. 71 of Table A, conferring general powers on them, Directors have unrestricted powers in respect of borrowing subject only to such limitations as may be imposed by the Memorandum of Association. (w)

It is not desirable, however, to vest such extensive powers in the Directors and most Articles of Association place some *restrictions on the exercise of these powers*. What the exact limitations should be must be determined in every case by the shareholders with reference to the particular circumstances of each company On the one hand, Directors must be given sufficient powers to borrow such money as may be necessary for the proper carrying on of the work of the company, without being hampered in every case by the necessity of consulting the shareholders On the other hand, they should not be given the power unduly to draw on the credit of the company so as to jeopardise its very basis The nature of the business of one company may make it necessary to borrow largely for a season while in another case large borrowing would be altogether exceptional. Each business must therefore have its own special rules and it may be fatal to follow blindfold any fixed precedent.

Power and propriety distinguished

The question of *powers* is altogether independent of the *financial soundness of* any particular loan. In every case the authority deciding upon a loan should have to determine the question with regard to its financial soundness or otherwise. All that regulations can do is to ensure that this should be properly considered. *Prima facie* Directors or Managing Agents are the persons who are most competent to consider this. Yet a company would not be well-advised to let the Directors or Managing Agents commit it too far without consulting the shareholders.

Ultra vires borrowing.

Where limitations are placed on the borrowing powers of the company under the *Memorandum*, they cannot on any account be exceeded. Any debt beyond those limits would be *ultra vires the company and could not by any means be validated.*(x). Where a debt is incurred by the Directors or Managing Agents, as the case may be, which is *intra vires* the company but *ultra vires* the Directors, the company may by *ratifi-*

(v) *Re Reversionary Society*, (1892), 1 Ch. 615 ; *General Auction Co.* supra, on the question as to where power may be implied, see *Wenlock* v. *River Dee Co.*; 10 A C. 354, which was a case of a company incorporated by Special Act.

(w) *Patent File Co*, 6 Ch. 83 ; *Anglo Danubian Co*, 20, Eq. 339 ; *Australian & Co*, v. *Mounsey* 4 K. & J. 733,

(x) *Ashbury* v. *Riche* 7. H.L. 653.

cation, express or implied, validate the act of the Directors,(y) Without such ratification such a debt would be inoperative, except where any equities are created in favour of the creditor.

Where the Articles of Association explicitly impose a restriction on the Directors' powers and they contract a debt clearly in violation of the Articles, the creditors can obviously plead no equities in their favour. For, every investor or other person having dealings with the company is expected to acquaint himself with the Memorandum and the Articles. But where the Articles only lay down that the Directors must act with the sanction of the shareholders in a general meeting, outsiders are *entitled to assume* that Directors in contracting the loan are *acting regularly* and that the necessary *sanction has been obtained.* In such cases therefore where the creditor acts *bona fide* the company will be bound by the acts of the Directors, though *ultra vires.*(z)

Equities of creditor.

On the effects of borrowing, *ultra vires* the company, the following propositions may be laid down : (a)

Effect of *ultra vires* borrowing.

(i) Such borrowing does not create any debt of the company, and no action in any form lies against the company, nor is the creditor entitled to apply for a winding-up order

(ii) The company can repay to the creditor money borrowed *ultra vires* and if such repayment has been made, the money cannot be recovered by the company.

(iii) Where money borrowed *ultra vires* has been applied in payment of debts lawfully incurred by the company the new creditor can stand in the shoes of the creditors who have been repaid to the extent that borrowed money has been so applied.

(iv) If the lender can show that his money has been invested, he can have a "tracing order" from the Court, by which he can follow the money in the hands of whosever holds it and where it has been invested in securities he is entitled to those securities.

(v) Where the money cannot be traced, in a proper case where there are no equities to the contrary, the lender may claim, on liquidation, to be paid out of the assets by the application of the principles of *Re Hallet's Trust,* (b) the directors being looked upon as standing in the position of trustees in respect of money taken by them from the creditors *ultra vires*

(y) *Irvine* v *Union Bank of Australia*, 2 A.C 366 ; *Grant* v. *United Kingdom Switchback*, 40 CD 135.

(z) *Royal British Bank* v *Turquand*, 6E & B 327 ; *Irvine* v. *Union Bank of Australia*, 2 A.C 366 ; *County of Gloucester Bank* v. *Rudry Merthyr & Co.* (1895), 1 Ch. 629 . *Mahony* v. *East Holyford*, 7 H.L. 869. *Mercantile Bank* v *Chartered Bank* (1937) IA E R. 231.

(a) See Buckley Companies Consolidation Act, p. 169 ; *Sinclair* v. *Brougham* (1914), A.C. 398 ; *Phoenix Life Co*, 2 J. & H. 441 ; *Ex parte Williamson*, 5. Ch. 309 . *Wenlock* v. *River Dee Co* supra.

(b) 13 C D. 696.

The simplest form of borrowing is by an overdraft from the company's bankers (c) or by a cash credit account. This requires no formalities except where the security offered is such as could only be created by registration under the Indian Registration Act.

Over-draft.

Bills of Exchange, Hundis and Promissory Notes can be executed on behalf of the company by any person acting under its authority, express or implied (sec 89). The person signing is only an agent and is not personally liable provided that the intention to sign on behalf of the company is unambiguous. Generally speaking, the Articles authorise certain officers or directors to sign on behalf of the company. But the authority need not be express, it may be implied.

Execution of negotiable instruments.

Debentures

Large loans are contracted by companies generally by the issue of debentures. A debenture is a document acknowledging a debt, but it is not every such document that can be called a debenture. Normally a debenture is a *promise by the company to pay* a debt with interest which is one of a *series of like debentures ranking pari passu* and generally carrying a charge or security on the company's undertaking. None of these characteristics are inseparable from a debenture, and an instrument lacking one or more of these characteristics can be a debenture. As a general rule the name is not given to an instrument unless it purports to be a debenture (d)

What is a debenture.

Where a company wants a large amount of capital for carrying on or expanding its business it may procure it in one of the two ways: By selling more shares, and if necessary, increasing the authorised capital or, by borrowing. Where the raising of more share capital is not desired or is not likely to yield an adequate response, the capital may be borrowed. This may be done, either by taking the money from a single party or group of persons or by the issue of debentures which are open to subscription by the public.

Issue of debentures are subject to regulations in many respects similar to the issue of shares. Thus a prospectus must be issued and the provisions of sections 92 to 100 apply equally to shares and debentures. The issue of debentures, like that of shares is subject under Act XXIX of 1947 to restrictions therein provided (see supra p92)

Statutory requirements for issue of debenture.

Particulars regarding the issue of debentures with a charge are required under sections 109 & 110 to be filed with the Registrar within 21 days, and under section 111 commission paid for the sale of debentures is required to be included in the statements required to be filed under section 109 or 110, and like commissions paid for sale of shares those for sale of debentures also have to be shown in the balance sheet under sec 106.

(c) Overdraft is borrowing and cannot be made where there are not necessary borrowing powers. *Looke v Wrigley*, 9 Q.B D. 397, *Blackburn Building Soc*, 9 A.C. 857 : *A.G. v. West Hum. Crop.* (1910), 2 Ch. 560.

(d) Palmer ; Comp. Prec. part III. p. 3.

Debentures may be issued in two different forms, ordinary debentures and debenture stock. In ordinary debentures a number of bonds of a fixed sum of money are issued making up the required sum, so that each bond constitutes a separate obligation of the company ranking *pari passu* with the rest of the issue. In debenture stock the whole amount of the debenture capital forms one consolidated sum for which the company enters into an obligation with trustees. Each subscriber to the stock takes such fraction of this total stock as he desires and receives a certificate from the company that he holds so much of the debenture stock

Debenture and debenture stock

Saving the fact that ordinary debentures create several separate obligations of the company while debenture stock constitutes one single obligation there is hardly any other distinction between the two The persons who are the parties to the obligation in the latter case are the company and the trustees and there are cases in which it has been held that stock-holders being only *cestuis que trust* are not creditors of the company and cannot apply for winding up, the right being vested in trustees (e) But this is by no means the general rule and as beneficiaries of the trust the stockholders are generally entitled to sue in their own name in most cases (f)

Debentures may again be issued in series of separate Bonds of a fixed sum of money, secured by a Trust Deed and the mortgaged property is held by the trustees as mortgagees. Except that in such cases, each debenture Bond is for a fixed sum of money, there is no difference between such debentures and debenture stock.

Debentures may be issued for a limited time or they may be perpetual. Sec. 126 contemplates that irredeemable debentures, to be paid off only upon winding up, may be issued.

Perpetual debentures

Debentures may be classified with reference to their transfer under two broad heads, (1) Debentures to bearer which are freely negotiable, and (2) Registered debentures which can be transferred only by registration. Sometimes, however, transfers of debentures to bearer are also registrable, though registration is not necessary for their transfer.(g)

Debentures to bearer and registered debentures

Registered debentures can only be transferred in the manner stated in sec. 130 of the Transfer of Property Act by an instrument in writing and the transferee would be bound by all equities against the transferor and otherwise bound by the provisions of Chapter VIII of the Transfer of Property Act. In addition, such debentures contain a clause by which no transfer is binding without registration with the company. This clause is effective.

How transferred

Debenture bonds or stock certificates expressed to be payable to bearer are however negotiable without such formalities. provided

(e) *Uruguay Central*, 11 C. D. 372 ; *Dunderland Iron*, (1909), 1 Ch. 416.
(f) *Empress Engineering Co.* 16 C.D. 125 ; *Gandy* v. *Gandy*, 30 C.D. 57.
(g) See Palmer Comp Prec. III, p. 14.

that there is nothing in the debenture itself restricting the right of transfer, and the transferee takes free from equities against the transferor.

The negotiability of debentures depends strictly on custom (sec 137 of the Transfer of Property Act) and the provisions of the Negotiable Instruments Act are not applicable to them, as that Act only applies to promissory notes, cheques and Bills of Exchange (Negotiable Instruments Act, sec. 13)

In England the negotiability of debentures to bearer has been finally established by the House of Lords (h)

In India the custom does not appear to have been judicially recognised though there is no doubt that the custom exists If any case arises however the custom of negotiability may have to be proved

Forms of charge on properties

Debentures may be either mortgage debentures, secured by a mortgage or a charge on the properties or naked debentures without any such charge. The right to borrow and the right to dispose of property of the company, taken together give a trading company a right to mortgage or charge the properties by way of security for any debt, including a debenture loan. (i) The security may be by a mortgage or charge *on specific properties* or a *floating charge* on the undertaking generally. In the absence of specific provision in the Memorandum it may be doubtful whether uncalled share capital can be pledged, (j) It is usual therefore to include a general power in the Memorandum giving all necessary powers for creating mortgages and charges (For form of such clause see cl. g of Form 3 in App B)

Mortgage

The usual forms of security are (*a*) mortgage, (*b*) hypothecation of goods, (*c*) hypothecation of uncalled capital (*d*) a floating charge on the undertaking generally.

The only aspect of mortgage that requires treatment here is mortgage to secure a debenture loan.

Debenture or debenture stock is often secured by a mortgage in favour of the trustees of the debenture-holders Sometimes the charge is contained in the debenture bond itself so that each debenture-holder has a charge on the properties mortgaged and all of them rank *pari passu* as mortgagees. Even where there is a trustee, the bonds also contain a clause creating the charge.

The charge on property as contained in the Bonds themselves is generally worded thus —"The company hereby charges with such payments its undertaking and all its property, present and future." When a specific property is required to be charged, the clause charging the entire undertaking of the company is omitted.

(h) *Goodwin* v. *Roberts* 1 App Cas. 476, affirming L. R 16 Eq 337. Other cases on the subject are *Rumball* v *Metropolitan Bank* 2 Q B D 194; *Bechuanaland Co.* (1898), 2 Q.B. 668; *Edelstein* v *Schuler* (1802), 2 K B 144, in which last case it was held that Courts will take judicial notice of the custom without proof.

(i) See supra. p. 258.

(j) See infra. p. 264.

Although, Debentures may be issued without a Trust Deed as indicated above it is found convenient and safe to appoint Trustees on behalf of the Debenture-holders, for the following advantages ;—

(*a*) If the company makes a default, Trustees can protect the interests of Debenture-holders, whereas in the absence of Trustees, it is left to the initiative of individual Debenture-holders to take action.

(*b*) By means of a Trust Deed, the Debenture-holders, through their Trustees can be empowered to enter and sell and thus realise the property without Court assistance.

(*c*) A legal Estate in the property charged can be vested in the Trustees.

(*d*) Meetings of Debenture-holders can be convened, in accordance with the Trust Deed, to ascertain their wishes.

(*e*) The company may, under the covenant, be brought to do may things, which in the interest of Debenture-holders are necessary, *e.g.*, to insure, repair and protect the property etc.

Uncalled capital

All property which the company is authorised expressly or by implication by its Memorandum and Articles to charge or hypothecate can be given as security. Uncalled capital can also be hypothecated if there is authority in the Memorandum, or in the Articles without anything to the contrary in the Memorandum.(k)

The reserve capital of the company i.e., what the company, by special resolution has declared to be not capable of being called up except on winding up cannot be hypothecated in this way (l)

Floating charges

A floating charge on the company's property can be lawfully created and it is not open to objection on the score of the uncertainty of the subject-matter of the charge.(m)

A floating charge can be created by expressly stating it to be so or by any words, such as 'a charge upon all property both present and future' which are susceptible of that meaning.(n)

It may extend to the whole undertaking of the company or of any class or section of the assets.(o)

Nature and effect of floating charge.

Creating of floating charges is a very convenient form of raising funds by issuing securities. Unlike a hypothecation of specified goods or a mortgage of specified property it *does not restrain the company from dealing with or disposing of the property.* The security-holder cannot claim any definite charge on any specified property until the

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(k) *Newton* v *Anglo Australian Co*, (1895), A C 244 As to what would constitute authority to pledge uncalled capital see the above case *Phoenix Bessmer Co*,. 44 L.J. 683, *Pyle Works*, 44 C D 4 4, *Houard* v. *Patent Ivory Co*, 33 C D. 156; *Page* v. *International*, 68 L.T 435; *Irvine* v. *Union Bank*, 2 A.C. 366; *Streatham Estates*, (1897). 1 Ch 15 Palmer Comp Prec. III, p. 56.

(l) *Mayfair Property Co*, 2 Ch 28

(m) *Panama & Co*, (1870), 5 Ch 318, Palmer's Comp. Prece III p. 67

(n) *Wheatly* v *Silkstone*, 29 C.D 715, *Florence Land Co*, 10 C.D 530, *Colonial Trust*, 15 C.D 465

(o) *Illingworth* v *Houldsworth*, (1904), A C 355

charge is enforced under law upon liquidation. So the *company can go on with the business* unhampered and sell in the absence of contract to the contrary, *create specific mortgages* ranking in priority to the floating charge and even sell the entire undertaking and dispose of the properties in any way in the ordinary course of business. (p) What is ordinary course of business is determined by the character of the business and, in detemining this, regard should be had to the objects sta ted in the Memorandum.

A floating security has been described by Lord Macnaghten as "an equitable charge on the assets for the time being of a going concern; it attaches to the subject charged in the varying condition it happens to be in from time to time. It is of the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern or until the person in whose favour the charge is created, intervenes" (q) to make it determinate e.g. by seizure under powers given by the charge deed. (ql) In another case he said, "a floating charge is ambulatory and shifting in its nature hovering over, and so to speak, floating with the property which it is intended to affect, until some event occurs or some act is done which causes it to settle and fasten on the subject of the charge...

Though it is dormant so long as it floats, a floating charge *is a present charge* and, in respect of *priorities it takes effect from the date on which it is created.* So long as the company is going on, the charge does not prevent the company from dealing with property in the ordinary course of business But when the charge is enforced it will be given effect to *against all the assets of the company as on that date* Upon a winding up, all the assets of the company subject to the floating charge become subject to a specific charge and the creditor in whose favour the charge exists ranks as a secured creditor in respect of all the assets. The priority of a floating charge may be affected by the creation of other rights over specific properties by the company but subject to this it ranks in the order of time with other securities.(r)

Commencement of business & borrowing

The borrowing powers of the company cannot be exercised under the Act until it becomes entitled to commence business under sec. 103 (s)

Form etc

Form No. 50 in Appendix B is the form which is usually used in issuing a debenture payable to registered holder.

In default of payment of interest under conditions as set forth on the back of the debentures, the debentures become immediately payable and in the case of winding up also become repayable at the commencement of such winding up.

(p) *Florence Land*, 13 C D 530, 540, 747; *Moore* v *Anglo Italian Bank*, 10 C.D. 681, 687, *Hamilton's Windsor Ironworks*, 12 C D. 707

(q) *Govt. Stock Co.* v. *Manilla Rail Co.* (1897), A.C 86 see (1910) 2 K B 979, 994

(ql) Re Foomer 23 Ch. D. 254; Mercantile Bank v. Chartered Bank (1940) A. E. R 231

(r) See Buckley, *op, cit*, p. 183 *et seq*,

(s) See *supra*

The debentures, when issued require entry in a register kept for the purpose, called "debenture register." Form No. 51 in App. B may be used for such a register. Apart from this, a register of mortgages and charges is required to be maintained (*vide* Sections 109, 109A, 112 and 123) and should be maintained in the Forms given in Form No.XXI in Appendix A.

On mortgage or charge of uncalled capital see Chapter VII.

Clauses in a Trust Deed to secure a Debenture Loan.

When a Debenture Loan is issued under a Trust Deed, after the preliminary recital clauses explaining the nature of the issue and the amount thereof and the rate of interest payable thereon, the Trust Deed generally embodies clauses with regard to the following particulars :—

(1) Specific mortgage of immoveable property and floating charges on moveable property, uncalled capital and other assets, as the case may be.

(2) Particulars of Trusts upon which mortgaged properties are to be held i.e., for securing to the Debenture-holders the principal, interest and other monies payable under the Debentures

(3) Detailing the grounds on which (*e.g* failure or default in payment of interest) the Trustees may enter into possession of mortgaged premises and the procedure to be adopted in effecting a sale if necessary and in dealing with the proceeds of sale.

(4) Powers reserved, if any, for the Trustees to sell or let out or exchange part of the mortgaged properties at the request of the Company, before the security becomes enforceable.

(5) When entry has been effected, powers reserved, if any, for the Trustees to carry on the business of the company including power to borrow for the better and speedier realisation of the Loan

(6) Power of Trustees to appoint or remove Receivers and for delegation of their powers to Receiver.

(7) Covenants by the Company—

(*a*) To appoint the Trustees as attorneys for the Company.

(*b*) To pay the principal monies when due and to pay interest at stated intervals.

(*c*) To carry on the business and to keep mortgaged premises in good repair and insured

(*d*) To allow the Trustees to have access to the demised premises and to books and accounts of the Company.

(*e*) To pay rents and observe covenants of leases of premises.

(*f*) To refrain from creating other charges on the assets of the Company without the consent of the Trustees.

(*g*) To grant facilities of inspection to any Inspector appointed by the Trustees.

(8) Covenant by Trustees to reconvey mortgaged premises on satisfaction of the Debenture Loan with interest.

(9) Provision for the appointment of new Trustees and for the majority of Trustees to act where there are more than two Trustees.

(10) Remuneration of Trustees.

(11) Limitation of liability of Trustees for mistake, oversight or error in judgment.

(12) Provisions relating to meetings of Debenture-holders, when the Trustees or the company consider it desirable to elicit the wish of the Debenture-holders on any matter. Provisions for Notice, Quorum, Powers of the Chairman, Poll Votes, adjournment, Extraordinary Resolutions how effected and the binding effect of Extraordinary Resolutions on all Debenture-holders, whether personally present or not

(13) Conditions regarding Redemption of Debenture Loan—whether redeemable at par or at a premium, whether by periodical drawings or all at the same time and whether the company retains the right to issue or extend the date of repayment of the Debentures. The Schedules give a detailed description of the property mortgaged and the contents of the Debenture-bonds with conditions of repayment detailed therein and the form of the interest coupons when debentures are issued to Bearer.

Registration of charges

Whenever a company borrows money on security, the prescribed particulars of mortgage or charge as given in Form No. XVIII in Appendix A together with the instrument creating the charge or a copy thereof must be filed with the Registrar for registration within twenty-one days from the date of its creation (*vide* sec. 109 and 116). Otherwise such mortgage or charge shall be void against the liquidator and any creditor of the company, though, in that case, the money secured thereby becomes immediately payable and the holder of such a charge is ranked with other unsecured creditors. It is no doubt, the duty of the company to register such mortgages or charges, but if the company fails or delays in registering such mortgage or charge with the Registrar, the registration may be effected on the application of the party concerned (*vide* sec. 116) and he is entitled to recover from the company any fees properly paid by him. By this section the interest of the holder of such a charge or mortgage may be protected by getting registration on his own initiative though the company may have defaulted in doing so.

Sec. 109. Section 109 runs as follows :—

(1) Every mortgage, or charge, created after the commencement of this Act by a company and being either :—

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

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

(*c*) a mortgage or charge on any immoveable property whereever situate, or any interest therein ; or

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

(*e*) a mortgage or charge not being a pledge of any moveable property of the Company except stock in trade ; or

(*f*) a floating charge on the undertaking or property of the company ;

shall so far as any security on the company's property or undertaking is thereby conferred be void against the liquidator and any creditor of the company unless the prescribed particulars of the mortgage or charge together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable.

Provided that

(i) in the case of a mortgage or charge created out of British India, comprising solely property situate outside British India, twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be filed with the registrar, and

(ii) where the mortgage or charge is created in British India but comprises property outside British India, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner, may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate, and

(iii) where a negotiable instrument has been given to secure 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 purpose of this section, be treated as a mortgage or charge on those book debts, and

(iv) the holding of debentures entitling the holder to a charge on immoveable property shall not be deemed to be an interest in immoveable property.

(2) Where any mortgage or charge on any property of the company requires to be registered any person acquiring such property or any part thereof or any share or interest therein, shall be deemed to have notice of the said mortgage or charge as from the date of such registration.

In this section 'British India' does not include Burma or Aden, whatever the date of the mortgage or charge in question.

Section 109A introduced by the amendment of 1939 also provides that where the property is acquired by the company after the commencement of the Act of 1936 which is subject to any mortgage or charge of the character specified in section 109, the company is required to deliver to the registrar within 21 days after the completion of the acquisition of the property a statement in the prescribed manner for the registration of such charge and section 116 sub-section (3) now

requires any modification of the terms of any mortgage or charge registered under that section to be similarly registered and provides that not only the company but any person interested in the mortgage or charge can also obtain such registration and recover the cost of it from the company.

Where a series of debentures containing a charge to the benefit of which the debenture holders of that series are entitled pari-passu is created, a verified copy of the trust Deed containing the charge or where there is no deed, a statement as to the total amount secured together with dates of resolutions authorising the issue and general description of the property charged should be filed under section 110, within 21 days,

If any commission or discount has been paid or allowed either directly or indirectly to any person in consideration of his subscribing or procuring the subscription of any debenture, particulars as to the amount or rate percent of such commission or allowance must also be filed together with particulars required to be filed under section 109 & 110 (see section 111).

The time within which the mortgage or charge can be registered may be extended by the Court under section 120 and sub-section (2) of that section now provides that where the Court extends the time for registration of a mortgage or charge, the order shall not prejudice the rights acquired in the property prior to the date of the registration.

Section 121 now provides that the satisfaction of mortgages and charges registered under section 109 must also be similarly registered with the registrar.

Stamp Duty

The debentures issued to bearer as well as to registered holders are required to be stamped under the provisions of Article 27 of the Indian Stamp Act. Provincial amendment on Stamp Act should be followed in respective Provinces,

Penalty.

The penalty, for default in filing with the Registrar for registration of the particulars of mortgages or charges or issuing of debentures requiring registration under sec. 109, has been provided by sec. 122. The forms for filing particulars of mortgages and charges or of modifications thereof or of particulars of a mortgage or charge subject to which any property is acquired are contained in forms XVIII, XIX and XX respectively given in Appendix A.

Registration of mortgages how made. Fee for the registration of mortgage etc

To get registration of such mortgages and charges the instrument or a copy of the instrument certified by an affidavit of some responsible officer of the company to be a true copy of the instrument creating a charge, together with a copy of the register of mortgages or charges as required by the provisions of sec. 123, containing the particulars of mortgages or charges, should be sent to the Registrar, along with the prescribed fee as given below ; and the Registrar on receipt of them will register and record the particulars of the deed in his register (*vide* sec. 112, sub-sec. 1), and return the said

instrument with due verification (*vide* sec. 112, sub-sec. 2). The fee payble on registration of these documents is Rs. 3/-per Return ; *vide* Table B, 1 (5) or (6).

The Registrar shall maintain a chronological index in the prescriform showing particulars of mortgages or charges registered with him (Section 113) and shall give a certificate to the company of such registration, which will be conclusive evidence that the requirements of Sections 109 to 112 have been complied with (Section) 114) and a copy of the certificate must be endorsed or every debenture or certificate of debenture -stock issued by the company (section 115).

Every company is bound to keep the instrument creating the charge or mortgage (*vide* sec. 117) and the register of mortgages or charges (*vide* sec. 123) in its registered office, recording therein all the particulars of such mortgage or charge. If no such register is kept or default is made in entering the requisite particulars in this register, the defaulting officer will be liable to a fine not exceeding Rs. 500/-. Form No. XXI in Appendix A is provided for a register of mortgages and charges.

This instrument and the register of mortgages and charges will be open to inspection to every member of the company gratis, and to any other person on payment of a fee not exceeding Re. 1/- (*vide* sec 124, sub-sec. 1) If inspection is refused, the company and the defaulting officer is liable to a fine not exceeding Rs. 20/-for every day during which the refusal continues.

Inspection of mortgages, etc.

Appointment of Receivers.

If any person obtains an order for the appointment of a Receiver of the property of the Company or appoints such Receiver under any powers contained in any instrument, section 118 enjoins on him the duty of filing in the prescribed form a notice of the fact with the Registrar within 15 days of such appointment, failing which he is liable to a fine of Rs. 50/- for every day during which the default continues. The Receiver, when appointed, must once in every half-year while he is in possession and also on his ceasing to be a Receiver, file with the Registrar an abstract in the prescribed form of his receipts and payments and when ceasing to be Receiver must similarly file a notice of the fact.

Under section 119 sub-sections 2 & 3, the fact that a Receiver has been appointed must be mentioned on every invoice, order for goods or business letter in which the name of the Company appears,default being punishable with fine extending to twohundred rupees.

Satisfaction of mortgage etc.

Whenever any moragage or charge is satisfied, a declaration by the company regarding the satisfaction of the debt is required to be filed with the Registrar under the provisions of sec. 121 in Form No. XXI, App. A.

Stamp Duty

Stamp duty is payable on Debentures under schedule I Art. 27 of the Stamp Act which runs as follows :—

Description of instrument.	Proper stamp duty	
	Indian.	Bengal.
Debenture (whether a mortgage debenture or not), being a marketable security transferable-		
(a) by endorsement or by a separate instrument of transfer.	Rs. 5/-per thousand and Rs. 2/8/-for every Rs. 500/- or part thereof in excess of Rs. 1000/-	Rs. 7/8-per thousand and Rs. 3/12/-for every Rs. 500/- or part thereof in excess of Rs. 1000
(b) by delivery	Rs. 10/per thousand and Rs. 5/-for every Rs. 500 or part thereof in excess of Rs. 1000/-	Rs. 15/-per thousand and Rs. 7/8/-for every Rs. 500 or part thereof in excess of Rs. 1000/-

Explanation,- The term Debenture includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.

Exemption.

A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage deed, duly stamped in respect of the full amount of debentures to be issued there under, whereby the company or body borrowing, makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders ; provided that the debentures so issued are expressed to be issued in terms of the said mortgage deed.

CHAPTER XVII.

WINDING UP

Winding up is the inverse of the flotation of a company. In the latter, several persons are brought together and organised into a separate legal personality, while in winding up the corporate personality is dissolved and broken up into its component elements.

There are two chief ways in which a company may cease to have legal existence : (1) By *dissolution* upon a *winding up* ; (2) By *cancellation* of the incorporation

Cancellation of Incorporation

Cancellation of incorporation takes place where the name of a company is struck off from the register under sec. 247.

Cancellation of incorporation.

This can be done in two cases. :—

(1) Where the company is not being wound up but the Registrar is satisfied that the company is *not carrying on business* or is *not in operation.*

(2) In any cases where a company is being wound up, the Registrar has reasonable cause to believe either,

(*a*) that *no liquidator is acting* or'

(*b*) that the affairs of the company are fully *wound up*, and the *returns required* to be made by the liquidator have *not been made for six consecutive months* after due notice has been given by the Registrar.

Provision is made by this section for the issue of notices by the Registrar to the company before he is satisfied that conditions authorising him to strike off the name of the company exist. When these preliminaries have been satisfied, the Registrar issues a notice in the local official Gazette. Upon the publication of this notice the company stands dissolved. But *the liability of every director and every member* of the company *continues* after such cancellation and can be enforced as if the company had not been dissolved.

Sub-sec. 6 gives to the company(t) or any member or creditor aggrieved by this order of the Registrar the right to *apply to the Court to have the company restored to the register.* The Court has a wide discretion in the matter and will make the order not only where it is satisfied that as a matter of fact the company was carrying on business but in every case where it appears to the Court that the order would be just, as for instance, where it is satisfied that though, for the time being, the company is not working there is every prospect of the company working again.

Restoration of incorporation.

The effect of an order of the Court is to wipe off the cancellation altogether so that there is no gap in the continued existence of the company and the Court is authorised by sub-sec. 6 to give such directions and make such orders as would place the company and all other persons in the position in which they would have been if the striking off order had not been made.

A company is struck off when it has in point of fact ceased to exist, so that its corporate character has become a mere name. A winding up on the other hand is a deliberate act by which the corporation is *extinguished after adjustment of the rights of all persons* in respect of it. In a winding up, the legal estate, then vested in the com-

(t) Until the Court orders restoration, the company is defunct and it is difficult to understand how such company can apply. In England the practice, where the company applies is to make another person co-petitioner. See Buckley *op. cit.*, p. 393.

pany remains in it until dissolution and a corporation does not become dissolved at the commencement of the winding up but at the end thereof.

Winding up

Modes of winding up.

A company may be wound up in two principal ways :-

(1) By an order of the Court, or

(2) Voluntarily.

In the latter case under some circumstances an order will be made by the Court that the winding up be –

(3) Under the supervision of the Court.

In the first case the operative element in the winding up is the order of the Court. As a result of the order the assets of the company come into the custody of the Court and the entire process of liquidation is carried on under the directions of the Court.

Voluntary winding up is primarily an act of the company. But the amending Act of 1936 makes a distinction between two kinds of voluntary winding up, called respectively the Members' Voluntary winding up and Creditors' Voluntary winding up. In either case, the resolution of the company is necessary for the purpose of winding up. *Members' winding up* takes place only when the company is solvent, and in such a case the liquidator is appointed by the company and winding up is carried on generally by the liquidator subject in certain cases to resolution of the company. In the *Creditors' voluntary winding up* on the other hand the creditors have a hand in the winding up and the liquidator is nominated by the creditors and the creditors have important functions to perform in the process of winding up.

Contributories

Winding up consists in getting together and liquidating all the assets of the company and paying off the creditors and finally, distributing the surplus among its members.

Position of members.

Members have a two-fold character on a liquidation. They are entitled to the surplus assets after paying off the creditors and they are liable to contribute, to the extent of their liability under the terms of incorporation, to the assets of the company in case the other assets are insufficient to pay the creditors. This liability is *not limited to members who are on the register* of the company at the date of winding up but extends also to some *past members i.e.*, to all persons who have been members of the company *within one year* from the commencement of the winding up. So in dealing with winding up the

Past members

expression "contributory" is used to denote all persons comprising present and past members who are "liable to contribute to the assets of the company in the event of its being wound up and, in all proceedings for determining, and in all proceedings prior to the final determinati on of the persons who are to be deemed contributories includes any person alleged to be a contributory" (sec. 158).

List of contributors.

One of the first duties of a liquidator upon winding up is to draw up a list of contributories. The list is drawn up in two parts called the *A list* and the *B list*. The A list includes the members on the date of the commencement of the winding up. The B list includes all past members who are under a contingent liability to contribute under sec. 156.

Rectification.

The A list will include *all present members* i.e., all persons whose names are on the register. Any person whose name appears improperly on the register may apply for *rectification* of the register. Such application can be made, after winding up by the court has commenced, only by permission of the Court. If the register is rectified the list of contributories will be amended accordingly. The list of contributories may be amended from time to time as necessary.

The mere fact that a person's name appears on the Register is not conclusive proof that he is liable as a contributory, and it is possible for him to escape being settled on the list of contributories on various grounds. He may establish that he had never applied for shares and registration was without his knowledge or consent or that he had withdrawn his application before notice of allotment was posted to him or that the application for share was subject to conditions precedent which were not complied with or that the person who applied professedly as an agent had in fact no such authority or that he was induced to take shares by misrepesentation or non-disclosure of material facts. Instances can thus be multiplied where, if the allegations are successfully proved, the name of a person may be expunged from the list of contributories although it appears on the register of the company. Similary, a person whose name appears on the 'A' list may pass on to the 'B' list if, for instance, he can prove that he sent in a transfer before winding up, which ought to have been registered due regard being had to the Articles of Association of the company. He may also prove that his shares were forfeited or legally surrendered within a year before winding up. On the other hand a person, whose name is not on the register may be settled on the list of contributories if it can be proved that (*a*) his shares were collusively forfeited, (*b*) the surrender of shares was illegal and not *bona fide*, (*c*) the transfer by him was invalid, *e.g.* to an infant or to a fictions transferee, etc. See Palmer's Company Precedents, 13th Edition, Part II, pp. 565 to 572.

It is not every member who would be necessarily liable as contributory and there may be different degrees of liability of different classes of members under the constitution of the company. This is often the case in Mutual Assurance Companies in which insurers are members, but either not liable as contributories

or liable only after the shareholders' liabilities have been exhausted(u)

Past members are contributories if they have not ceased to be members more than a year before the commencement of the winding up. (see *infra*) For this purpose members who have transferred their shares within a year and members whose shares have been forfeited stand on the same footing, notwithstanding that by the Articles "all rights incident to the share" may have been declared to be terminated (v)

The case is different when an allotment is cancelled and avoided *ab initio*(w) in which case the person is deemed not to have been a member at all.

Strictly speaking a holder of a fully paid up share is not a contributory and he will not be placed on the list of contributories unless he wishes to be placed. But such a shareholder has an interest in winding up and it has been held that such a shareholder is included in the definition of a contributory and is entitled to apply for winding up under sec 166 (x)

If a contributory dies either before or after he has been placed in the list of contributories his heirs and legal representative are liable to contribute to the assets of the company in discharge of the liability of the deceased and are therefore contributories. [section 160 (1).]

Surviving coparceners of a contributory who is a member of a joint Mistakshara family are his legal representatives for the purposes of this section and are liable to contribute.

The liability of heirs and legal representatives of the deceased contributory, like their liability for the other debts of the deceased is limited to the assets which come into their hands and accordingly if they make default in paying any sums ordered to be paid by them, sub-section (2) provides that proceedings may be taken for the administration of the assets of the deceased contributory and for compelling payment of the money due out of such assets.

Similarly, if a contributory is adjudged insolvent his assignees can be proceeded against in the place of the insolvent contributory and the money due by the insolvent may be proved as a debt against his assets in the hands of the assignees. (sec. 161).

For liabilities of contributories, see *infra*.

Winding up by the Court

A company may be wound up by the Court (*vide* sec. 162) :—

(u) See sec. 156 sub-sec.(vi) Also *Albion Life Assurance Soc.*, 15 C D 79 ; *Great Britain L.A. Soc.*, 16 C. D 246 ; *Bath's Case*, 11 C. D. 386, was one of a company with two different classes of business each with a separate capital which was broken up into two companies.

(v) *Orsyk's Case*, 5 Ch 63 ; *Marshall* v. *Glamorgan*, 7 Eq 29 ; *Bridger's & Neill's Case*, 4 Ch 266 (where the shares were transferred within one year and subsequently forfeited by the transferee).

(w) *Wright's Case*, 7 Ch. 55.

(x) *Anglesea Colliery Co.*, 2 Eq. 379, *National Savings Bank*, 1 Ch. 547 ; *Imperial Soap & Co.*, 91 P.R. 1917 ; 36 I C. 980. See however *Cheshire Patent Salt Co.*, 1 N.R. 533.

(i) If the company has by special resolution resolved that the company be wound up by the Court.

Such a step is very rare, as in such a case the matter can be more easily done by special or extraordinary resolution for a voluntary winding up.

(ii) If default is made in filing the statutory report or in holding the statutory meeting.

Under the provisions of sec 77 sub-sec. 1, every company is bound to hold a statutory meeting within six months from the date of the commencement of business to consider the statutory report, as prepared under the provisions of sub-sec. 3 of the said section If such statutory meeting is not held within the prescribed time, any shareholder, on the expiration of fourteen days from the last day on which meeting ought to have been held (*vide* sec. 166 cl. b), may apply to the Court, for an order of winding up No one except a shareholder can apply on this ground and the power of the Court is discretionary.

(iii) If the company does not commence its business within a year from its incorporation, or suspends business for a whole year.

This is also a right that can be exercised by a shareholder The power is, discretionary with the Court and will not be exercised if the delay is satisfactorily accounted for and indicates no intention not to carry on the business. (y)

Where the company has stopped some parts of the business and not others (z) and where a company has become amalgamated with another (a), there is no case for winding up under this clause

(iv) If the number of shareholders is reduced in the case of a private company below two or, in the case of any other company, below seven.

This is a statutory restriction (*vide* sec. 5) and relief for violation of this condition may be prayed for by any member. In this case it is not necessary, as in other cases, that the contributory should have held the shares for at least six months [sec. 166 cl (a)]

(v) If the company is unable to pay its debts.

(vi) If the Court is of opinion that it is just and equitable that the company should be wound up.

When a company is unable to pay its debts it is primarily the *creditor who is entitled to apply.* But sec. 166 indicates that a contributory also may apply. And the *contributory* may have substantial reasons to ask for winding up when the company is already practically insolvent, for a prompt winding up might reduce the liability of the contributory.

Who can apply.

But a Court is always reluctant to act on the application of a contributory unless strong grounds are shown, for the Act creates a

(y) *Metropolitan Railway*, 17 L. T. 108; *Middlesborough Assembly &c.*, 14 C.D. 104; *Murlidhar & Bengal Steamship Co.* 1 L R. 47 Cal. 654.

(z) *Norwegian Iron Co.* 35 Beav, 223; *Patent Bread Co.*, 14 W.R. 787; *Thellusson* v. *Valentia*, (1907). 2 Ch. ; *New Gas Co.*, 5 C D. 703.

(a) *National Finance Corp.*, 14 L.T. 749.

domestic tribunal in the general meeting of the company for adjustment of the rights as between members, and it is the policy of the law that the Court will not interfere with the domestic tribunal except for strong reasons.(b)

When company is unable to pay debts.

A company is deemed to be unable to pay its debts under sec, 193 : —

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

(ii) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part , or

(iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay is debts, the Court shall take into account the contingent and prospective liabilities of the company.

Cl. (*iii*) is a general clause covering all cases where the Court is satisfied that the company is unable to pay its debts, and on this ground *any creditor can apply.*

Creditor's application and contributory's application.

Cl. (*i*) and (*ii*) provide for special cases where it is not necessary to establish as a fact that the company is really insolvent. All that is necessary to be proved under cl. (i) is that the company has neglected to pay the debt or secure or compound for it within three weeks after a formal demand or(ii)that execution against the company has been returned unsatisfied in whole or in part. In these cases only the creditor whose claim is thus unsatisfied is entitled to apply. The notice of demand by the creditor will be considered to have been duly given if it is signed by himself or by an agent or legal adviser duly authorised on this behalf or by a partner if the creditor is a firm.

There is an important distinction between a contributory's application and a creditor's application. In the former case the Court exercises judicial discretion and will not make an order except in a strong case.(c)

On a creditor's petition, on the contrary, the Court is ordinarily bound to make a winding up order if a valid debt is established and

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(b) *Pioneer Bank*, I.L.R. 3 Bom. 16 ; *Murlidhar* v. *Bengal Steamship Co*,. I.L.R. 47 Cal. 654.

(c) *European Life Ass. Soc.* 9 Eq. 122 ; *Planet Building Society*, 14 Eq. 441 Buckley *op cit*, 310-311 ; *In the matter of Mahamandal etc.* I.L.R. 39 All. 334 ; *Murlidhar* v. *Bengal Steamship Co*, I.L.R. 47 Cal. 654.

not satisfied or where insolvency is established.(d) But winding up is primarily in the interest of creditors and the applying creditor is only a representative of the class. If the majority of creditors is therefore against it the Court may refuse the application.(e) The Court will not grant the application where there is a *bona fide* dispute as to the debt (f) nor where the petition is not *bona fide* for a winding up but is made only to exert pressure on the company.(g) In such a case the company can also apply successfully for an injunction to restrain the creditor from proceeding with his application.(h) Absence of assets cannot be pleaded by the company against an order for winding up.

"Just and equitable" clause

Cl. (vi) of sec. 162 gives a wide discretion to the Court to order a winding up if it considers it *just and equitable* for any reason other than those mentioned before. Such reasons need not be *ejusdem generis* with the others enumerated.(i) But the grounds must be of like magnitude with those specified in the other clauses.(j) Thus orders have been made (i) where the *substratum of the company is gone* i.e. the main purpose for which it was incorporated has become impossible or (ii) where there is a *complete deadlock* in its management or (iii) where the company was organised *to carry out a fraud* or an unlawful purpose (k) or (iv) where there has been *gross mismanagement and misapplication of funds* by the management, who control the company, so as to make ordinary remedies by a person interested unavailable or (v) where the company is a "*bubble company*" or (vi) where the petitioner is *entitled by the Articles to have* the company wound up in the contingencies that have happened. (l) It has also been held by the Judicial Committee that a company can be wound up under this clause when there was no reasonable prospect of the company being carried on at a profit in the future but not if there is such prospect (ll).

But where a petition for winding up was not investigated on its merits as to whether there was a valid ground for making a winding up order, but the Judge directed a meeting of shareholders to be held and the e was a considerable majority

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(d) Per Lord Cranworth, *Bowes* v. *Hope Insurance*, 11 H. L. C. 389.

(e) *Crigglestone Coal Co*., (1906). 2 Ch 337 , *Uruguay Central Railway*, 11 C.D 372 ; *Great Western Coal Co*., 2 C D. 769.

(f) *Catholic Publishing Co*., 2 De G J. & S 1/6 *Lord Warfg Co*. 35 Beav. 37 ; *Tulsidas* v. *Bharat Chand & Co*., I.L R. 39 Bom. 47 ; *The Company* v. *Rameswar*, 23 C.W.N. 844 where suits in which creditor's rights were disputed were pending and proceedings were stayed.

(g) *Re A Co*., (1894) 2 Ch. 349.

(h) *Cadiz Waterworks Co* , v. *Barnet* 19 Eq. 182 ; *Niger Merchants Co*. v. *Capper*, 18 C.D 557n ; *Circle Restaurant*, 18 C.D. 555.

(i) *Amalgamated Syndicate* (1897), 2 Ch. 600 , *Chic Ltd*., (1905), 2 Ch 845 ; *Melson & Co*. (1906), 1 Ch. 841, *Lock* v *Blackwood* (1924), A.C 783.

(j) *Cowas* v. *Nath Singh Co*., 59 I C.524,

(k) But mere fraud in promotion or fraudulent representation in the prospectus is not a sufficient ground, for the majority of shareholders may waive the fraud which affect them alone ; *Oriental Navig. Co*, 49 Cal. 399,

(l) Buckley, *op. cit*, pp. 315-318.

(ll) Davies v. Brunswick (Australia) L D. (1936) 1 A.E.R 299. 309.

of them at the meeting who voted for winding up and then made the winding up order, it was held that this was not a sufficient ground for making the winding up order. (m) The mere fact that the applicants apprehend loss from further working of the company is not a sufficient ground. (n)

What liabilities to be considered.

In considering whether a company is unable to pay its debts, the Court is bound to take into consideration *actual as well as contingent and prospective liabilities* [sec. 163, cl. (iii).] This means only liabilities *already incurred, e.g.* under existing contracts and not possible future liabilities. (o) In cases under cl. (iii) it will be necessary to establish that existing and possible assets would be insufficient to pay present dues and contingent and prospective liabilities. In cases under cl. (i) and (ii) it is no answer, however, to say that if all assets are realised there would be enough to pay all debts. It is enough that for the time being the assets are so locked up that the company is not able to meet current demands, and there is what is called a '*commercial insolvency.*'

Jurisdiction of Court.

The Court in the above section means the *High Court* of Judicature under whose jurisdiction the company is situated (*vide* sec. 3) or any other District Court duly authorised. No District Court has yet been so authorised, under the Act, in Bengal. In Assam the Judge of the Assam Valley District and the District Court of Cachar have been authorised under this section. The Court must be moved by a petition by a person entitled to make it under sec. 166.

Who Can Apply

Under section 166 an application to the Court for the winding up of a company can be presented (a) by the *company*, or (b) by *creditor* or creditors including the contingent and prospective creditor, (c) *contributory* or contributories, (d) by the Registrar.

A *contributory* cannot apply unless (1) the number of members is reduced below two in the case of private companies and below seven in the case of other companies ; (2) the shares in respect of which he is a contributory were registered in his name for at least six months during the 18 months before the commencement of the winding up or have devolved upon him through the death of the holder.

The *Registrar* who has been given the power to apply under the amending Act of 1936 can only apply if from the financial condition of the company as disclosed in the balance-sheet or from the report of an inspector appointed under section 138, it appears that the company is unable to pay its debts ; and he can in no case apply without the previous sanction of the Government which sanction will not be given without giving the company an opportunity of being heard.

(m) *Oriental Navig. Co.*, supra.

(n) *In the matter of Mahamandal etc.*, I L R. 39 All. 334.

(o) *British Equitable Bond Corp.* (1910), I. Ch. 574, 579 ; *European Life Ass Soc* 9 Eq. 122.

Voluntary Winding Up

In order to effect a voluntary winding up, the company is required to pass an *extraordinary* or *special resolution*, except in the case provided in sub-sec. (1) of section 203. An extraordinary resolution is sufficient only when the company *cannot by reason of its liabilities continue* its business [see sec. 203, sub-sec. (3)]. Otherwise it should be done by special resolution. When the company is required to be liquidated by any extraordinary resolution in an emergency the notice of the meeting should be very carefully drafted. The notice may be drafted in the Form as given in Form No. 36 in App. B.

Extraordinary resolution

In giving the notice, care must be taken that the regulations of the company as regards issuing of notice have been complied with.

The resolution is required to be passed in the manner as prescribed by sec. 81 (1) which runs thus :—

"A resolution shall be an extraordiny resolution when it has been passed by a majority of not less then three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given "

Hence, a bare majority will not do in passing such a resolution When the resolution has been passed without any poll being demanded the minute should show that the Chairman "declared that the resolution was carried."

Copy of such extraordinary resolution should also be filed with the Registrar.

Copy to Registrar.

As to winding up by special resolution, it can be done in any case whether the company is solvent or insolvent. When the company intends to pass a special resolution, the notice convening the meeting of which 21 days previous notice must be given should state that the meeting is called to consider and if thought fit to pass the following resolution, *e.g.* "that the.....Company Ld, be would up voluntarily, and that.....and .....be and they are hereby appointed liquidators"; or it may be framed more generally, *e.g.* "for the purpose of considering and, if thought fit, passing as a special resolution a resolution for the voluntary winding up of the company and appointing liquidators." If the resolution is passed at the meeting the winding up will thereupon commence.

Special resolution.

The regulations of the company as to the issuing of notice should also be followed in convening the meeting to pass such a special resolution. The resolution shall be passed in such manner as is necessary in case of other special resolutions (*see supra* p. 169) and a copy should be sent to the Registrar under the provisions of sec. 82 of the Act.

The voluntary winding up shall be *deemed to commence at the time of the passing of the resolution* either extraordinary or special, (*vide* sec. 204),

Commencement of winding up

Under the provisions of sec. 206 a notice of special or extraordinary resolution for winding up of the company is required to be given within ten days from the passing of the same by advertisement in the local official Gazette and also in some newspaper (if any) circulating in the district where the registered office of the company is situated. A fine not exceeding Rs. 50/-a day during which the default continues is prescribed for noncompliance with the requirements of this section.

Advertisement of resolution.

The notice of the special or extraordinary resolution to wind up a company may be given in the newspapers in the form as given in Forms No. 53 and 54 respectively in App. B.

Kinds of Voluntary Winding Up

As already mentioned the amendment of 1936 now makes a distinction between two kinds of voluntary winding up: the *members' voluntary winding up* and the *creditors' voluntary winding up*. The new section 207, which reproduces section 230 of the English Act of 1929 lays down the procedure preliminary to initiating the *members'* voluntary winding up. Under that section the directors are required in the *first* place to make a declaration verified by an affidavit to the effect that they have made a full enquiry into the affairs of the company, and that having so done they have formed an opinion that the company will be able to pay its debts in full within a period not exceeding three years from the commencement of the winding up.

Members' voluntary winding up.

Secondly, the declaration must be supported by a report of the company's auditors on the company's affairs.

And, *thirdly*, such declaration together with the auditor's report must be delivered to the Registrar for registration *before* notices of the general meeting for the winding up of the company are issued.

It is only where a resolution for winding up is preceded by such a declaration that the procedure laid down in the following sections viz., sections 208-208E shall be applicable to the winding up. In all other cases of voluntary winding up which would be creditors' voluntary winding up, sections 209-209H lay down the procedure to be followed.

Creditors' voluntary winding up

The fundamental distinction between the two kinds of voluntary winding up is that the members' winding up proceeds of the footing that the company is solvent, while if the company is insolvent the procedure in the creditors' winding up must be followed.

Winding Up Subject to Supervision of Court

This is in essence a voluntary winding up and commences, as in the former case, from the date of the Resolution, whether special or extraordinary as the case may be, with this special feature that the Court has jurisdiction to appoint an additional liquidator and usually does so, upon application by a creditor or contributory. Further, a supervision order has the effect of staying all suits and proceedings

against the company and confers full authority on the Court to exercise all powers, which it would have in the case of a compulsory winding up.

Procedure in winding up by Court

Who can apply.

As already stated, under sec. 166 an application for winding up may be made

(*a*) by the company,

(*b*) by any creditor or creditors including any contingent or prospective creditor or creditors,

(*c*) by any contributory or contributories,

or by all or any of these parties, together or separately, or

(*d*) by the Registrar.

This statutory right cannot be taken away by any provision in the Articles. (p)

Applications by the company are rare, but there may be cases where the best course for the Directors is to apply for a compulsory order, e.g. when the company has become totally insolvent or where due to a serious fraud or misconduct having come to light, there is no prospect of a voluntary winding up being tolerated. *Vide Re City Equitable Fire Insurance Co.* 40 T. L. R. 853.

A creditor cannot apply on the ground that the statutory report has not been filed or that the statutory meeting has not been held [Proviso (*b*)].

Contingent and prospective creditors.

Contingent creditors are those to whom sums will become due on the happening of a contingency. Prospective creditors apparently include only persons to whom no debt is presently payable but to whom a debt will necessarily be payable in course of time, such as the landlord in respect of rents not yet due, holders of Bills of Exchange or hundis before the due date and other persons to whom money would be payable at a future date under a contract. (q) The Court shall not however give a hearing to a petition of winding up by a contingent or prospective creditor until adequate security for costs has been given and until a *prima facie* case for winding up has been established to the satisfaction of the Court [sec. 166. cl. (c)].

But a person who will probably be a creditor at a future date is not a creditor. A garnishor of a debt due from the company to another is not a creditor of the company because the garnishee order does not vest the debt in the garnishor. (r)

Debenture holders.

A debenture holder to whom there was a direct promise to pay is entitled to apply, but not the holder of a debenture stock in which there is no independent covenant to pay. In such cases the application

(p) *Pewerl Gold Mines*, (1893). 1 Ch. 122.
(q) See Buckley, *op. cit.*, p. 368
(r) *Chatterton* v. *Watney*, 17 C.D. 259 ; *Norton* v. *Yates*,. (1906). 1 K.B. 112 *Cairney* v. *Back*, (1906). 2 K.B. 746.

cation can be made only by trustees of the debenture. (s) But debentute-holders usually have the power under the terms of the debenture bond to have a receiver appointed and the Court will not usually order winding up on his application until the special remedy failed to give relief (t) A bare legal owner of a debt cannot apply without joining the beneficial owner (u) A claim for unliquidated damages would not support a petition It must first be established and amount ascertained by suit (v)

Shareholder *de jure*.

A shareholder *de jure* who has not been registered by the default of the Company in not obeying an order of the Court can apply: but not a person who was entitled to an allotment but has been improperly refused allotment (w) The holder of a share-warrant to bearer whose name is not on the register cannot apply (x) A shareholder in arrear of calls can apply if he pays the call in Court. (y) A paid up shareholder (z) and a past member (a) as well as executor of a deceased shareholder whose name has not been registered (b) can apply.

Procedure in Court.

The petition must be in the form prescribed by the rules of the High Court, and the detailed procedure laid down there must be followed. These rules are substantially the same in all the High Courts. For rules of the Calcutta High Court see Appendix A.

Who is bound by the order.

The proceedings in Court in winding up are in the nature of proceedings *in rem*. The person who applies does so *on behalf of all creditors and contributories* (d). There is provision therefore for adequate advertisement to enable all persons interested to come and take part in the proceedings. If the petitioner seeks to withdraw, any other creditor may come forward and prosecute the petition and when the petition is successful and an order is made for winding up it operates in favour of all creditors and contributories (sec. 167). The final order in winding up (sec. 194) declaring the company dissolved is binding on all the world and altogether extinguishes the personality of the corporation.

Commencement of winding up.

Restraint and suspension of suits &c

The winding up of a company by the Court is deemed to *commence at the time when the petition is presented* (sec. 168). The date is important for many purposes. At any time *after the presentation of the petition* and before the winding up order has been made, the Court may on the application of any creditor or contributory *restrain further proceedings* in any suit or proceedings against the company upon such terms as the Court thinks fit (sec. 169) and

(s) *Dunderland Iron Co.*, (1909), 1 Ch 446, *Olathe Silver Mining Co* 27 C. D. 278.
(t) See *Exmouth Docks*, 17 Eq. 181,
(u) *Ex parte Culley*, 9 C D 307; *Ex parte Dearle*, 14 Q B.D. 184.
(v) *Bank of South Australia*, (1895.) 1 Ch 578
(w) *Patent Steam Engine Co*, 8 C D 464; *Re A Co*, (1894). 2 Ch 349.
(x) Buckley (11th Ed) p 369.
(y) *Diamond Fuel Co*, 13 C.D 400.
(z) See *supra* p. 253.
(a) See *supra* pp. 254.
(b) Yorkshire Yarn Co. 12 Beav. 366.
(d) See *Origgiestone Coal Co*, (1906), 2 Ch. 327.

when a winding up order has been made, and also where before such order a provisional liquidator is appointed no suit or other proceeding can be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose (sec.171).

The principle of these sections is to prevent a multiplicity of legal proceedings in respect of the company. The Court which has seisin of the winding up has to deal with all the assets and liabilities of the company, realise the assets and adjust out of them all claims of creditors and contributories. And for this purpose the Court has jurisdiction to decide on all claims against the company and to institute suits or proceedings against persons liable to the company. It is desirable therefore that all claims against the company should be adjusted by the Court in the winding up proceedings. The principle is the same as in Bankruptcy.

But there are cases in which it may be desirable to allow suits or proceedings against the company and the Court will grant leave under sec. 171 or refuse to restrain proceedings under sec. 169 in such cases. Thus where a suit is brought against a third party to which the company is a necessary party, leave will be given on the plaintiff undertaking not to enforce decree against the company. (e)

Where suits allowed after winding up commenced.

A mortgagee's suit for foreclosure (f) or a suit for any relief which cannot be obtained in winding up proceedings, (g) suit for damages (h) or specific performance (i) and other similar suits have been permitted to proceed. (j) Leave to proceed to sue does not necessarily imply leave to execute a decree obtained Fresh leave must be obtained. (k) An application for rectification of register under sec. 38 after the winding up order can only be made by leave.(l)

When an application for liquidation has been made, the Court may in a proper case appoint a provisional liquidator, [sec, 175 cl. (2)] at any time after the presentation of a petition and before the winding up order. When a company which has suspended business is commercially insolvent, such appointment is properly made.(m) Such order is however not to be made in ordinary cases without notice to the company.

Provisional Liquidator

Section 169 sub-section (3) now provides that upon an order for a winding up a notice shall be given of the order to the official receiver and under section 178A the official receiver shall forthwith become the official liquidator of the company and act as such until his continuance as such is terminated by an order of the Court which will ordinarily be when an official liquidator has been appointed under section 175, The official

Interim custody of Court.

(a) *Melhuish* v. *London Bombay Bank*, 15 *L.T.* 495 : *Marine Investment Co.*, 14 *L. T.* 535 ; *Hall* v *Old Talargoch etc.*, *Co*, 3 C. D. 749.
(f) *David Lloyd & Co.*, 6 C D 339.
(g) Buckley, *op. cit*, p. 368 *Jawahir Singh*. 47 I.C. 1005.
(h) Wyley v. *Exhall Mining*, 33, Beav 539.
(i) *Thomas Plate Glass*, 11 Eq 248.
(j) For other cases see Buckley, *op cit*, p 357 *seq*.
(k) *Inwards* v. *Dhunjisha*, I. L. R. 16 Bom. 644.
(l) *Onward Building Soc.*, (1898), 2 Q B 463.
(m) *People's Bank* v. *Narain Das*, 21 I C. 577.

liquidator is required immediately upon the making of the winding up order to take the books, documents and assets of the company into his possession. This provision removes an anomaly in the law as it stood before the amendment of 1936 which left a gap between the winding up order and the effective appointment of an official liquidator during which the Court was supposed to be in possession but without any means to exercise any acts of possession.

The winding up order is required to be filed with the Registrar under section 172 within a month of such order. The duty of filing is imposed both upon the petitioner for winding up and on the company. When the order is filed with the Registrar he is required to make a minute thereof in his books and notify in the Gazette. The making of this order is also deemed to be a notice of discharge to the servants of the company except where the business of the company is continued.

Powers of Court.

The Court is given a wide discretion in the matter of dealing with the application by sec.170, It may dismiss the application, adjourn the hearing, make any interim order or any other order that it deems just. On an application by a contributory the Court can, in the exercise of judicial discretion, refuse to make a winding up order.(n) On the application of a creditor, however, the authorities are clear that where the circumstances entitle a creditor to apply, the court cannot refuse to make the winding up order except where the majority of creditors are against it. (o) Under sec. 174 the Court will have regard to the wishes of creditors.

Adjournment may be granted for sufficient reason but should not be granted if it can be avoided.

The only persons entitled to be heard on a petition for winding up or entitled to appeal are the company, its contributories and creditors (including prospective and contingent creditors). No other person can appear.

Costs

As regards costs and apportionment thereof between several parties, see Buckley's Companies Act, p.352 *et seq.* Sub-sec. 2 of section 170 enables the Court in some cases to order the costs to be paid by the persons responsible for the default *e.g.* Secretary, Manager, Directors, etc. As these persons are not entitled to appear in the cause, it would seem they are entitled to be heard only on the question of costs before the Court can make an order against them.

Stay of winding up.

Even after making a winding up order the Court can stay further proceedings in winding up if it is satisfied upon the petition of a creditor or contributory that proceedings ought to be stayed (sec. 173). In doing so the Court will no doubt have regard to the wish of the majority of creditors (sec.174) but would not be bound to follow it. This includes a power to allow a resumption of business.(p) Such an order is often needed when there are promising proposals afoot for an arrangement with creditors under sec, 153, or for reconstruction of the company.

Resumption of business.

(n) Buckley *op cit*, p. 349

(o) *Bradford Navigation Co.*, 5 Ch. 600 ; *South Indian Mills* v. *Shivlal* I L.R 40 Mad, 706.

(p) Buckley, *op. cit.*, p, 351.

Appointment of liquidator.

Official Liquidator:—Upon a winding up order being made the Court proceeds forthwith to appoint a liquidator (sec. 175)

Statement by Directors

Section 177A now requires that immediately after the winding up order or even before such order where a provisional liquidator has been appointed, the directors and other persons specified in that section must submit a statement regarding the position of the company.

Section 177A runs as follows,

"177A. (1) Where the Court has made a winding up order or appointed an official liquidator provisionally, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the official liquidator a statement as to the affairs of the company verified by an affidavit and containing the following particulars, namely :—

(a) the assets of the company, stating separately the cash balance in hand and at the bank, if any ; (b) the debts and liabilities, (c) the names, residences and occupations of the creditors, stating separately the amount of secured debts and unsecured debts, and in the case of secured debts particulars of the securities, their value and the dates when 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 therefrom.

(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 secretary, manager or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned as the official liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons—

(a) who are or have been directors or 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 as the official liquidator or the Court may for special reasons appoint,

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making

statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, knowingly and wilfully makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code and shall, on the application of the liquidator or of the official receiver, be punishable accordingly,

(8) In this section the expression "the relevent date" means in a case where a provisional liqudator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order."

Liquidator's Report

After the statement under section 177A has been filed the official liquidator is required to prepare and submit a preliminary report under section 177B within four months or with the leave of the Court within six months of the order for winding up containing the following —

(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 and securities , if any , available to the company ,

[iv] moveable and immoveable properties belonging to the company ;

[v] unpaid calls ; and

(b) if the company has failed, as to the causes of the failure ; and

(c) whether in his opinion further inquiry is desirable to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

Sub-section (2) provides for a further report if the official liquidator thinks fit regarding the manner in which the company was formed and whether any fraud has been committed in its promotion or formation or since the formation thereof or any other matter which it is desirable to bring to the notice of the Court.

For procedure for making reports by the Liquidator see rules 109-111 of the Calcutta High Court Rules,

This preliminary report is required to be submitted only by the official liquidator and not by the provisonal liquidator, for the section speaks of a case where the winding up order has been made, after which the provisional liquidator ceases to function. Where no official liquidator has been appointed it would seem that the

official receiver who by virtue of section 171A becomes the official liquidator has got to make a report under this section

Liquidator's Control and Disclaimer of Assets

The official liquidator as well as the provisional liquidator has, however, to take into his custody or assume control of the assets of the company which are to be deemed to be in the custody of the Court as from the date of winding up order. (Sec. 178)

The liquidator's duty to take charge of the assets of the company has now been made subject to his right to disclaim any property on behalf of the company under section 230A. Under this section when the liquidator finds that any land belonging to the company is burdened with onerous covenants or any shares or stock in companies or unprofitable contracts are of a character which are not readily realisable by reason of the obligation to the performance of any onerous act or the payment of any sum of money, the liquidator may at any time within twelve months after the commencement of winding up or where the liquidator does not know of the existence of the property at the time, within 12 months of his knowledge disclaim such property with the leave of the Court. On such an application to disclaim the Court will not make any order without giving notice to all persons interested.

The procedure for such disclaimer and the safeguarding of the rights of persons interested is laid down in detail under sec. 230A.

Power and duties of liquidator.

The powers of the official liquidator are given in sec. 172. It is to be noted that these powers are all subject to the sanction of the Court, and unless the Court gives him power to act without such sanction in any matter under sec, 180, he cannot exercise any of these powers without such sanction.

The function of the liquidator is to wind up the company. which means collecting and liquidating its assets including money payable by contributories and distributing them after deduction of costs and necessary expenses between creditors in the first instance and contributories afterwards. Even after the winding up the company retains its corporate personality until it is dissolved under sec, 164. But after winding up it cannot function except through the liquidator. Sections 179 and 181 give the liquidator the powers which are essential for the liquidator to function on behalf of the company and sec. 182 and 183 lay down some of the modes in which he should work.

All the provisions of this chapter which have obvious analogies to proceedings in insolvency are directed towards making the process of winding up effective and final.

Sec. 179 not exhaustive.

The powers under section 179 are not exhaustive as is indicated by cl. (i) which gives the liquidator residuary powers to do all sucht hings as may be necessary for winding up the affairs of the company and distributing assets. The section outlines the nature of the powers to be exercised by the liquidator, e.g. to institute and defend suits in the name and on behalf of the company, to carry on the business of the company with a view to

speedy and beneficial winding up thereof, to sell the property of the Company by public auction or private contract, to draw, accept or negotiate bills of exchange, hundis and promissory notes, to raise money on the security of the assets of the Company, to use the Company's seal on any document whenever necessary, to prove, rank and claim in the insolvency of any contributory or to take out Letters of Administration to any deceased contributory. Section 181 enables the liquidator to obtain legal assistance where necessary by appointing an advocate, attorney or pleader to act for him.

All the acts of the liquidator are done by him as an officer of the Court and the exercise of his powers is subject to the supervision of the Court. Any person aggrieved by his acts has power to apply to Court under cl. 5 of section 183 and the Court may make such orders as are necessary.

Control of Court.

Section 182 requires the Liquidator to keep proper books for recording minutes, accounts etc. By the amendment of section 182 by the Act of 1936 it is now provided that the official liquidator is required to submit his account to the Court not less than twice in each year and the Court is required to have the accounts audited and the Court is further entitled at any time to require the production and inspection of books or accounts kept by the official liquidator. When the liquidator's accounts are audited one copy of it is required to be kept in Court and the other copy is to be sent to the registrar for filing and each copy is to be open to inspection by any creditor or any interested person.

Accounts

Rule 87 of the Calcutta High Court Rules requires the accounts to be verified by an affidavit. Rule 88 further provides that the accounts are to be audited and passed by the judge. Having regard to the amendments in section 182 which by sub-section (3) provides for the verification and by sub-section [4] for audit and in particular having regard to sub-section [5] that the audited accounts have to be filed it seems that this rule is now of little further importance though the Court has the power under sub-section [4] to scrutinize the accounts if it thinks fit.

The books required are prescribed by the rules of the High Court which leave it to the discretion of the Judge to determine what other books should be kept. The rule in Calcutta is as follows :—(r. 100).

"The Official Liquidator shall forthwith upon his appointment provide and keep proper books of account for the purpose of showing the receipts and payments of the company in its liquidation and of all such transactions and matters as may be necessary to furnish a correct record of his administration of the affairs of the company. In particular, he shall keep (a) a cash-book, in which shall be entered from day to day all receipts and payments, (b) a Ledger which shall include individual accounts of the contributories, in which every contributory shall be debited with the amount payable by him in respect of any call and (c) a book to be called the "Record Book" in which shall be recorded all minutes, all proceedings had, and resolutions passed at any meeting of creditors or contributo-

Books to be kept.

ries, and all such matters other than of accounts as may be necessary to furnish a correct record of his administration of the affairs of the company."

Committee of Inspection

Under the amendments introduced by the the Act of 1936, practically the first act of the Official Liquidator next after taking the assets of the the company into his custody is to call a meeting of the creditors for the purpose of determining whether or not a committee of inspection should be appointed. This is provided in section 178A. The decision of the creditors' meeting regarding the committee of inspection is next to be laid before a meeting of the contributories. If the contributories do not accept the decision of the creditors, the liquidator is to apply to the Court for directions as to whether there should be a committee of inspection and if so what should be the committee. (Sec Rules 112, 115 of Cal. H. C. Rules).

This committee of inspection is a new and important feature of the ammended Act. Sub-section (4) of section 178A provides that the committee shall consist of not more than 12 persons being either creditors or contributories or their attorneys in such number or proportion as may be agreed upon by the creditors or the contributories or in case of difference between them determined by the Court. The committee has important functions to perform in supervising the work of liquidition and advising the liquidator. For this purpose they are entitled to inspect the accounts of the official liquidator at all reasonable times and are required to meet at least once a month, the meeting being called by the liquidator or failing him by any member of the committee. Under section 183 as amended. the resolution of the committee of inspection has also to be taken into consideration by the liquidator in the administration of the assets of the company.

Contributories

List of contributories.

The next duty of the liquidator is to frame a list of debts due by the company and list of contributories.

The list of contributories is settled finally by the Court (sec 184). But it is the duty of the liquidator to make out a list and file it in Court with an affidavit and then make an appointment with the Judge to settle it. The procedure in this respect is laid down in the High Court Rules (see Rules 140 to 146 of the Calcutta High Court). Any person who is aggrieved by the inclusion or exclusion of his name in or from the list may be heard in settling the list and, in a proper case, the Court will give permission to such person to establish his right by a proceeding under sec. 38 for rectification of register or by suit.

The list of contributories is made out in two parts—the A list, which includes the members actually on the register at the commencement of the liquidation and the *B* list which contains the names of past members who have ceased to be members within a year from the commencement of winding up. Liability of members on the B list is contingent on the failure of the contributions from A contributories

to satisfy all debts, (sec. 156). but the two lists may be made at the same time. Where a transfer has been made by X to Y and by Y to Z both in the course of the year X and Y will both be placed on the B list though the liability of X will only arise if the amount due on the share is not realised from Y. (q)

But there is nothing in the Act to prevent the liquidator from calling upon both X and Y simultaneously or calling upon X and passing over Y. In either case, however, X has his remedy over against Y and can call upon him for indemnity (see Buckley, p. 336).

Liability of contributories

Sec. 156 lays down the exact limits of the liabilities of contributories generally. Briefly they are as follows :-

(1) The liability extends only up to the amount unpaid on the shares, or in the case of a guarantee company, up to the amount guaranteed (cls. iv and v).

(2) Members of a company such as policy-holder members of an Insurance Company who are by contract excluded from liability to contribute are not liable (cl. vi).

(3) Past members who have ceased to be members for a year or more are not liable [cl.(i)].

(4) Those who have ceased to be members within a year from the commencement of winding up are liable but their liability (i) does not extend to debts incurred after they ceased to be members [cl. (ii)] nor does it arise (ii) until the Court finds that existing members are unable to pay the contributions required to be made by them [cl. (iii)].

Past members who are compelled to pay are entitled to indemnity against their transferees.

Under the amended section 159(1) the liability of the contributories creates a debt payable at the time specified in the calls made for them by the liquidator. This means that the liquidator upon winding up acquires a new cause of action against the contributory as a share-holder. So that, although the claim of the company may have become barred by limitation, the liquidator will nevertheless be entitled to realise the same money on a call made by him within a fresh period of three years from the call made by the liquidator.

Under section 160 the liability of the contributory extends to his legal representatives on his death and under section 161 on his assignee upon his insolvency. For the purposes of this liability under section 160 the surviving copartner of a contributory who is a member of the Mitakshara joint family is to be regarded as a legal representative.

For a detailed treatment of the liability of past members, see Buckley, p, 332 *seq.*

Assets and Liabilities

Under the old rules of the Calcutta High Court the Official Liquidator was required to file a statement of assets of the company within three months. This has now been replaced by the statement by the Liquidator under sec. 177B (supra p. 287) and rules 109 to 111 of the Calcutta High Court rules.

(q) *Kellock* v. *Enthoven*, L.R., 8 Q B. 458 ; *Kerrison* v. *Patten*, 1872, W N. 226.

The making of a list of debts of the Company and proof thereof are however still provided for by rules. The first step is an advertisement in such manner as the Court shall direct (r. 123 Cal. H. C. rules). Thereafter every creditor has to prove his debt unless the judge directs any debt to be admitted without proof (r. 124). Rules 125 to 131 provide for the mode of proof and the investigation, acceptance or rejection of debts by the Liquidator. When the investigation is finished the Liquidator files a list of debts on affidavit (r. 132) which is followed by a hearing and settlement of debts by the Court (r. 132-137).

List debts

After the list of debts is settled, the Liquidator will proceed to estimate the amount of the debt. In arriving at the correct figure for the settlement of debts, the judge will decide in each particular case if the cost of proving debts will be added to the principal and interest on the debt will be calculated up to the date of winding up. The final settlement of the list of debts and claims shall be recorded in a certificate signed by the judge (rules 134 and 135).

Assessment of amount of debt.

The liquidation of the assets of the company include three steps (i)taking possession of all properties, (ii) selling the properties and realising all claims of the company including contributions from contributories and (iii)distribution of assets and adjustment of claims of creditors and contributories.

Steps in liquidation.

It is not necessary to bring an action to recover property in every case. Where any *money, property or document* of the company is in the possession of any *contributory, trustee, receiver, banker, agent or officer* of the company, the Liquidator may apply to the Court for an order under sec 185 calling upon him to surrender such possession. The order will be made as a matter of course and anybody disobeying the order would be liable for contempt. This order like other orders of the Court should be executed in the same way as a decree (sec. 199-201). The money, property etc. must be shown to belong *prima facie* to the company. No order will be made where the title of the company is disputed or where the person claims to hold under a charge or lien or otherwise adversely to the company.

Realisation of assets.

An auditor, not being an officer, cannot be proceeded against under this section to deliver books in his charge. (s) He may be ordered to produce books under sec. 195.

Similarly in respect of debts due to the company by any contributory other than a call, an order may be made under sec. 186 calling upon him to pay. In doing so the Court will allow a set-off in respect of any sums due by the company to the contributory on any contract otherwise than in his capacity as a member of the company. This is called a *balance order* and may be made also in respect of calls due before the winding up. An

Balance order

(r) *Kit Hill Tunnel* 16 C. D. 590.

(s) *Pindlay v. Waddell*, (1910), S.C. 670.

order on a contributory to pay calls *after winding up* cannot be made under this section but can be made under sec. 187 and the amount of *such calls cannot be set-off against any debts* due by the company. The order is subject to appeal (sec. 202) but is otherwise conclusive and cannot be questioned in another suit (sec. 190).

Suits etc by liquidator.

Apart from these special remedies the Liquidator can institute suits or other proceedings such as execution or a petition in insolvency on behalf of the company. Such suits or proceedings are to be instituted in the name and on behalf of the company [sec. 179, cl. (*a*)]. (*t*) Secs. 179 and 181 give the necessary powers. And sec. 198 provides that the Court has power to institute suits or other proceedings even in respect of matters for which summary remedies are provided in other sections.

Sale.

The High Court Rules provide for the mode of sale of properties, normally by public auction. The rules also lay down that the purchase money in sales is to be paid in such manner as the Court directs and in the absence of any direction, to the Liquidator or to his Bank account (Rule 160).

Liquidator's duty with regard to cash receipts & cash in hand

Under section 188 the Court may order all payments or moneys due to the company to be paid to the account of the official liquidator in any scheduled Bank and under the new section 244A the official liquidator is bound to pay all moneys received by him into a scheduled Bank except where the Court for special reasons authorises him to have an account with any other Bank and a stringent penalty is prescribed by sub-section (2) of that section for the liquidator who keeps any money exceeding Rs. 500/-for more than ten days in his hands without paying into the Bank.

Further, under the new section 244B, if there are unclaimed dividends or undistributed assets in the hands of any liquidator, either official or otherwise, which have remained unclaimed for six months after being payable, the amounts should be forthwith paid to the "Companies Liquidation Account" in the Reserve Bank together with a statement showing the particulars of the amounts and of the persons to whom such amounts are payable. Failure to comply with this section is punishable under sub-section (7).

Carrying on business.

It is the duty of the liquidator to sell the properties with reasonable speed and realise the assets. But a hurried sale may sometimes be disastrous. The Court therefore is given power [sec. 179, cl. (*b*)] to enable the liquidator to carry on the business for some time if that is necessary for the profitable winding up of the company. But such power is given solely for the profitable winding up and the liquidator cannot carry on the business for any other purpose, *e.g.* for the sake of extra profit.

In connection with the realisation of assets it may be necessary to proceed against directors, promoters, officers and others for

(t) *Muhammad Yusuf v. Himalaya Bank*, I.L. R 18 All; *In re Winterbottom* [18 Q.B.D. 446

Proceedings against Directors &c.

damages or misfeasance and there may also be occasion for the exercise of extraordinary powers of the Court. These powers have been given to the Court for facilitating the progress of liquidation.

Thus under sec. 195 the Court can summon any *officer or other person known or suspected to have in his possession any property* of the company or supposed to be *indebted* to the company or any person whom the Court deems *capable of giving information* concerning the trade, dealings and affairs of the company. The Court after summoning him may examine him on oath and get him to sign his statement and also require him to produce documents in his custody or power.

Discovery on evidence; sec. 195.

"The powers conferred by the above sections are frequently exercised, *e.g.*, (1) where the liquidator, from an examination of the books and papers of the company, or otherwise, has reason to suspect that there may be some claim under sec. 215 (corresponding to sec, 235 of the Indian Act), the misfeasance section ; or (2) where he thinks there may be ground for taking proceedings for an action against promoters or others ; or (3) where proceedings are pending against the company, and he desires to ascertain whether he can prudently proceed with or defend an action (*Massey* v. *Allen* 9. Ch. D. 164 ; *Re Contract Corpn.Ex parte Bateman* ; (1867), 15 W.R, 245 ; *Metropolitan* (*Brush*) *Electric &c. Co.* (1885), 51 L.T.817 ; (4) where the circumstances in which a person became a member, or ceased to be a member, are material , (5) where a contributory cannot be found or is in default.

Powers when exercised

"The object of the examination is to get information to enable the Court to determine what course ought to be followed with reference to some matter or some claim in the winding up. *Grey's Brewery Co.* (1883), 53 L.T.Ch.262.

"The object is discovery. There need not be any specific issue or dispute pending. *Clement's Case*, 13 Eq. 17n ; *Gold Co.* 12 Ch. Div. 77 ; but the Court is bound to see that the inquisitorial powers given by the section are not used for vexation or oppression. *Heiron's Case* 15 Ch. D. 142." (u)

Public examination of Directors &c. Sec 196

Sec. 196 provides for what is known as *public examination* of directors, promoters etc. The section runs as follows :—

106. (1) When an *order has been made* for winidng-up a company by the Court, and the *official liquidator has applied* 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 director or other officer of the company in relation to the company since its formation, the Court may after consideration of the application direct that any person who has taken any part in the promotion or formation of the company, or has been a director, manager or other officer of the company, shall attend before the Court on a day appointed by the Court for that purpose and be *publicly examined* as to the promotion or formation or the conduct of the business

(d) Palmer : Comp. Precdts : Part II 13th Edition, pp. 660, 661.

of the company, or as to his conduct and dealings as director, manager or other officer thereof.

(2) The official liquidator shall take part in the examination, and for that purpose may, if specially authorised by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(3) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him

(6) A person ordered to be examined under this section may at his own cost employ any person entitled to appear before the Court who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him, Provided that if he is, in the opinion of the Court exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit

(7) 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 in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times

(8] The Court may, if it thinks fit, adjourn the examination from time to time.

[9] An examination under this section may, if the Court so directs, and subject to any rules 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, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held

Arrest of contributory

Under sec. 197 the Court can arrest a contributory about to abscond or remove or conceal property to avoid payment of calls and cause his books, papers and property to be seized.

Object of these rules

All these powers are preliminary and ancillary to taking proper legal steps for the realisation of damages and other claims against proper persons. The claims will have to be pursued by suits and in appropriate cases by orders under this chapter. These processes only furnish clues and afford evidence for the proper proceeding.

Calls ; sec. 187.

When the debts have been estimated and an estimate of realisable assets have been made, the liquidator has to estimate whether and to what extent contributories should be called upon to pay. Then the liquidator applies to the Court to make calls under Sec. 187. The order of the Court making the call can be executed as a decree (sec. 199).

This is a *summary process* which may be utilised in lieu of a suit for the money but is *not the exclusive remedy*. A suit and an application for calls under this section cannot however be proceeded with simultaneously.

The Court has to exercise its *discretion* in making calls after taking into consideration all the debts and realisable assets. If it thinks that the assets are sufficient to pay all debts, no call will be made. In determining the amount of the call the Court has to take into consideration the *probability that the whole of the amount called may not be paid.* The call may be made at any time after winding up, on the basis of estimated assets and liabilities and the Court need not wait till other assets are realised. Generally speaking the call will be made so as to leave a balance as a margin of safety. The Court may order the payment to be made by instalments.

Rules relating to calls.

The procedure for making calls is provided for by rules of the High Courts. Under the Calcutta High Court Rules (r 147) a liquidator is required to obtain the sanction of the Committee of Inspection, if there is any. Where there is no such committee or if the committee decides against him, an application has to be made by the Official Liquidator to the Judge, for leave to make a call in the prescribed form. [r. 148] On the petition being admitted, the Judge shall fix a date for hearing, whereupon the notice of the appointed date shall be advertised by the Liquidator, which must be published at least fourteen days before the date of hearing. No individual notice need be served on the contributories, unless the Judge so directs. [R 150] Every contributory is entitled to be heard in opposition to the application so that the Court may make the order after considering the objections, if any. After the order for call has been made, a copy thereof is required to be served by registered post upon each of the contributories together with a notice from the Official Liquidator specifying the amount of the balance due from such contributory, having regard to the provisions of the Act [Rule 151], as to the time within which and the place where such call shall be paid. The payment of the amount due from such contributory may be enforced by order of the Judge to be made on summons by the liquidator, supported by an affidavit in the prescribed form (r. 152). A call made otherwise than in compliance with the rules is not binding.[v]

Unlimited liability of Directors.

In addition to the liability of the Directors as ordinary contributories, they may be under a further liability in companies where the liability of Directors is by the Memorandum declared to be unlimited. This can be done under section 70 of the Indian Companies Act. And a Limited Company if so authorised by the Articles may provide for such unlimited liability by a special resolution in accordance with sec 71. Such provisions are rare Where they exist, however, the liability of the Director as a contributory is provided for under section 157, which lays down that in addition to his liability to contribute as an ordinary member, the Director shall be liable to make a further contribution as if he was at the commencement of the winding up a member of an unlimited company. The liability extends to persons only so long as they are

(v) *Krijanandan v. National Insurance*, 44 I. C. 139.

Directors. But, as in the case of past members, past Directors may also become liable under the *unlimited liability* clause, provided that a past Director is not liable if he has ceased to hold office for a year or upward. nor is he liable for any debt or libility of the company incurred after he has ceased to be Director, and he is not also liable unless the Court deems it necessary to require that contribution in order to satisfy the debts and liablities of the company, and costs, charges and expenses of the winding-up This liability can only be invoked when the ordinary liability of shareholders as contributories has been exhausted and the debts of company are still unsatisfied.

Misfeasance claims; sec. 235

An important head of the assets of the Company is the amount which can be recovered by the company for *misfeasance of Directors, Managers, Liquidators and other officers of the Company.* Section 235 provides as follows :—

Where in the case of winding up a company it appears that any person, who has taken part in the formation or promotion of the company or any past Director. Manager, or Liquidator or any past or present officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company the Court may, on the applicatton of the Liquidator or of any creditor or contributory, made within three years from the date of the first appointment of a liquidator in the winding up or the misapplication, retainer, misfeasance or breach of trust as the case may be whichever is longer, examine into the conduct of the promoter, director, manager, liquidator or officer 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 sums 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

Sub-section 2 of the section provides that this liability is enforceable in spite of the fact that the offence in respect of which the officer is liable is a criminal offence so that, except for this provision, the liability would have been unenforceable at Common law.

Scope of this section

The official liquidator or any creditor or any contributory can apply under this section.(w) This section, however *does not create any new rights*, but provides only a *summary remedy* for enforcing rights which existed before winding up. And where the remedy, by ordinary suit is *barred by limitation it cannot be enforced* by an application under this section. The article of the Limitation Act applicable is article 36, and time runs from the date of misfeasance.(x) Action under this section can only be taken against a Director or officer, as such. Anything done by him during the period that he was a Director, but in his capacity as a debtor, cannot be made a ground of liability under this section.(y) The jurisdiction under this section is *discretionary.* And

Ground and extent of liability

(w) *National Funds Code*, 10 C.D. 118.
(x) *Hukumchand* v. *Bank of Multan*, 69 I.C. 255.
(y) *Haneray* v *Liquidator of Lahore Bank*, 59 P. L. R. (1915), 27 I. C. 594.

when all the creditors are satisfied and majority of the contributories do not wish to proceed against the Directors, the Court may, in its discretion, refuse relief.(z) The object of this section is to add to the funds available for meeting the liabilities of the company and the Court will not take action at the instance of a contributory who has suffered by the act of a Director or other officer to recover damages for his benefit, when the company as a whole is not benefited. (a) The wrongful act. which is to be the ground for action, must be one which has *caused loss to the company*, (b) To sustain a claim under this section the applicant has to show firstly a *breach of trust or misfeasance*, secondly, *loss to the company*, and rhirdly, an interest of the company in the result of application (c) The only cases in which the liabiliay arises, are, where the officer has been guilty or a breach of duty as officer and has caused pecuniary loss to the company by mis-application of its assets, for which he might have been sued. (d) Lindley, L.J., observed in *Re Sharpe* (e). "As soon as the conclusion is arrived at that the company's money has been applied for purposes which the company cannot sanction, it follows the Directors are liable to replace the money, however honestly they may have acted." (f) "The summary power of the Court is to be exercised only when the charge against the officer is clearly and distinctly made out and there is no question of law to be determined." (g) Section 281 provides that where a Director, a manager, a managing agent, an officer of the company or the auditor is, or may be, liable in respect of negligence or breach of trust but is found to have *acted honestly* and reasonably, the Court may relieve him either wholly or partly from liability on such terms as the Court may think proper.

Persons liable

The persons who are liable under this section are *promoters*, any *past or present Director, manager, liquidator or any officer* of the company. *Bankers* and *trustees for debenture-holders* and *solicitors* of the company are not *prima facie* officers under this section. But if they are employed permanently, they may come within the scope of this section. The term 'officer' is very extensive. It includes a person who,by the term of his appointment is made and called an officer, who is appointed by the company, paid by the company and whose function is to act on behalf of the company,to check the Directors and whose appointment is made not on a special occasion or for a special limited purpose but under the regulation governing the constitution of the company.(h) A Director *de facto* who is not properly appointed is liable under this

Officer : who is.

(z) *Sunlight Incandescent*, 16 P. R. R. 535.

(a) *Hills Waterfall Company*, (1896), 1 Ch. 947.

(b) *Jubilee Cotton Mills*, (1923) 1 Ch. 188, *Mathurdas* v. *Abdul Gani*, 28 P. L. R. (1917), 39 I. C. 769.

(c) *Benlinck* v. *Penn*, 12 A C. 652.

(d). *Kensington Cotton Mill*, (1896). 2 Ch. 279.

(e) (1892), 1 Ch. 154.

(f) See, however. *Kingston Cotton Mill* where it was held that where the action is *intra vires* and the Directors acted honestly and reasonably believing in a state of facts which would justify the act there was no liability.

(g) *Stringer's Case*, 4 Ch 475 at P. 493.

(h) Buckley *Companies Consolidation Act*, p. 509.

section.(i) Auditors are officers under this section and are liable for *misfeasance; see* sec. 2, *sub-sec.* (11).(j) But a person who is only called upon to do the auditor's work for a particular occasion is not liable.(k) The question as to whether an auditor is an officer must be decided with reference to Articles of Association dealing with the duties of auditors. But a person who has been appointed auditor cannot be heard to say that his appointment was invalid and improper.(l)

Auditor.

The following are some illustrative cases where liability has been incurred. Where dividend has been improperly paid out of capital, a Director who is a party to such payment is liable. And where a Managing Director induces the share-holders to declare a dividend partly out of capital, he may be made liable,(m) A Director making a profit by way of commission from vendors is liable to return the amount, So bribes and secret profits made by Directors are also recoverable. Where loss has been incurred by allotment to infants at the instance of the Director, he was made liable, With regard to liability of promoters. *see supra* p. 50 seq.

Illustrative cases

Prosecution of Delinquent Directors

Under the amendment of 1936 provision has been made for the procedure to be followed in prosecuting any past or present director, manager or other officer or any member of the company and by section 238A stringent penalties have been provided for offences commited in connection with the liqudation,

Under section 237 if the Court finds in the course of winding up that any past or present director, manager or other officer or any member of the company has been guilty of any offence in relation to the company it may either on application by a party or on its own motion direct the liquidator to prosecute the offender or to refer the matter to the Registrar. If the liquidator in the course of a voluntary winding up finds that an offence has been committed by any such person in relation to the company he is required to report the matter to the Registrar and furnish him with all information and evidence whereupon the Registrar is to report to the Local Government if he thinks fit and the Local Government may apply to the Court.

If the Registrar refuses to take any proceedings on the report of the liquidator. the liquidator may take action himself with the sanction of the Court and the Court also may be moved by any otherperson to direct the liquidator to prosecute in the case where a liquidator in the voluntary winding up does not himself prosecute.

Section 238 provides a penalty of imprisonment up to seven years as well as a fine for a false statement in any affidavit, deposion or

(i) *Coventry and Dickson's Case*, 14 C D. 660 ; *Gibson* v *Barton* 10. Q. B. 629.

(j) *Londou and General Bank*, (1895) 2 Chan. 166 *; Kingston Cotton Mills*; supra *; Republic of Bolivia Syn.* (1914), 1 Chan, 139.

[k] *Western Counties Steam Company* [1897] Chan. 617

[l] *Lovelock & Lewes* v. *Malabar Timber*, 18 I C 997 ; 13 M. L T. 282 ; *Stuart Smith* v *Bank of Burma*, Bur L. T. 230 ; 24 I C 431.

(m) *Daulat Rai* v. *Emperor*, 29 I.C. 105 ; 28 P.R C , 1915.

solemn affirmation in or about the winding up of any company and section 238A provides for a long list of offences during winding up as follows :---

"238A (1) If any person, being a past or present director, managing agent, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up whether by or under the supervision of the Court or voluntarily, or is subsequently ordered to be wound up by the Court or 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, real and personal, 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 way of the business of the company, or

(b) does not deliver up to the liquidator or as he directs, all such part of the real and personal property of the company as is in his custody or under his cotrol, and which he is required by law to deliver up ; or

(c) does not deliver up to the liquidator, or as he directs all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up ; or

(d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of one hundred rupees or upwards or conceals any debt due to or from the company ; or

(e) within 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 hendred rupees or upwards ; or

(f) makes any material omission in any statement relating to the affairs of the company ; or

(g)knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof ; or

(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;or

(i) within 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 , or

(j) within 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 ; or

(k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in or is privy to the fraudulent parting with, altering or making any omission in any document affecting or relating to the property or affairs of the company ; or

(l) after the commencement of the winding up or at any meeting of the creditors of the company within 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 ; or

(m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for , or

(n) within 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 ; or

(o) within 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 way 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 the offences mentioned respectively in clauses (m), (n) and (o) of this sub-section, with imprisonment for a term not exceeding five years, and, in the case of any other offence, with imprisonment for a term not exceeding two years '

Provided that it shall be a good defence to a charge under any of clauses (b)' (c) (d), (f), (n) and (o), if the accused proves that he had no intent to defraud. and to a charge under any of clauses (a) (h) (i) and (j), if he proves that he had no intent to conceal the 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 (c) of sub-section (l) 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 not exceeding three years.

Penalties for offences against the company irrespective of winding up are dealt with under Part XI section 278-283 of the Act.

Duty of liquidator

A liquidator appointed by the Court is an officer of the Court and it is his duty to act impartially and in the interest of the creditors. He is in some sense a trustee for the creditors as well as for the company. It is his duty, therefore, to act with impartiality and safeguard properly the interest of the creditors and the company. And the Court in making any order on the liquidator will have regard to the wishes of the creditors and contributories as proved by sufficient evidence (sec. 174).

This is interpreted by section 209 which lays down the method by which the Court is to ascertain the wishes of the creditors or the

Wishes of creditors how ascertained.

contributories. That section lays down that the court may, if it thinks fit, for the purpose of ascertaining those wishes, *direct meetings of the creditors and contributories to be called*, held and conducted in such manner as the Court directs, and may appoint a person to act as Chairman of such meeting and to report the result of it to the Court. And it is, therefore, provided that in considering the wishes of the creditors the Court shall have regard to the value of the debt due to each, while in the case of contributories, the votes they are entitled to under the Articles would be taken into consideration. Section 183 provides that the liquidator is to have regard to any directions that may be given to him by the resolution of creditors or contributories at any joint meeting. Such meetings may be summoned by the official liquidator at his discretion, and he is bound to summon such meetings at such times as the creditors or contributories by resolution may direct, or whenever he is requested to do so by one-tenth in value of the contributories. The High Court has powers under section 246 to make rules enabling the liquidator to exercise his powers in respect of holding and conducting meetings. Such rules are to be found in the case of Calcutta, High Court in Rules 168 to 194 which provide that notices of meetings of creditors or contributories shall be given in the prescribed form 7 days before the date appointed for such meeting by advertisement in two daily newspapers published in Calcutta and also by prepaid letter posted to every creditor or contributory, specifying the time and place of the meeting and the matter to be considered. The votes may be given either in person or by proxy, provided that no person who is not a contributory can be proxy for a contributory nor can a person who is not a creditor be a proxy for a creditor, but a creditor or contributory may appoint the official liquidator to act as his proxy. The official liquidator, or where there are more than one, the first-named liquidator or a person nominated by him shall be the chairman of the meeting and a resolution thereat will be deemed to be passed, when a majority in number and value of the creditors or contributories present in person or by proxy have voted in favour of the resolution. The quorum of a meeting of the creditors or contributories is fixed by the Rules at three persons entitled to vote. The Chairman of the meeting shall file a copy of each resolution passed with the Registrar of Joint Stock Companies and report the result of each meeting to the Judge in the prescribed form (rule 143).

Rules

Every disposition of property of the company and every transfer of shares or alteration in the status of members, unless the Court directs otherwise, are declared to be void after the commencement of the winding up (*vide* section 227). The Court has to exercise its discretion in the matter of sanctioning transfers or changes of status and where a *bona-fide* and proper transfer has been made the Court will sanction it.

Effect of winding up order on dispositions of property.

With regard to payment of creditors, the first duty of the liquidator is to settle the list of creditors together with the amount due to each. When this is done and the assets of the company have been realised either wholly, or partially the liquidator has to pay the debts, and when they are paid

Payment of creditors.

in full to pay dividends to the creditors. In the winding-up of an insolvent company the liquidator is required to observe the rules with regard to the respective rights of secured and unsecured creditors, and to debts proveable, and to the valuation, annnities and future and contingent liabilities which are enforced for the time being under the law of insolvency. The position of a secured creditor, as under insolvency, is that he is entitled to realise his debt from the security with interest up to the date of realisation and, in so far as any portion of the debt is not satisfied out of the security, is entitled to share rateably with the unsecured creditors, He may proceed to enforce a security by a proper action in spite of the winding up and then prove for the balance before the liquidator, or he may surrender his security and prove for his whole debt (Sec *Presidency Towns Insolvency Act*, 1909, Schedu clauses 9, 10 and 11, *Provincial Insolvency Act*, 1907, sec, 31.)(n). As between unsecured creditors they are to be paid *pari passu*.

Secured creditors

"Secured creditors" include all persons who hold any security on any specific property or on the general undertaking of the company, either by contract or by order of court or otherwise. Thus the landlord is a secured creditor in respect of his rent.

Securities Deposited with Company

Debtors, securities

The position of debtors of the company and other person who have given security to the company for their debt or actual or contingent liabilities is different. They are not creditors but owners of the property which is given as security, subject to the charge in favour of the company; so that, on discharging their liability they are entitled to recover their security in specie. The company would be liable for conversion if they dealt with the security by selling or hypothecating it otherwise than by way of enforcing the security. The position is different when the security is, by consent of the giver of the security, mixed up with the funds of the company. In such a case the company becomes a debtor. Thus where an agent of a bank deposited as security a certain sum for the faithful discharge of his duties and the deposit carried an interest at 6 p.c. for its use *held* that the agent could rank only as an unsecured creditor, (o)

Provident fund.

This is now provided in respect of the securities deposited by employees with a company as well as in sespect of the provident fund by section 283B of the amended Act which requires all moneys or securities so deposited to be deposited in a scheduled bank and also that all provident fund moneys should be invested in trutsee securities and gives to the employee the power to inspect the bank's receipts for such deposits.

Void Trausfers

Void transfers

A security given by the company for a debt may be avoided under sec. 231, like any other "transfer, delivery of goods payment, execution or other act relating to

(n) *Ram Chand* v. *Bank of Upper India*, 74 I.C. 197.
(o) *Malayanker v. Credit Bank of India*, 16 Bom L. R. 783; 27 I. C. 187.

property" if it is a *fraudulent preference* within the meaning of the *insolvency rule* and all transfers of property and agreement to transfer for the benefit of creditors are void.

Under insolvency law

Sec. 56 of the Presidency Towns Insolvency Act(see sec. 37 of the Provincial Insolvency Act) lays down the rule in bankruptcy thus:—

"(1] Every transfer of property, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money, in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the Offcial Assignee.

"[2] This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent."

This lays down a special rule in insolvency, setting aside all transfers and other similar transactions by a person unable to pay debts, made by way of preference, if the transaction takes place *within three months* of the insolvency or the commencement of the winding up in the case of a company. Apart from this, every transfer of immoveable property is liable to be set aside under section 53 of the Transfer of Property Act if such transfer is made *with intent to defraud* prior or subsequent tranferees for consideration or to defeat or delay the creditors.

Fradulent transfers under T. P Act.

Thus while a transfer made before three months is voidable if it was made with a fraudulent intent, no such intention need be proved if the transfer was made within three months. And the classes of transactions avoided under the Insolvency rule and the Companies Act cover a wider area than the rule under the Transfer of Property Act. The *intention to show preference*, however, must be present in every case and it will be evidenced by circumstances. Where such intention is negatived, the transaction will not be set aside. Thus where a company issued debentures in payment for goods actually supplied, not in contemplation of winding up but with a view to avoid winding up (p) or where a security is given under pressure from a creditor at a time when there was nothing to show that a winding up was contemplated (q) the transactions were held valid. The Court looks, in fact, at the dominant or real intention and not at the result.(r)

Where security is given within three months but in pursuance of a prior agreement and in the course of performance of the agreement the security will be held valid, unless the giving of the security was purposely delayed.(s)

(p) *Inns of Court Hotel Co.*, 6 Eq. 82

[q] *Patent File Co.* 6 Ch. 83.

[r] *Ex parte Taylor*, 18 Q B D 295 ; Buckley, *op cit*, p 495.

[s] *Olderfleet Shipbuilding*, [1922], 1 I R. 26 ; *Jackson v Baseford*, [1906], 2 Ch. 467.

Floating Charges

Sec. 233 provides a special rule for floating charges. Where a company is found to have created a floating charge within three months of the commencement of the winding up, such charge will be invalid "except to the amount of any cash paid to the company *at the time of, or subsequently* to, the creation of and as *consideration* for the charge together with interest on the amount at tht rate of five per cent· per annum" so that a floating charge created in consideration of past debts or for past and future debts is void with regard to past debts if the charge was created within three months of the commencement of winding up; bui it is valid for such part of the subsequent advance as is due on the commencement of the winding up.(t), This rule is inapplicable if it is proved that at the time of creating the charge the company was solvent. A floating charge created within three months of winding up in pursuance of prior agreement is also invalid unless the agreement to create the charge is unconditional, and the charge is created in due course without delay. (u) Where cash is advanced against an unconditional agreement to give a floating charge forthwith and documents are executed without undue delay, in due course, the money paid is to be regarded as paid in consideration of the charge within the section and not a past debt. (v)

Floating charges: sec. 233.

Priority Between Debts

Subject to the rights of secured creditors against the securities, the assets of the company have to be applied in the payment of the ordinary debts and liabilities of the company in the first instance.

Other debts.

The first charge on the assets of the company are the costs and expenses of the winding up for which a sufficient amount will have to be set apart in the first instance. Subject to this, the debts enumerated in sec. 230 are to be paid first and forthwith, if possible. These are *revenue, taxes, cesses* and *rates*, whether payable to the Crown or to a local authority, due from the company *within twelve months* from the date of the commencement of the winding up or the date of the order of winding up as the case may be and all *wages* or *salary of any clerk, servant, labourer or workman* in respect of service rendered to the company *within two months* preceding such date, provided that the sum payable as salary or wages does not exceed Rs. 1,000/-for each clerk or servant, and in the case of any labourer or workman not Exceeding Rs.500/-for each workman ; the *compensation* payable under the *Workmen's Compensation Act*; all sums payable due to an employee from *provident fund, pension fund, gratuity fund* or any other fund for the welfare of the employees and the expenses of any investigation held under section 138 of the Act. Among themselves,

Cost of winding up.

Preferentia liabilities.

[t] *Henrymen Chusty & Lilly Ltd.* [1917]. I Ch. 283
[u] *Gregory Love & Co.* [1916] I Ch. 203 ; *Columbia Fireproofing Co.* [1910]. I Ch. 758.
[v] *Columbia Fireproofing*, supra.

these claims rank *pari passu* and, unless the assets are sufficient to pay them in full, they abate proportionately. If the amount available for general creditors is insufficient to meet these debts, the balance due may be paid out of any property comprised in a floating charge attached to debentures issued by the company. So that these expenses have priority over such floating charges, and these debts are also declared by sub-sec. (4) to be a first charge on properties distrained by the landlord for rent within three months of the commencement of the winding up.

Clerks and servants

The clause "clerk or servants" under this section has been given an extensive meaning and includes a secretary, a person engaged on a salary for work two days in the week, person working at home but on a monthly salary and so on; but not a contributor to a newspaper nor a Managing Director nor *semble* a Managing Agent. [w]

The payment is to be made, in the first instance out of general assets. It is only when these assets are insufficient that the property subject to a floating charge can be attached. [x]

After the payment of these preferential claims the liquidator has to apply the assets which remain after satisfaction of secured creditors to paying the creditors generally. All creditors who have proved in time are entitled to participate in the distribution of the assets *pari passu*.

General body of creditors *pari passu*

Sec. 234 gives the liquidator large powers in the matter of making arrangement and compromises with any class of creditors or the whole body of them. The compromise can be made only by the liquidator with the sanction of the Court. The Court cannot compel the liquidator to accept any compromise against his will. Nor can the liquidator make a compromise without the sanction of the Court.(y) Any creditor or contributory aggrieved by the order may apply to the Court against such compromise under sub-sec (2) and in a proper case the Court will refuse to give effect to a compromise.

Procedure after Winding up Order

Orders of Court how enforced

Orders made by the Court in a winding up may be enforced in the same manner as decrees of the Court (sec. 199-201) and they are subject to appeal or rehearing in the same manner as orders in ordinary civil cases (sec. 202).(z)

Filing with Registrar.

When the winding up orders is made, the company is bound, under section 172, to file with the Registrar a copy of the order, and the Registrar is required to make a minute thereof in his books and to notify in the Official Gazette that such an order has been made. The petitioner in winding up is also required to file a copy of the order with the Registrar. One of

[w] Buckley, *op cit*, p 492.
[x] *Westminister Corporation* v. *Chapman* [1916], 1 Ch. 161.
[y] *Lama Coal Co*, 2 Ch. 692; *East of England Banking Co.*, Ch. 309.
[z] On the nature of the power of appeal and review see *Kesavaloo* v. *Moruqappa*, I.L R. 30 Mad. 22 and *Mussorie Bank* v. *Himalaya Bank* I L R. 16 All 53.

the effects of such an order is, under section 172, clause 3, that it operates as a notice of discharge to all servants of the company, except when the business of the company is continued. The exact effect of this rule upon the servants and officers of the company would be determined upon terms of employment of each officer. Thus where an officer is liable to be removed on six months' notice, he would be entitled to a week's notice, will be entitled to a week's wages. Where the business of the company is continued by the permission of Court with a view to the profitable winding up of the company, the services of officers are not terminated by the order.

Wishes of creditors

Section 174 authorises the court to have regard to the wishes of the creditors and contributories in all matters relating to the winding up, The mode of determination of the wishes of creditors is laid down by rules framed by the High Court. under section 246.

Distribution of Surplus Assets

After meeting all the liabilities of the company, the liquidator proceeds to distribute the "surplus assets" to the shareholders. The term "surplus assets" often used in the Articles is ambiguous and must be construed strictly with the context in the Articles. It may mean and *prima facie* does mean "the assets remaining after payment of debts and costs," but it may also mean "assets remaining after payment of debts and costs and *payment of paid up capital*." Further, it must be remembered that when different amounts are paid up in the capital, the liquidators may either make a call on the defaulting contributories or pay up the differences to the shareholders who have made larger payments in order to "equalise" the capital accounts. Where a company has both Preference and Ordinary Capital, reference should be made to the Articles to determine if the Preference shareholders are entitled to a preferential payment of any "arrears of dividend" in addition to their capital in priority to Ordinary shareholders and also if they are entitled to any surplus assets after return of Preference and Ordinary Capital, Even where the Articles provide that the "arrears of dividend" to Preference shareholders are payable in priority to Ordinary Capital, there is a conflict of authority as to whether these are payable out of the whole of the distributable assets (irrespective of the capital assets and accumulated profits) or only out of the portion which represents accumulated profits, Swinfen Eady, J., holding the latter view and Lawrence, J., the former (see *Hall & Co,* 1909, 1 Ch. 521 ; *Springbook Agricultural Estates* 1920. 1 Ch. 563). It should be noted here that if any part of the Reserve Fund of the company remains unexhausted after payment of the debts of the company and the costs of liquidation, it must be treated as profits and not as capital.

"Surplus assets"

Another point to be decided from the Articles is whether the Preference shareholders' right to dividend arises on the profits being earned by the company as a going concern, whether or not a dividend is declared or whether it is dependent on a declaration of dividend.

The rights of different classes of shareholders to share in the

surplus assets are determined by the Articles and are to be ascertained by reference to the Articles. The question therefore is essentially one of construction of the Articles.

Remuneration of Official Liquidators

The remuneration of an official liquidator is fixed by the Court at the time of making the order, and the Court may also determine any, and if so, what security is to be given by the official liquidator (section 175. clause 4 and section 176 clause 3). Where the remuneration is not fixed at the time of appointment, an order for it may be made at any time thereafter and may be altered to cover or exclude the employment of assistants or clerks, office rent and expenses.

Remuneration of official liquidator

The official liquidator is described by the style of "the Official Liquidator" of the particular company in respect of which he is appointed and not by his individual name (section 177). When a suit is brought by the official liquidator or continued or defended hy him, it is required to be *in the name of the company*, and the party is properly described by saying 'XY Company under liquidation by the official liquidator" [*section* 179, clause (*a*)].

Suits how styled

The official liquidator is required to file accounts at *such time* as may from time to time be *ordered by the Judge.* (see infra) When the affairs of the company have been completely wound up, the liquidator files his *final account and a balance-sheet* of the receipts and payments *verified by his affidavit*; and the official liquidator is required to pass his final account and the balance, if any, due upon official account, shall be certified by the Judge and upon payment by the official liquidator of the balance, if any, in such manner as the Judge shall direct, the recognisance entered into by the offical liquidator and his sureties may be vacated. (Rule 159, Calcutta High Court Rules. For form see Form No,55 in Appendix B).

Official liquidators accounts.

Then the official liquidator applies to the Judge for an *order that the company be dissolved* (Rule 162), and the Judge makes an order under section 194 that the company be dissolved from the date of such order. This order is required, under section 194, clause (2) to be *reported by the official liquidator to the Registrar* within 15 days, subject to a penalty of Rs50/- per diem for default.

Dissolution of the Company.

When the company has been dissolved the Court has the power, undersection 243, to *declare the dissolution void* at any time *within* 2 *years* from the date of institution, on the application of the *liquidator* or *any other person interested*, and the effect of such an order is to restore the proceedings (section 243). And the person who makes such an application is bound to *file the order*, when made, *with the Registrar*, within 21 days.

Avoidance of dissolution.

Where the assets are insufficient to satisfy the liability, the Court may make an order as to the payment, out of the assets, of the *costs and expenses incurred in the winding up* in such order of priority as the Court thinks just. Under section 244, if the winding up of a company is not concluded within one year, the *liquidator is required to*

Payment of expenses of winding up.

file with the Registrar a statement in the form prescribed by the High Court Rules, containing prescribed particulars with respect to the *proceedings in and position of the* liquidation, once in each year and at intervals of not more than twelve months. (see section 244.)

Procedure in Voluntary Winding Up

Voluntary winding up. When possible,

A company may be wound up voluntarily (sec. 203)—
(1) if the *duration* of its existence *fixed by the Articles has expired* or an event on the happening of which it is to be dissolved under the Article happens,

(2) if it cannot, *by reason of its liabilities*, carry on business or,

(3) for *any other reason.*

In the first case, it is necessary that *a resolution* should be passed *at a general meeting* requiring the company to be wound up voluntarily.

How made

The Articles seldom provide for the winding up of a company at the end of a stated time or on the happening of a certain event, but companies formed for the promotion of other companies are sometimes met with and when they fulfil their function, they lose their' *raison d'etre* and the Articles of such companies generally provide for their liquidation when the objects for which they were floated, had been attained. In the second case it is necessary that an *extraordinary resolution* (*supra* p. 137) should be passed to the effect that the company cannot *by reason of its liabilities* continue its business and that it is advisable to wind it up; in any other case, there must be a *special resolution* that the company be wound up voluntarily. In this way a company may be wound up even if it is in a flourishing condition simply because the majority of members by a special resolution wish that it should cease to exist.(a)

Validity of resolution for winding up.

A winding up resolution which is in itself valid does not become invalid if it is associated with other resolutions passed at the same meeting which have not been regularly passed and are therefore ineffectual.(b)

But where the notice of a resolution is given for winding up with a view to reconstruction and the only resolution put and carried at the meeting is one for winding up, the resolution is ineffectual, as it is in effect different from the one of which notice was given.(c)

TWO KINDS OF VOLUNTARY WINDING UP

As already mentioned, the amending Act of 1936 following the English Act 1929 has made an important distinction between a *members' voluntary winding up* and a *creditors' voluntary winding up.* Sections 208-208E deal with members' voluntary winding up while sections 209-209H deal with creditors' voluntary winding up and the

(a) *Horsey* v. *Steiger* (1898), Q. B. 259, (1899) 2 Q B. 79; *Ewart* v. *Fryer* (1901), 1 Ch. 499; (1902), A. C. 187.

(b) *Irrigation Co. E. p, Fox*, 6 Ch. 176; *Thomson* v. *Henderson's Estates*, (1906), 1 Ch. 765; *Cleve* v. *Financial Corp.*, 16 Eq. 363; *Clinch* v. *Financial Corp.*, 5 Eq. 450; 4 Ch. 117; *Stone* v *City and County Bank* C P. D. 282.

(c) *Teeds and Bishop*, (1901), W N. 52; see *Gutta Percha Corp.* (1900), 2 Ch. 665. See chapters on Meetings and Notices.

new sections 210-211 as well as section 220 give the general provisions with regard to both kinds of winding up. The essential difference between the two kinds of winding up consists in this that the members' voluntary winding up proceeds on the *basis that the company is solvent* and section 207 therefore requires a declaration of solvency made by the directors and supported by the company's auditors. On the other hand, where the *company is not in a position to pay its debts* the winding up becomes a creditors' voluntary winding up.

In either case the voluntary winding up can always be terminated by an application to the Court for winding up under supervision under section 221 or for winding up by the Court under section 162.

Members' Winding Up

Declaration of solvency.

In a members' voluntary winding up, as already mentioned, section 207 requires *a declaration of solovency* to be made *before* sending out notices convening the general meeting for passing the resolution under section 203 for the winding up.

Liquidator.

Thereafter the company proceeds to appoint a liquidator and fix his remuneration under section 208A. On the appointment of a liquidator the powers of the directors are terminated and vested in the liquidator except in so far as any powers may be given to the directors either by the liquidator or by the company in general meeting.

If a vacancy occurs in the office of the liquidator it is to be filled by the company at a general meeting and, as the directors will not be functioning such general meeting can be called by any contributory and must be held in the manner prescribed in the Articles of Association (section 208B).

Transfer of business

Upon a members' voluntary winding up the liquidator is given the power under section 208C *with the sanction of a special resolution* of the company to *transfer the whole or any part of a business* to another company in lieu of shares, policies or other like interests in the transferee company for distribution among the members of the transferor company or enter into other arrangements by which the members of the transferor company may participate in the profits or receive any other benefits in the transferee company.

Sub-section *(2)* of section 208C makes such a transfer binding upon the members of the transferor company subject to the right of a dissenting member to notify the liquidator within seven days after the passing of the special resolution requiring him *either to abstain from carrying the resolution into effect or to purchase his interest* at a price to be determined by agreement or arbitration. After the liquidator elects to purchase the shares of such dissenting member the purchase money shall be paid before the company is dissolved.

Sub-section (5) provides that a special resolution for a transfer or arrangement under section 208C would be invalidated if within a year of the special resolution an order is made by the Court for compulsory winding up or winding up under supervision of Court.

If the winding up continues for more than one year the liquidator has to *call a general meeting of the company every year* beginning from the end of the first year *within 90 days* from the closing of the year and place before it an account of his acts and dealings or the conduct of the winding up during the preceding year and the statement regarding the position of the liquidation in the form prescribed by rules made by the High Court. This duty of the liquidator is subject to a penalty of a fine up to one hundred rupees for violation.

General Meeting.

When the affairs of the company are fully wound up the liquidator is required to make 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 shall call a general meeting before which a statement will be placed. It does not appear that the company in its general meeting has any power to accept, reject or modify the report. The purpose of the meeting is simply to acquaint the members with the affairs of the company at its final winding up. The liquidator is required to make a return to the Registrar of the holding of the meeting and also a copy of the account within a week after the meeting. But if there is no quorum at the meeting the liquidator will none the less have to send the account to the Registrar with a report that the meeting was summoned and no quorum was present. In either case the Registrar is required to register the return and the accounts and on the expiry of three months from the registration of the return the company is deemed to be dissolved.

Dissolution of the Company.

Within three months any person may apply to the Court for an order referring the date of dissolution and the Court may make such an order which in its turn must be filed with the Registrar for registration (section 208E).

Creditors' Voluntary Winding Up

The principal *points of difference* between a members' voluntary winding up and a creditors' voluntary winding up are—

(1) from the very first along with the meeting of the members for winding up a *meeting of the creditors* of the company must be held;

(2) the liquidator is *nominated by the creditors* and in case of the members not accepting the nomination any *member may apply* to the Court for vetoing the nomination of the creditors and appointing another liquidator:

(3) the creditors appoint a *committee of inspection* consisting of members and the company at a general meeting may appoint additional members of the committee not exceeding five subject to the right of the *creditors to apply to the Court* to veto the nomination of the members of the company ;

(4) the committee of inspection or where there is no committee of inspection appointed, the creditors at a meeting can exercise several *powers* such as (a) fixing the remuneration of the liquidator

(b) filling up vacancies in the office of the liquidator, (c) sanctioning any scheme for the transfer of the business of the company under section 208C which cannot be effective without their sanction.

(5) Further, the liquidator is required under section 209G to call a meeting of the creditors every year side by side with the general meeting of the company as in a members' winding up for placing his statement and accounts before them and under section 209H the final dissolution of the company can only take place after the liquidator's acconnts and statements, as in the case of members' winding up, are placed, not only before the general meeting of the company but also before the meeting of the creditors. Such meeting is to be called by advertisement and the returns to be made to the Registrar are also required to specify that a meeting of the creditors was either held or summoned without a quorum being present.

Meeting of Creditors.

In effect, the fundamental difference is that the committee of inspection or the creditors generally have the same voice in the direction of the liquidation in a creditors' winding up which the members have in a members' winding up.

Notice of any special resolution or extraordinary resolution for winding up the company voluntarily is required to be given by the company within 10 days of the passing of same, by *advertisement in the local official Gazette* and *also in some newspaper*, if any, circulating in the district where the registered office of the company is situated. The penalty for default in compliance with this section is a *fine up to Rs. 50/- per diem* for every day of default (section 206).

Notice of resolution for winding up

Within 21 days after his appointment, a *liquidator* is required *to file notice of his appointment* in the form prescribed by the High Court Rules, *with the Registrar* (section 214), under a penalty of fine up to Rs. 50/- per diem, for default.

Result of Members' or Creditors' Winding Up

Sections 211-220 summarise the chief results of a voluntary winding up.

The following consequences shall ensue on the voluntary winding up of a company :—

Effects of winding up.

I. After the appointment of the liquidator the power of the directors cease and their functions are performed by the Liquidator.

II. Subject to the rules regarding preferential payments the assets of the company shall be applied in satisfaction of its liability *pari passu* and subject to such application, should be distributed among members according to their rights and interests in the company unless the articles provide otherwise.

III. The liquidator has the power to exercise all the powers of an official liquidator under section 179 without the sanction of the Court except the powers (a) to execute in the name and on behalf of the company deeds, receipts and other documents and for that purpose to use the company seal, (b) to prove a claim in the insolvency of any contributory, to receive dividends of insolvency etc., (c) to draw, accept, make, endorse any bill of exchange, hundi etc., and (d) to take out letters of administration to the estate of any contributory.

IV. The powers excepted in the last foregoing paragraphs can be exercised by the liquidator with the sanction of an extraordinary reslution of the company in the case of a members' voluntary winding up or with the sanction of the committee of inspection or of the Court in the case of a creditors' voluntary winding up. In either case however the exercise of these last powers of the liquidator are subject to the orders of the Court which may be applied for by any creditor or contributory.

V. The liquidator may settle the list of contributories and the list as settled by him shall be prima facie evidence of the liablity of the persons in the list and not final as in the case of list of contributories settled in winding up by the Court,

VI. The liquidator may make calls on contributories and call meetings of the company.

VII. The liquidator shall pay the debts of the company and adjust rights of contributories amongst themselves.

VIII. When several liquidators are appointed, any power may be exercised by such one or more of them as may determined at the time of their appointment and in the absence of such determination by any number not more than two.

Arrangement

Section 215 provides for arrangements between the creditors and a company which is being wound up. Any such arrangement between a company and its creditors will be binding on all creditors if agreed to by three fourths in number and value of the creditors and on the company if sanctioned by an extraordinary resolution, provided that any creditor or contributory may apply to the court within three weeks from the completion of the arrangement for a variation or amendment of the arrangement (see Chapter XVIII).

The liquidator or any contributory or any creditor has the power to apply to the Court for determination of any question arising in the winding up of the company or to exercise all powers regarding the enforcement of calls, starting all proceedings and all other matters upon application as it might exercise in the case of a compulsory winding up and the Court may upon such an application set aside any attachment or execution against the assets of the company

A voluntary winding up unlike a compulsory winding up *does not stay any suit* or proceedings in execution or otherwise against a company but section 216 gives the Court power on the application of the liquidator or creditor or contributory to stay such proceedings. But the Court will not stay any proceedings in the case of a members' voluntary winding up, because such winding up porceeds on the footing that the company is solvent (1936—A. E. R. 905).

Stay of suits.

The liquidator is thus required to do all the acts which the official liquidator is required to do and has the necessary powers for the purpose, including such powers as are given to the Court in compulsory liquidation, and he does not require the sanction of the Court as in the case of the official liquidator. Thus the liquidator should prepare a list of contributories, and, in doing so, he should act, as far as possible, in accordance with the procedure laid down for the official liquidator, to avoid being dragged into the Court for irregularities and omissions ; and he makes the calls in the same manner, as the Court might make calls, without the sanction of the Court. But the list of contributories settled by him is not to be considered as final as in the case of a list settled by the Court. Nor is the call made by the liquidator to be codsidered as conclusive evidence that the call is due from a contributory as under section 190. The list of contributories, settled by a voluntary liquidator, is only *prima facie* evidence of the liability of the persons named therein.

Duties & powers of liquidator

The Court is not altogether without powers in respect of voluntary liquidation. Thus the Court may, on the application of a contributory, *appoint a liquidator* when there is no one acting, or *remove the liquidator and appoint another* liquidator on cause shown and the cause shown need not necessarily be founded upon any allegations against the liquidator. (Sec. 213) And the Court may, on the application of the liquidator, *decide any question referred to it*, in connection with the winding up (section 215.)

Powers of Court.

Besides, the Court has the power under section 218 *to order a winding up by the Court* even after a voluntary winding up on the application of a creditor or contributory. And under section 221, the Court may make an order for *winding up*, subject to the *supervision of the Court*. And the powers of the Court with regard to the *public examination of* Directors etc. and summary processes for *misfeasance* and *prosecution* of delinquent Directors may be invoked in voluntary liquidation in the same manner as in the case of liquidation by the Court. The liquidator can also apply for the *examination of Directors etc.* under section 195, and he can get an order from the Court, *staying action and executions* against the company. (f) All the powers of the Court may be invoked by a proper *application on summons* by the *liquidator* or any *contributory* or *creditor*, under section 216 only if the Court is satisfied that the determination of the question, or the required exercise of power, will be just and beneficial. (g)

(f) *Poole Firebrick Company*, 17 Ep. 268 , *Currie v. Consolidated Kent Collieries*, (1906), 1 K B. 134.

(g) *Black & Co.*, 8 Chan. 254 ; *Heiron's Case* 15 Ch. D. 139.

The commencement of voluntary winding up *does not automatically put a stop to legal proceedings* against the company, as in the case of Court-liquidation. But an application may be made by the liquidator or any creditor or contributory for an injunction to restrain such proceedings under the general power to apply to court under sec. 216.

Stay of proceedings.

In addition, every creditor and contributory has the right under sec. 166 to apply for winding up by the Court or under sec. 221 for a supervision order. And the Court will make either of such orders as it thinks fit if *it is of opinion that the voluntary winding up will be prejudicial to the right of the creditors* or that the proceedings are open to suspicion or it is just or equitable on other grounds that such an order should be made. (h)

Winding up by Court or supervition order.

The position of a voluntary liquidator in a members' winding up is different from that of an official liquidator. He is not a trustee for the creditors or contributories but is only *an agent of the company* for winding up its affairs. His position is the same if he is appointed by the Court in a voluntary wind up.

One result of this is that while the official liquidator is required to look to the Court for his powers and is supervised by it in matters of winding up, somewhat similar functions are exercised by *general meetings* of members in the case of a members' voluntary liquidation and by the creditors or the commitee of inspection in a creditors' winding up. Thus the *general scheme for* adjusting the claims of creditors and contributories under sec. 231 has to be sanctioned by the Court in the case of winding up by Court or under supervision, while it is *sanctioned by* an *extraordinary resolution* of the company in the case of members' voluntary winding up. So too in the matter of sanctioning the *disposal of documents* of the compauy in winding up an *extraordinary resolution* in a voluntary liquidation takes the place of the order of the Court in the other cases.

Function of general meeting of members

Winding up under Supervision

The third form of winding up which is intermediate between voluntary winding up and winding up by Court is winding up under supervision. This pre-supposes that the *company has already resolved to wind up* by a special or extraordinary resolution as the case may be. When this has been done, the Court may make an order under sec. 221, *usually upon application by a creditor or a contributory*, "that the voluntary winding up shall continue but subject to such supervision of the Court and such liberty for creditors or contributories to apply to the Court and generally on such terms and conditions as the Court thinks just."

Supervision order.

(h) *Re New York Exchange Co.*, 39 C. D 415 ; *Re Russel Cordner & Co.* (1891), 3 ch. 171 ; *National Elec Co.* (1902) 2 Ch 34 ; *Bishop & Sons* (1900), 2 Ch 254.

When made.

Such orders are *not to be made as a matter of course*, but *for good reason* shown. The discretion of the court is very large.(j) But the Court must have regard to the *wishes of creditors and contributories* (sec, 174).

Effect of Supervision order.

An important distinctive feature of a supervision order used to be that it enabled the creditors to apply to Court. But as they have the power now under sec. 215 even in a voluntary winding up, this is not of much importance now. At present, the chief advantages of a supervision order are *firstly* that the *Court may appoint an additonal liquidator* (sec. 224) without waiting for an application of creditors and, *secondly*, supervision order has the effect of *staying all suits* and *procedings* and *gives the Court most of the powers* it has in a liquidation by Court [sec, 225 sub sec. (2)].

But a liquidation under supervision is *in substance and essence voluntary liquidation* by the company. It is deemed to have commenced when the resolution for winding up was passed and the powers of the liquidator are, subject to any orders made by the Court, the same as in a voluntary winding up [sec. 225 cl. (1)]. The procedure in voluntary winding up has to be followed in such winding up, subject to any orders the Court may deem fit to pass

Summary of sections.

The following is a short summary of the sections relating to powers of liquidator on liquidation :—

178 :— To take control of the company's property.

179 (a):—To institute and defend action on the company's behalf in any proceeding, civil or criminal.

179 (*b*):—To carry on and conduct the business of the company whenever necessary for beneficial winding up.

179 (*c*).—To sell and transfer the property of the company.

179 (*d*).—To do all acts and execute in the name of the company all deeds, receipts and other documents and for that purpose use the comapany's common seal,

179 (*e*):—To prove and claim in bankruptcy for any claim against the estate of the contributory and to receive such dividend in the insolvency as may accrue to the company in respect of those contributories.

179 (*f*):—To draw and make bills of exchange and other negotiable instruments.

179 (*g*):—To raise money on the security of the assets of the company.

179 (*h*):—To take out in his name as official liquidator letters of administration to any deceased member.

(j) For cases where such orders have been made see Buckley, Companies Act, p. 510.

179 (i) :—To do all such other things as may be necessary for winding up the company and distributing its assets.

208A(2):—To permit the Directors to continue in their office.

208C :— To accept shares etc. as consideration for sale of property of the company.

208D :— To call general meetings and to lay before the meeting a statement in the prescribed form in respect of the proceedings and the position of the liquidation.

208E :— To call a final general meeting for the disolution of the company.

234 :— To make any compromise of any sort with creditors, debtors or contributories being duly empowered by the general meeting and with the sanction of the Court in case of compulsory winding up.

236 :- To prosecute any person for falsification of books.

237 :— To report to the Registrar if any criminal offence has been committed by any past or present Director, Manager, officer or any member in relation to the company.

CHAPTER XVIII

ARRANGEMENT, AMALGAMATION AND RECONSTRUCTION

Arrangenent

When for the purpose of profitably carrying on a company it is necessary to relieve it of a part of its burden of debts or give relief by changing the incidents of liabilities under its debentures and other obligations, a procedure is generally adopted which is called "arrangement" with creditors.

What is arrangement ?

What is sought to be achieved by an arrangment is really *a novation of the contracts with creditors* by which the old contract is replaced by a new one on different terms. This can be done by a separate agreement with each creditor, in which case all that is necessary is that the crditor in question and the company should agree to the new terms, and, generally, the existence of the obligations under the old contract is sufficient consideration for the new contract. In England, an agreement by which a creditor renounces a part of his debt without any fresh consideration is not binding.(k) But such a contract would be valid under Indian law, at any rate, if the effect of the new agreement is a present adjustment of old claims—an

Novation of contract by separate agreements.

(k) *Foakes* v. *Beer*, 9 App. Case, 605.

accord and satisfaction, and not a mere executory accord (see sec. 63, Indian Contract Act.)

By composition of creditors.

Very often, instead of individual agreements, we have what is called a *composition* or agreement with all the creditors in a body. It creates a somewhat complex legal relation. On the one hand there is a contract between the debtor and each creditor and there is a contract between each creditor with every other. Each creditor in a composition renounces a part of his claim or accepts a different obligation from the original one in consideration of all the other creditors doing the same. So that the *whole composition is one single contract* and not so many different contracts between the debtor and each creditor. The agreement cannot be altered by the consent of any single creditor and the debtor but by consent of all. And any *preference of a creditor* or payment by the debtor to one creditor in violation of the terms of the composition avoids the entire composition and restores each creditor to his original rights.

For the validity of a composition it is not necessary that all creditors should be treated in the identical way. The scheme agreed to by all creditors may give preference to any creditor or class of creditors but *whatever the scheme it must be agreed to by the entire body of the creditors*, and once it is so agreed to, it cannot be varied without the consent of all.

For a composition, it is essential that *all creditors should agree* to it. A single dissentient creditor would make a composition impossible, unless the other creditors agree to leave out his particular claim in the scheme. No composition can be binding on any person unless he agrees to it himself.

Arrangements in insolvency

In insolvency, however, a different rule has been adopted and that rule with suitable modifications has been introduced into the Companies Act. After an adjudication order has been passed the insolvent may propose a scheme for composition and if the scheme is accepted by a majority in number and three-fourths in value of the creditors at a meeting held for the purpose, the Court has the power to sanction the composition and it becomes binding on all creditors upon such sanction being given.(1)

Arrangements under the Companies Act.

Similarly sec. 153 of the Indian Companies Act authorises an arrangement in any case, *whether a liquidation is contemplated or is in progress or not* and is much wider in scope. It corresponds closely to the rule regarding arrangements in insolvency, but it is *not necessary* for such arrangement that the *company should be insolvent or about to be wound up.* There may be reasons why the company should wish to make an arrangement with creditors, for instance, for a reconstruction of the company, say, by readjusting the classes of shares, varying the

(1) Presidency Towns Insolvency Act 1919, sec. 28-35 : Provincial Insolvency Act, sec. 27.

incidents debentures converting debentures into shares and so forth. The procedure for doing so is laid down in sec. 153.

Arrangements under this section *can only be made with the intervention of the Court.* There must, in the first place, be an *arrangement or compromise proposed* by the *company or a creditor or a member of the company or a liquidator,* and an *application to the Court* by such person. This application is made on summons. Upon the application being made the *Court may order a meeting of creditors,* or a class of creditors, or members or class of members. as the case may be, with whom the arrangement is proposed, The meeting is to be held and conducted in the manner laid down by the Court. When the meeting has been held and a *resolution passed* by the *requisite majority,* a *petition is made to the Court* for *sanctioning the arrangement.* Sanction will not be given as a matter of course. "The Court will see first, that the *statute has been complied with,* secondly, that the class was *fairly represented* by those who attended the meeting and that the *statutory majority* is acting *bona fide* and are not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent and thirdly, that the *arrangement is such as a man of business would reasonably approve*".(m)

Proedure in composition

Meeting of creditors

Sanction of Court

Under section 153 an arrangement may be made with the *whole body* of creditors or a *class* of creditors only ; and also with *members generally* or any *class* of them. The Court will summon a meeting only of those with whom the arrangement is proposed. A wide interpretation is given to this section and under this *any* arrangement including all modes of reorganising share capital, even affecting special rights attached to shares by the Memorandum can be given effect to, subject to the limitation that where a reduction of capital is contemplated it must be made in accordance with sec. 55. So also, any arrangement with creditors even if it affects the security of secured creditors or shares in another company is to be given in lieu of shares or debentures and so on, can be made under this section.

Scope of arrangements

(m) Buckley, *Companies Act* p 320 *et seq*

With regard to the duty of the court ,—(See *In re Nilpumari Lakemi Bank* 63, Cal-99, *In re Kanti Cement Etc Co.,* 171 I C. 769, *Calicut Bank* v *Dhanni,* A. I R 1940, Mad. 644, *Nafore Kanala Bank* I L R 1937 I Cal

The court has no power to alter or modify the scheme as passad either at the the time of sanctioning the scheme or at any time thereafter without a fresh meeting of the creditors and their assent (*Jalpaiguri Etc Corporation* 172, I. C 717, *Mymensingh Loan Office Ltd* 44 C W N 599.

When the scheme has been passed by the necessary of the creditors and sanctioned by the court it becomes binding upon all creditors and the company can set it up in defence in any proceeding for execution of a decree as well as in any suit by the creditor and in such suit or execution proceeding the court is not entitled to go behind the scheme or allow any party to challenge it collaterally on any ground whatsoever so long as the order was passed by a court having jurisdiction ; nor can it declare that the scheme is not binding on a particular person because he had no notice of it or on some such grounds, except of course on the ground that the arrangement was one with only one class of creditors to which this particular person did not belong. (See *Jalpaiguri Etc Corporation,* 172, I. C 717, *Mahajury Loan Office* vs *Behari Lal Chatterjee,* 41 C W N. 952 *Krishnanath Sen* vs *Dinajpur Loan Office* (1938) 2, Cal 30. *Mahagani Loan Office* vs. *Behari Lal,* 41, C.W.N, 406.)

When the meeting is called its *procedure will be regulated by the Court.* In this matter the Indian Act makes express provisions which are absent in the corresponding section of the English Act. The manner of voting, taking of polls etc., whether and under what limitations proxies will be accepted and similar other questions will be decided by the Court. There is no right to vote by proxy at common law. Section 212 however, contemplates voting by proxy and the only function of the Court would seem to be to lay down rules regarding proxy.

Proceedings at meeting of creditors.

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 either in person or by proxy at the meeting agree to *any* compromise or arrangement the compromise arrangement shall if sanctioned by Court, by binding on such creditors.

Majority acquired.

Where any special class of members or creditors is affected by such scheme there must be a separate meeting of such class and the scheme passed by the requisite majority at such separate meeting at which no other shareholders or creditors are entitled to be present. But where a resolution affecting a special class of deferred shareholders was passed by the requisite majority of votes of that class of shareholders only, taken at a meeting at which other shareholders were present though not voting, and no objection was taken by any of the deferred shareholders at the meeting or by a petition in court objecting to the presence of strangers, the House of Lords held that the resolution had been properly passed (n)

Class of share holders

Under the Indian Companies Act provisions have been made for compromises and arrangements with creditors and contributories both when the company is in liquidation and when it is not.

When a company is in liquidation, the liquidator has power under sec, 234 sub-sec. (1) cl. (iii) to "compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts and all claims, present or future, certain or contingent, subsisting or supposed to subsist" &c. Under this section the compromise must be *sanctioned* in the case of a winding up by Court or under supervision, by the *Court*, and in voluntary winding up by an extraordinary resolution of the company. Under this clause there may be a compromise with a class,(o) but there is *no power of the majority* of the class to bind a minority. The compromise is only binding on a person who consents.

Compromises by the liquidator

A compromise moreover implies some dispute about the right or difficulty of enforcing it. (p) So it may be doubted whether under this section a liquidator can compromise clear debts where the assets are sufficient to pay the claim in full.

(n) *Carruth* v. *Imperial Chemical Industries*, (1937) 2 A. E. R 422

(o) *Bank of Hindusthan* v. *Eastern Financial Corp*, L. R 2 P. C. 269.

(p) *Mercantile Investment Co.*, (1893), 1 Ch 484*n*.

Amendments under the Act of 1936

The amending Act of 1936 while maintaining the substance of section 153 unaffected, has made some important changes. This sub-section 3 of the section now provides that when an order is made by the court sanctioning the scheme a certified copy of the order has to be filed with the Registrar and every copy of the memorandum of the company issued after the order has been made has to have annexed to it a copy of the order. This sub-section also provides that until a certified copy of the order is filed with the Registrar, the order and therefore the arrangement will have no effect.

Sub-section (4) provides that if a company makes default in complying with sub-section (3), every officer of the company who is knowingly and wilfully in default will be liable to a fine up to Rs. 10/- for each day of the default.

The old section 153 contained no provision authorising a stay of any suit or proceeding, pending the proceeding for arrangement. Subsection (5) of the amended section now provides that the court may at any time after the application has been made to it, proposing the arrangement, stay the commencement or continuation of any suit or proceeding against the company on such terms as it thinks fit until the final disposal of the application. This amendment was vitally necessary, for difficulties have been created in the past by reason of a suit being hurriedly instituted or decreed during the pendency of the proceeding on the application proposing the arrangement.

It will be noticed that the arrangement when it is sanctioned, takes effect from the date when it is adopted by the requisite majority at a meeting of the creditors though the order of the court sanctioning it may be passed later. Now the court has power, at any time after the application proposing the scheme has been made, to stay all suits and proceeding.

Another important amendment is that by sub-section (6), the conflict of decisions on the question as to whether the creditors who have obtained decrees are or are not of a different class by reason of their having decrees from other creditors of the same class, has been set at rest. In several cases it was held that the creditors who have obtained decrees belonged to a different class.(q) Sub-section (6) of the amended section now provides that unsecured creditors who may have filed a suit or obtained a decree were to be deemed for all purposes of this section to be of the same class as other unsecured creditors. By a further amendment of this sub-section by ActXVII of 1942, it is now provided that the expression "arrangement" includes are-organisation of the Share Capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods and section 54 of the Act, which provided for such reorganisation was accordingly deleted.

[q] *Rajshahi Banking Corporation vs. Surabala* 40 C.W N.1104, *Manikgonj Etc Co, vs Madhurendra* 40 C. W' N 580, *Nator Kamala Bank Ltd.* I. L. R. (1937) 1 Cal 368, *Krishna Nath Sen vs Dinajpur Loan Office* I. L. R. (1938) 2 Cal 30

The amended section also provides by sub-section 7 for an appeal against every order passed under this section. When the order was passed by the High Court, an appeal lay under the Letters Patent, even before this amendment, but this section provides for appeal in every case.

Amalgamation

Other changes in the law regarding arrangements have been made by the amended Act of 1936 by inserting sections 153A and 153B in the Act, As already mentioned, section153 authorises making of every arrangement including an arrangement for transfer of the business from one company to another. But necessary particulars of provisions for the transfer of business from one company to another under such arrangement were wanting in that section. Section 153A specifically deals with a scheme of re-construction of the company by amalgamation of any two or more companies or by transfer of the whole or part of the undertaking or properties of any company concerned to another company.

The court is authorised by this section to order all or any of the following things :

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company :

(b) the allotting 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.

(c) the continuation by or against the transferee company of any legal proceedings pending by or against the the transferor company.

(d) the dissolution, without winding up, of any transferor company:

(e) the provision to be made for any persons who, within such time and in such manner as the court may direct, dissent from the compromise or arrangement :

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

When the court sanctions a scheme by which the property and the business of the company is transferred to another company, that order itself will effect the transfer and the property and the liability of the transferor company (a) will vest in the transferee company by virtue of the order without any further deed of conveyance.

It will be noticed that the section contemplates making provision for persons who dissent from the terms of the compromise. The court is entitled to make suitable provision for the interests of the dissentients.

(a) But not rights or liabilities under a contract for personal service. *Nokes V. Doncaster & Co* (1940) 3 A. E R. 549.

Dissentients

Section 153B makes detailed provisions for dealing with dissenting members who are defined by sub-section 4 of section 153B as shareholders who have not assented to the scheme or any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme of arrangement.

This section deals with the case of dissentients to a scheme which involves the transfer of the shares or any class of shares of a company to another company.

Where such scheme has been approved by the holders of not less than three-fourths of the value of the shares affected, the transferee company is entitled within two months after the expiry of four months within which the offer to take the transfer of the shares must be accepted, to give notice to the dissenting shareholders that it desires to acquire their shares. Upon such notice being given the dissenting shareholder has the liberty to apply to the court within one month of the notice and the court may, upon such application make such order as it thinks fit, with regard to such application. If the court does not order to the contrary, then the transferee company shall be entitled and bound to acquire these shares on the terms on which the shares of the transferor company are to be transferred under the scheme. The court has power to order otherwise only if the scheme is proved to be unfair. A mere omission to disclose materials necessary to ena le shareholders to decide is no ground for interference by the court.(a)

The section also provides for the steps to be taken for the completion of the transaction on the transfer of such shares until the consideration money for the shares is received by the transferor company.

This under sub-section (3), has to be paid into a separate bank account and held by the company on trust for the several shareholders.

Amalgamation of Insurance Companies

In the case of insurance companies there are special provisions made by the Insurance Act of 1938, for the amalgamation of the insurance companies, and the transfer of business under sections 35 to 37 of the Insurance Act of 1938. Under sestion 35, no life insurance business of the insurer can be transferred to, or amalgamated with the life insurance of any other insurer, except in accordance with that section. The scheme prepared under that section is required to set out the agreement, which is proposed to be effected and all other provisions that may be necessary for giving effect to the section. Notice of the intention to make the application has to be sent to the Central Government at least two months before the application is made, with copies of the following documents which are also required to be kept open for inspection of the members and policy-holders at all offices of the company for the same two months :--(a) the draft of agreement or the deed under which it is proposed to effect the amalgamation or transfer

(a) *Re Hore & Co.* 159 L. T. 74; Re *Evertite Locknuts* (1945) 1 A E R 401.

(b) the statemet of the assets and the liabilities of the insurers concerned, (c) actuarial or other reports on which the scheme was founded, including the report of an independent actuary on the proposed amalgamation or transfer.

Under section 36, notice of the application may be ordered by the court to be circulated to every person who is the holder of a life policy under the insurer and the statement is to be prepared in such manner as the court may direct. It is only after this that the court, after hearing all persons interested, may make the order sanctioning the amalgamation. After the amalgamation takes place, the insurer carrying on the amalgamated business is required to furnish to the Central Government the documents specified in section 37.

Arrangement during Liquidation

Sec. 153 may be compared with section 215 which relates to the arrangements made during a winding up. The important points of difference between this section and section 215 are :—(1) that under the latter section the arrangement does not become binding until sanctioned by an extraordinary resolution of the company, and (2) that section 153 requires the sanction of the court as a preliminary, which is not necessary under section 215, for under the latter section an appeal to the court is provided for at the instance of any creditor or contributory. Another important difference is that section 153 contemplates agreement between the company and its creditors which can only be sanctioned by the Court. The Court has no power to amend or vary the resolution of the creditors, while under section 215 by reason of the appeal of a creditor or a contributory, the Court has power to amend or vary the scheme as well as to confirm it.

A further distinction which may be noted is that section 153 requires the consent of the majority in number representing 3/4ths in value of the members present while under section 215 the assent must be of 3/4ths in number and value of the creditors, irrespective of whether consent is given in the arrangement or otherwise. Further section 215 does not seem to distinguish between different classes of creditors.

Amalgamation and Reconstruction

What is Reconstruction.

The reconstruction of a company generally implies its liquidation and the projects for such reconstruction may be many. It may be for the purpose of raising additional capital, it may be desired to amalgamate with another or a number of other concerns, thus amalgamating several businesses into a new company. Again, it may be sought to induce a compromise with the company's creditors whereby their claims upon the old concern would be converted into shares or debentures in the new, or to readjust its share capital. The compromise with the company's creditors or readjustments of shares may also be made under the provisions of sec. 153A without the company going into liquidation.

The processes of reconstruction are various. A company formed to work a colliery wants to manufacture steel or to go into partnership with some other company ; or a company wants to issue preference

shares but has no such power in its Memorandum or Articles; or a company wants to return some of its capital or reduce the liability on its shares without applying to the Court for reduction of capital under the provisions of sec. 55. All this can be done by a scheme of reconstruction.

The essential difference between Amalgamation and Reconstruction is that in the latter case a new company has to be formed. which in effect carries on the business of the other company which is sought to be reconstructed, whereas in an amalgamation, no new company is formed but an existing company takes over the business of the liquidated company, share-holders whereof receive shares in the existing company. Reconstruction and Amalgamation are again distinct from the sale of the assets of the company which can be done by a deed of sale by the Directors if so empowered by the shareholders at an extraordinary meeting.

The mode of reconstruction is as follows —

Mode of reconstruction

The Memorandum and Articles of a new company are prepared together with an agreement between the old and the new company, by which the old agrees to transfer and the new agrees to accept, all the assets and liabilities of the old, and to issue shares to the members of the old subject to the desired modifications. The old company then passes a special resolution approving of the agreement and authorises the liquidator in pursuance of sec. 208C of the Act to adopt it. The new company is then registered, the agreement is executed, and the assets transferred and things go on as before. The Memorandum and Articles of the new company should be framed with such care and precaution that the powers which the old company wanted are inserted therein, and otherwise to effectuate the objects of the reconstruction. Any member of the old company who dissents in writing addressed to the liquidator within seven days after the confirmation of the special resolution is entitled to be paid the value of his interest in cash (sec. 208C, subsec. 3).

Modes of amalgamation

Amalgamation of companies is of very frequent occurrence now-a-days. When two companies desire to be amalgamated, either of the following plans can be adopted:-

(1) Form a new company and let both the existing companies transfer their assets and liabilities to that company and let the shareholders of each become the shareholders of the new company.

(2) Let one of the companies transfer its assets and liabilities to the other in consideration of shares to be issued to its members.

In either case the directors and officers of the old company or some of them, become directors and officers of the new, and perhaps those who do not may be compensated. If the undertaking of the one company is worth less than that of the other, the shares will be distributed accordingly. Whatever plan is adopted, it will be carried out very much in the same way as a reconstrution.

The arrangement may be with all the creditors or with a class of creditors, with all the members or any class of members. The word class indicates a body of members or creditors, whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest. (r)

Points to be considered by the Court.

In considering whether the Court would sanction an arrangement, the Court will consider whether the majority have voted *bona fide* in favour of the class they represent. (s) But there is nothing to prevent shareholders who are also creditors voting at a creditor's meeting, or in passing by their votes a scheme more favourable to shareholders than to creditors.(t)

Scope of secs. 153 and

Before the amendment of 1936, amalgamation and reconstruction could be made under section153 or under section 212 which corresponded to the present section 215. Under the amended Act amalgamation is to be carried out under sections 153A and 153B.(*see supra*. p. 322)

When a company is being wound up the reconstructon involving amalgamation can be carried out under section 208C in the case of members' voluntary winding up and subject to the provisions of section 209F in the case of creditors' voluntary winding up. Section 208C is practically identical with the old section 213 and the provisions of this section and sections 153A aud 153B are similar in character, The principal features of sections 153A end 153B are :—(a) the transfer of business and dissolution of the transferor company take place under the order of the court without winding up and without any instrument of transfer (b) the transferee company by the application of the order steps into the shoes of the transferor company and continues all suits and proceedings; (c) dissentient members who have not agreed to the amalgamatien or transfer can apply to the court and would be entitled to be paid out the value of their shares.

Section 208C is practically on the same lines with this difference that here the company is in liquidation and the liquidator executes the transfer and takes the consideration for distribution amongst its members. Dissentient members have got the right to claim that their shares should be purchased by the liquidator without any application to the court.

Typical modes of Reorganisation.

As already mentioned, the schemes of arrangement or reorganisation that are sanctioned by the Courts are various. Some typical specimens, as indicated by Palmer, may be given here. (See Palmer's Comp. Precedents, 13th Edition, Part II. pp. 972-973) :—

(r) Per Bowen L J. *Sovereign Life Assurance Co.* v. *Dodd* (1892) Q. B. 589 ; *United Provident Co.*, (1910) 2 Ch. 477 ; see Buckley, *op. cit.*, pp 279, 282.

(s) *Ex parte Strawbridge*, 25 C. D. 266.

(t) *Madras Irrigation Co.*. (1881) W. N. 172.

(1) A new company to be formed to take over the assets and liabilities of the company in liquidation (whether compulsory or voluntary), the debenture-holder to receive debenture or paid-up shares in the new company, the ordinary creditors to receive a composition or paid-up shares in the new company and the members to receive paid-up or partly paid up shares in the new company, usually of less nominal value than their shares in the existing company.

(2) The existing company to create debenture stock, and to satisfy its debentures by corresponding amounts of debenture-stock, or say, 75 per cent, of debenture-stock and 25 per cent, of paid-up shares, and the unsecured creditors to receive a composition in cash or shares or both, the winding-up (if any) to be stayed and the company to resume business

(3) The unsecured creditors to agree to accept a composition of so much in the Rupee in cash or paid-up shares or other assets, and the surplus assets to be made over to a new company in consideration of shares to be rateably divided among the shareholders of the existing company

(4) The holders of debentures to postpone the time for payment of the debenture loan for a number of years and to agree to accept preference shares in satisfaction of the arrears of interest and to agree to future interest being paid out of profits only.

(5) The shareholders of several classes to agree to a reduction of capital by cancelling capital not represented by available assets and the preference shareholders to agree to forego the arrears of dividends, where they are entitled to a cumulative preferential dividend, and to accept a reduced rate of dividend in future

Illustrative Example

Gore-Brown in his Hand-book on joint Stock Companies, 35th Eidition, pp-438-440 gives a concrete example of a very complicated case, which is reproduced below —

'A Company is in financial difficulties having a capital of £ 500,000 divided into 300,000 ordinary shares and 200, 000 Preference Shares of one pound each and having made issues of first and second mortgage debentures of £150,000 and £100,000 respectively, the former specially charged, on the "A" factory and works, and generally upon all the assets, the latter having a specific first mortgage on the "B" factory which was acquired with the proceeds of the issue and having, subject to the first debentures a floating charge on all the other assets of the Company. The interest on the debentures is in arrear, receivers have been appointed by the Court in actions commenced on behalf of each class of debenture-holders, and, in addition, the debts owing to unsecured creditors amount to over £60,000. Negotiations take place between the company and representatives of each class of debenture-holders and preference shareholders and a scheme arrangement is agreed by which it is determined to proceed in the following manner :--

(1) Reduce the capital to £180,000, by writing eighteen shillings per shares off each of the ordinary shares and five shillings per share off each of the preference

shares, leaving 300, 000 ordinary shares of two shillings each and 200,000 preference shares of fifteen shillings each.

(2) Consolidate every ten ordinary shares of 2 shillings into one new share of £1 and every four preference shares of 15 shillings into one new share of £3 each and sub-divide each of these new £3 shares into three shares of £1 each.

(3) Unify the 180,000 shares of one pound each resulting from the foregoing proceeding into one class of shares all ranking equally and to be called ordinary shares

(4) Increase the capital by £70,000 by the creation of 70, 000 new preference shares of £1 each entitled to a cumulative preferential dividend of 8 per cent, and entitled in a winding up to repayment of capital before any payment is made to the ordinary shareholders, but not further to practicipate in the profits or capital of the company.

(5) Create £100,000 prior lien mortgage debenture-stock constituting a first charge on all the assets of the company, and £125,000 'A" Debenture-Stock entitled to a second charge on the assets, and £145 000 "B" Debenture-Stock entitled to a third charge on the assets specifying the rate of interest and other rights attaching to each class of debenture-stock

(6) Declare that the company may issue the prior lien debenture-stock to raise fresh working capital and to pay the costs of the debenture-holders' actions and of the scheme.

(7) Declare that the 'A' and 'B' debenture-stock shall be issued to the holders of the existing first and second mortgage debentures, so that the 'A debenture stock is issued to the holders of the first debentures in proportion to the value of the assets on which they have a first charge (i e all the assets except factory 'B') and to the holders of the second debentures in proportion to the value of the assets on which they have a specific first mortgage (these amounts having been previously ascertained by valuation and agreed) and that the B debenture-stock is issued to the holders of the first and second debentures in proportion to the amounts secured by such debentures respectively for principal and interest in arrear, so far as the same are not satisfied by the issue of A debenture-stock as above mentioned.

[8] Declare that the amounts owing to the unsecured creditors of the company shall be satisfied by the issue to them of fully paid new preference shares at par.

[9] Direct that application shall be made in each of the debenture holder's actions that the receivers shall be discharged and all proceedings stayed, costs being paid by the company out of the proceeds of the issue of the prior lien debenture stock.

The scheme will result in the company having power to raise £100,000 by the issue of prior lien debenture-stock, in the rights of the existing debentures of each class being re-arranged and the arrears of interest funded, in the unsecured creditors having their debts converted into fully paid preference shares of the new issue, and in the old share capital of £200,000 in preference shares and £300,000 in ordinary shares being reduced and unified into a single share issue of £180,000 in ordinary shares.

The reduction of capital will require a special resolution and the sanction of the Court, under section 46 (now English section 55 corresponding to Indian section 55). It will be necessary to alter the Articles declaring the rights of the preference and ordinary shareholders by special resolution, and to obtain the consent of the preference shareholders by a resolution under section 45 (corresponding to Indian section 54 since deleted and incorporated with Section 153) if their rights are determined by the Memorandum of Association without a power of variation but if not so determined either by resort to the powers contained in the Articles or if those do not suffice by proceedings under section 120 (now section 153 corresponding to Indian section 153) Meetings and resolutions of the holders of the first mortgage debenture-holders, of the second mortgage debenture-holders and of the unsecured creditors must be held separately under section 120 (now section 153 and Indian section 153), and the whole scheme requires confirmation by the Court under sections 45, 46 and 120 (corresponding to Indian sections 54, 55 and 153). This can be obtained by a single application on which all the parties interested can appear.

It may be suggested that the original ordinary shares should be wiped out altogether, but it is usually found desirable, to leave them a small interest to secure their support to the scheme and their assistance in subscribing to the new prior lien debenture-stock."

CHAPTER XIX

PRIVATE COMPANY.

The Act by sec. 2, sub-sec 13 has defined the status of a private company. The section runs thus:—

Definition of Private Company.

"Private Company" means a company which

(i) by its articles—

(*a*) *restricts the rights to transfer* its shares; and

(*b*) *limits the number* of its members (exclusive of persons who are in the employ of the company) to fifty; and

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

(ii) *continues to observe such restrictions*, limitations and prohibitions.

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 considered as a single member.

Restrictions to be contained in the Articles of a PrivateC ompany

Accordingly the Articles of Association of a private company must provide some regulations restricting the right of transfer of its shares and prohibiting the issue of its shares amongst the public. So *Table A of the Act cannot be accepted* in entirety without some modifications or restrictions.

Mode of forming a Private Company.

The method of forming a private company is also very simple. In forming a private company, a Memorandum of Association as required in the case of a public company should be prepared and signed by at least *two subscribers* in the presence of at least one witness. The maximum number of members of a private company must in no case exceed fifty, but the joint holders of shares should together be counted as one member. The Memorandum of Association should be accompanied by Articles of Association prepared in accordance with the regulations of the Act. A sample of such Articles of Association is given in Form No. 57 in App. B. These two documents when prepared and signed should be presented to the Registrar along with a *declaration of compliance* as required by section 24, sub-sec. 2, (Form No. I. of App A) A statement in lieu of prospectus is also required to be filed, if the company intends to pay brokerage or commission on sale of its shares under the provisions of sec. 105; otherwise it is not required. A notice regarding the situation of the registered office of the company is also required to be filed in Form No. II, App A

On presentation of the above-mentioned documents by the person who is authorised to present them under the provisions of the Statute the Registrar will grant a certificate of incorporation on receipt of the fee prescribed by clauses 1 and 2 of Table B. This certificate will be conclusive evidence as regards the incorporation of the company.

Permission for commencement of business of a Private Company.

A private company is entitled to commence business immediately after incorporation, and is not required to pass through all the technicalities as provided by sec. 103. But a private company is not exempted from filing the return of allotment as required to be filed with the Registrar under the provisions of sec. 104 when any allotment is made, though such company is not under the restrictions of sub-sec. (7) of sec. 101, as the company does not offer its shares to the public for subscription.

Exemptions of Private Company from certain Statutory duties.

A private company is exempted from many statutory technicalities, which a public company must observe. The following are a few of the exemptions which a private company is entitled to enjoy:—

(1) It is not required to file with the Registrar a *Statutory Report* as provided by sub-sec 5 of sec. 77, nor *now* to hold a *Statutory Meeting* under sub-sec. 1.

(2) Section 84 regarding consent of Directors will have no application

in the case of a private company nor to a public company which was a private company before being converted into a public company.

(3) A private company is not required to file a *Prospectus or a statement in lieu of Prospectus* except in the case where they pay any brokerage or commission on sale of shares.

(4) A private company which is a subsidiary company of a private company is not bound to have at least three directors as provided by Section 83A. At the same time although this section does not apply to private companies, private companies are now bound to have directors, as Article 71 of Table A has been made compulsory under section 17 in the case of all companies including private companies. On the other hand, Articles 78-82 regarding rotation of directors etc., which have been made compulsory in the case of public companies are not applicable to private companies except such as are subsidiary companies of public companies.

Article 77 regarding statutory report and statutory meetings of companies has now been made wholly inapplicable to private companies so that they are not bound to have any statutory report or statutory meeting.

The new Section 87A imposing restriction of duration binding on the managing agents does not apply to private companies which are not subsidiary companies of public companies Nor does the restriction regarding remuneration of the managing agents in the new section 87C apply to such companies.

Under section 87D, a subsidiary company cannot make a loan to its managing agent if the parent company is not its managing agent but there is nothing to prevent its making a loan to the managing agent of its parent company Again, the directors of a subsidiary private company will have all the limitations of the directors of a public company. Further under section 54A a subsidiary company cannot buy the shares of its parent public company except by way of reduction of capital.

Section 91B prohibiting the exercise of vote by the director in any matter in which he is directly or indirectly interested also does not apply to private companies, but it applies to a private company which is a subsidiary company to a public company.

Section 101 restricting the allotment of shares is now applicable to private companies without exception.

Section 103 limiting the power of a company to commence business is not applicable to private companies.

(5) Though a private company is required to prepare a *balance-sheet* under the provisions of sec. 131 and to hold the general meeting to consider and pass the said balance-sheet, still it is not required to forward a copy of the said balance-sheet to the Registrar under the provisions of section 134, sub-sec. 3; nor is a private company required to send a copy of it to each member 7 clear days before the meeting. But a summary and the list of the shareholders is required to be filed with the Registrar under the provisions of sec. 32.

(6) The balance-sheet of a private company is not required to be audited by a *certified auditor*, as is compulsory in the case of a public company (sec. 144). But it is not desirable that the directors and officers of a private company or a partner of the company should audit such a balance-sheet.

(7) The Articles of Association may *restrict the right of receiving or inspecting the balance-sheet*, etc., of the holders of preference shares, which the Articles of Association of a public company cannot do (sec. 146)

On the other hand, by reason of its being a private company subject to the restrictions of private companies, such a company must at the time of submitting the annual return under section 32 send with it a certificate signed by the director or other officer of the company to the effect that the company has not since the date of incorporation or since last return issued any invitation to the public to subscribe for any share or debenture and also when its annual return shows that the number of members exceeds 50, another certificate similarly signed showing that the excess consists wholly of persons who are under clause 13 of sub-section (1) of section (2) not to be counted towards the number of 50 and in the event of the number of members exceeding 50 after excluding such members the company would cease to be entitled to be a private company.

Though a private company is exempted from so many legal technicalities, it should observe the provisions regarding statutory powers and duties as given on page 22, and pages 34-36 save the provisions of clauses 4, 5, 6 and a part of clause 8, 19 and 20 of Statutory Duties as given on pages 34-36, *supra*

A private company is entitled to enjoy the benefit of borrowing facilities as provided by sec. 109 and the rules regarding winding up of a public company apply to it.

A private company may be converted into a public company under sec. 154. In converting a private company into a public company the following three things have to be done:—

Converting a Private Company into a Public Company.

(1) The company must pass a special resolution altering the articles deleting the provision of section 2 sub-section 1 Clause 13 and file the same with the Registrar under the provisions of sec. 82.

(2) There must be filed with the Registrar a statement in lieu of Prospectus under Form II in the Second Schedule within 14 days of such alteration of articles.

(3) There must be filed with the Registrar a statutory declaration required to be filed before commencing business under the provisions of sec. 103. A list of Directors along with their consent and contract to act as such is also required to be filed under the provisions of sec. 84, when the company intends to offer its shares for public subscription.

A fresh set of Articles or special resolutions withdrawing the restrictions on the transfer of shares, offering the shares for public subscription

and extinguishing the limitation of number of members to fifty must also be filed with the Registrar. For convenience it is desrable that a fresh set of Articles should be prepared and filed. The conversion may also be effected by a process of reconstruction as detailed in Chapter XVIII by selling the assets and liabilities of the private company to the new public company.

The conversion of a public company into a private company may also be effected by the reconstruction process as detailed on pages 262 *et seq.* or according to the Patna High Court by a simple change of the articles (a)

Under section 154, as amended, if the articles of the private company are so altered that they no longer include the restrictions required under section (2) sub-section (13), the company ceases to be a private company from the date of such alteration and is required to file its prospectus or a statement in lieu of prospectus under the penalty of fine up to Rs. 500/- for default, and when such default happens the company will not be entitled to the privileges of private companies except where the court, being satisfied that failure to comply with the conditions was accidental or due to some other sufficient cause, gives relief from the penalty and consequences.

The Memorandum of Association both of a public and a private company may be drawn up in the same way save that the number of subscribers in the case of a public company must be at least seven, while in case of a public company it must be at least two But the Articles of Association of a public and the private company must differ as the Articles of the latter must restrict the transfer of shares etc , under the provisions of the statute. The form as given in Form No. 57 in App. B may be taken as a form for Articles of Association of a Private Company.

Contrast between the Memorandum and Articles of a Private and a Public Company.

CHAPTER XX

BANKING & INSURANCE COMPANIES & FOREIGN COMPANIES

Banking companies are governed like all other companies by the Indian Companies' Act. But they are subject to certain special provisions made in this Act. Thus under section 4, association of more than 20 persons are forbidden otherwise than by registration under this Act. In the case of banking companies such associations are forbidden if they consist of more than *ten persons*. There are similar other provisions in various parts of the Act specially applicable to the banking companies. Thus under section 133 a special mode of the signature on the balance sheet and the profit and loss accounts is provided for banking companies, and section 136 itself provides that a banking company is to publish *every six months*

(a) In re. *Radiant etc. Co.* A. I. R. 1943 Pat. 278.

a statement in the Form G, Schedule 3, giving a brief statement of the position of the company along with a copy of the last audited balance sheet, and this statement and balance sheet are to be *displayed continuously* in the bank, until the next statement is thus displayed.

In the amending Act of 1936 new sections 277F to 277N contain elaborate provisions for banking companies. A banking company is defined by section 277F as follows:—

Definition of banking Company.

277F. A 'banking company' means a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one or more of the following forms of business, namely:—

(1) the borrowing, raising or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, travellers cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others; the negotiating of loans and advances, the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise; the collecting and transmitting of money and securities;

(2) acting as agents for Governments or local authorities or for any other person or persons; the carrying on of agency business of any description other than the business of a managing agent of a company not being a banking company including the power to act as attorneys and to give discharges and receipts;

(3) contracting for public and private loans and negotiating and issuing the same;

(4) the promoting, effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, Municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(5) carrying on and transacting every kind of guarantee and indemnity business;

(6) promoting or financing or assisting in promoting or financing any business undertaking or industry, either existing or new,

and developing or forming the same either through the instrumentality of syndicates or otherwise;

(7) acquisition by purchase, lease, exchange, hire or otherwise of any property immoveable or moveable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liability;

(8) managing, selling and realising all property moveable and immoveable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(9) acquiring and holding and generally dealing with any property and any right, title or interest in any property moveable or immoveable which may form part of the security for any loans or advance or which may be connected with any such security;

(10) undertaking and executing trusts;

(11) undertaking the administration of estates as executor, trustee or otherwise;

(12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company;

(13) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependants or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

(14) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(15) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section;

(17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.

Provided that any company which uses as part of the name under which it carries on business the word "bank", "banker" or "banking" shall be deemed to be a banking company notwithstanding that the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque,

What is a Banking Company.

draft or order, is not, or is not shown to be, the principal business of the company. (t1).

The first paragraph of this section gives the essential functions of a bank.

Under the English law a banker is defined as "an individual partnership or corporation whose sole or predominating business is banking *i.e.*, receipt of money on current or deposit account and demand and collection of cheques drawn up or paid for by the customer "(t2) Receiving of deposits subject to withdrawal by cheques is thus essential to a bank. But in addition to this, banks carry on various other businesses such as those specified in this section, and it is provided therefore that carrying on of other businesses along with the principal business of banking does not make the company other than a banking company.

The language of this section leaves it somewhat obscure as to whether a company which carries on any business other than businesses specified in this section in addition to banking proper would come under this definition. Thus if a company carries on a business of banking along with the business of insurance or of manufacturing goods, would it or would it not come under this definition of a banking company and be subject to the stringent provisions made in this section, regarding banking companies? No doubt under section 277(G) no company formed after the commencement of the Act of 1936 can be registered unless it limits its objects to banking proper along with one or more of the businesses specified in section 277F, and this section also prohibits any banking company carrying on any form of business other than businesses specified in section 277F, after the expiry of two years from the passing of this Act of 1936. But in the case of old companies which had other businesses along with banking proper, their position within the two years, during which they are allowed to carry on such other businesses is far from clear.

Besides the definition of banking company in section 277F would otherwise seem to be inartistic in so far as it requires the *principal* business to be the accepting of money subject to withdrawal by cheques etc. A company the volume of whose other businesses is greater than receiving of deposits on these conditions would therefore seem not to be within this definition and therefore the prohibitions under section 277G would not apply to it in as much as they are prohibitions applying only to banking companies, which must mean companies defined under section 277F.

It would seem however the intention of the legislature is that any company which carries on business of taking deposits on condition of withdrawal by cheques etc. shall be deemed to be a banking company and such companies will not be allowed to carry on any other business except those

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(t1) This proviso was added by section 2 of the Indian Companies (Second Amendment) Act, 1942 (XXI of 1942), with effect from 1st November, 1943.

(t2) Laws of England (Hailsham Ed.) vol. I. p. 782.

specified in section 277F. But the two sections as drafted leave the matter somewhat undefined.

As already stated, section 277G applies limitations on the power of banking companies to carry on any kind of business other than those specified in section 277F. Proviso to section 277G however gives the Governor General in Council power to add to the list of businesses set forth in the clauses (1) to (17) of section 277F which it shall be lawful for the banking company to carry on.

Limitations on Banking Companies.

The next important limitation on the powers of banking companies is that no existing banking company can after the expiry of two years from the commencement of the Act of 1936 employ or be managed by any *managing agent* other than a banking company and no new banking company can have such managing agent (see 277H) By section 277HH, which was introduced by Act IV of 1944, with effect from 1st July, 1944, it was further enacted that no banking company, carrying on business in India, whether incorporated in India or not, can be managed by a managing agent or any other person for a period exceeding five years unless the contract is renewed every five years and the banking company is precluded from paying him any remuneration in the form of commission or a share in the profits of the company

A banking company is forbidden by section 277M from forming any *subsidiary company* except a subsidiary company for the purposes of undertaking administration of estates as executors, trustees, or otherwise and such objects set forth in section 277F as are incidental to the business of accepting deposits of money on current account or otherwise. Besides, banking companies are now forbidden to hold shares in other companies, except of its own subsidiary company either as owner or as pledgee or mortgagee beyond 40% of the issued shares of such company

A very important limitation to the rule laid down in the amendment for banking companies is provided in the section 277I which forbids any banking company *commencing business* unless shares have been allotted to an amount sufficient to yield at least Rs. 50,000/-, as working capital and a declaration in the form of an affidavit signed by the director and the manager, that the sum of Rs. 50,000/- has been received by way of paid up capital has been filed with the Registrar. It will be remembered that under section 101, sub-section 2, the minimum subscription stated in the prospectus must include, in addition to the working capital other items of expenditure such as preliminary expenses, commissions, repayments of moneys borrowed, purchase prices of property purchased or to be purchased and banking companies like any other company must make provision for these items in the amount of minimum subscription stated in the prospectus. The special rule in respect of banking companies is that while in the case of other companies the working capital is left undetermined, to be fixed by each company for itself with reference to the probable requirements, in the case of banking companies the working capital must be at least Rs. 50,000/-.

Limitation regarding Capital.

Further, the amending Act IV of 1944, provides that on and from the 1st of July, 1946, no banking company incorporated on or after 15th January, 1937, can carry on business unless (*a*) the subscribed capital is at least half the authorised capital and the paid-up capital at least half the subscribed capital, (*b*) the capital of the company is composed of ordinary shares only or ordinary capital and such preference capital as was issued before the 1st day of July, 1944 and (*c*) that the voting rights are strictly proportionate to the paid-up capital, contributed by ordinary or preference shareholders.

Charge on unpaid capital forbidden

A banking company is forbidden by section 277J from creating any *charge upon the unpaid capital* of the company and if any such charge is created it is rendered invalid by the section It is usual in banking companies to have a substantial amount of capital uncalled as reserve liability in order to give extra security to its creditors and customers. The policy of this section is that this reserve liability of the shareholders should be always available to the liquidator and should not be encroached upon by any charge made upon it.

Reserve fund

Sections 277K and 277L make some special provisions with regard to the maintenance of *reserve fund* and of the *cash reserve*. These sections are not applicable to scheduled banks [section 277L subsection (3)] because the Reserve Bank Act makes ample provision by insisting upon certain deposits being maintained with the Reserve Bank by scheduled banks. Banks other than scheduled banks must provide for the reserve fund under section 277K to which shall be transferred no less than 20 per cent out of the declared profits of the year before any dividend is declared until the Reserves are equal to the paid-up capital and this reserve fund is required to be invested in Government securities or Trustee securities or deposited in a special account in a scheduled bank. This applies also to reserves which accrued prior to the passing of section 277K(*a*).

With regard to cash reserve section 277L provides that every banking company shall have *cash reserve* in cash of a sum equivalent to 1½ per cent. of the time liabilities and 5 per cent. of the demand liabilities of such companies and shall file with the Registrar before the 10th. of every month three copies of a statement of the amount so held on the Friday of each week of the preceding month together with the particulars of demand and time liabilities. *Demand liabilities* are defined by this section as liabilities which must be met on demand and *time liabilities* as liabilities which are not demand liabilities such as fixed deposits, security deposits and so forth.

Penalties

If a banking company makes default in complying with the provisions of sec. 277G, 277H, 277HH, 277I, 277J, 277K, 277L and 277M, every director or officer of the company who is a wilful party to the default is liable to a fine up to Rs. 500/- for every

(a) *Public Prosecutor v. Ananta* A. I. R. 1945 All 629.

day of the continuance of the default and to a fine not exceeding Rs. 100/- per diem for default in filing the monthly statement prescribed by section 277L.

MORATORIUM

Valuable provisions have been made for *meeting a sudden run* on banks by section 277N. This section provides that when a banking company is temporarily unable to meet its obligations, the Court may on application by the company stay commencement or continuation of all actions and proceedings against the company for a fixed period on such terms and conditions as it thinks fit, and may extend the time from time to time. For such application it is necessary to file along with it a report of the Registrar who is authorised to investigate the financial condition of the company at the cost of the company under sub-secion 3. A recourse to the section will save companies from being ruined by a sudden run made on the banks which it will be unable to meet although its financial condition may be thoroughly sound In such cases the Registrar may be asked to investigate the affairs of the company and to make a report in respect of the application to the Court, and if his report shows that the condition of the company is sound the Court may grant relief to the company by staying all suits and legal proceedings under this section.

INSPECTION BY RESERVE BANK

By Ordinance No IV of 1946 the Central Government may direct the Reserve Bank to inspect the affairs of any Bank and on receiving their report pass orders prohibiting the Bank from receiving deposits and removing a Scheduled Bank from the Schedule.

INSURANCE COMPANIES.

While the special provisions regarding banking companies have been incorporated in the Indian Companies Act by the amendment of 1936, such provisions regarding Insurance Companies have been embodied in the Insurance Act IV of 1938 which provides for insurers whether they are companies registered under the Indian Companies Act, or private persons or firms. Some of the special provisions regarding Insurance Companies may be noted here.

An insurance company cannot commence business merely by satisfying the requirements of the Companies' Act, for the purpose. In addition, before an insurer can commence any class of insurance business it has to obtain from the Superintendent of Insurance a certificate of registration. Section 3 of the Insurance Act which requires such a certificate specifies the documents and particulars to be furnished to the Superintendent of Insurance with every application for such a certificate, and along with every application a certified copy of the Memorandum and Articles of Association of the company, the name, address and occupation,

Certificate of registration

if any, of the directors; a certified copy of the published prospectus has also to be furnished by the companies under that section. Under section 6 of the Insurance Act, an insurance company cannot be registered by the Superintendent unless it has for *working capital* no less than fifty thousand rupees exclusive of any sums payable as preliminary expenses in the formation of the company.

Under section 7 of the Insurance Act, every insurer except Lloyds under-writers is required to *deposit* and keep deposited with the Reserve Bank of India to the credit of the Central Government cash or approved securities of the market value of two hundred thousand rupees, if the business to be done is Life Insurance only, one hundred fifty thousand rupees, if the business to be done is Fire Insurance or Marine Insurance or Accident and Miscellaneous Insurance only. The scale of amounts to be deposited where the different kinds of businesses are combined is also provided in that section and further provision is there made enabling insurance companies to make deposits in instalments.

Deposit with Government

Such deposits are, under section 8, to be deemed part of the assets of the insurer and the insurance company has no right to assign any part of it in discharge of any liability other than those on insurance policies, and these deposits are not liable to attachment. The deposit is however refunded when the company ceases to carry on business or any particular class of business for which such deposits have been made.

Section 10 of the Act provides for the keeping of accounts for each class of insurance and section 11 makes a special provision with regard to accounts. The balance sheet is to be prepared in accordance with the regulation contained in Part I in the Form set forth in Part II of the First Schedule of the Insurance Act. The profit and loss account is also to be made out in the Form set out in Part II of the second Schedule of that Act. In addition, the revenue account for each class of insurance business carried on by the company is required to be prepared in accordance with part II of the third Schedule of that Act.

Accounts

Insurance companies have to get a valuation of the business made every 5 years by an actuary *after* investigations made by him, under section 13 of the Insurance Act. The abstract of the report of the actuary in conformity with the requirements of part II of the Fourth Schedule is to be made by the company. In addition to this quinquennial valuation, a similar abstract of valuation is required to be made under section 13 whenever, at any other time, an investigation into the financial condition of the insurer is made, with a view to the distribution of profits or for publication. Sections 15 to 20 of the Act provide for the making of certain returns to the Superintendent and the Registrar of the Joint Stock Companies and for the inspection of the documents.

Quinquennial valuation

Some special rules are made by the Insurance Act, with regard to the investments and loans by section 27 under which no less than 55 per cent.

Investments and loans

of the amount of the liabilities of the policy-holders is required to be invested in securities referred to in that section, and investments by loans except loans on life policies to any director, manager, managing agent, actuary, auditor or officer of the insurance company or to any other company or firm in which any such director, manager, managing agent, actuary or officer holds any similar position is absolutely forbidden by section 29 subject to exceptions in favour of loans to banking companies and in respect of existing loans.

Special liability is imposed upon the director, manager, etc. by section 30. The Insurance Act avoids any loans made in violation of provisions regarding investments under sections 27 and 39 of the Act.

Insurance companies like banking companies under the Indian Companies' Act are forbidden to have a managing agent for the conduct of business and a stringent rule is laid down; where there are any such managing agents, they shall cease to hold office on expiry of three years from the commencement of the Act without having any right to compensation by reason of the premature termination of their appointment. And it is further provided that the remuneration which may be paid to the managing agent cannot exceed more than two thousand rupees per month including salaries and commission and other remuneration payable to and receivable by him

Managing agency prohibited

Supervision

The supervision of insurance companies is vested in the Superintendent of Insurance, who for special purposes of insurance companies takes the place of the Registrar of Joint Stock Companies, and under section 33 he has got the power to make an investigation into the affairs of an insurance company. To such investigation the provisions of section 140 of the Indian Companies' Act shall apply.

Amalgamation and Transfer

Sections 35 to 37 of the Insurance Act lays down special procedure for the amalgamation of insurance companies. The chief points of the special provisions are that (1) a scheme must be prepared in accordance with section 35; (2) and it must be sanctioned by the court; (3) the scheme must set out the agreement under which the transfer or the amalgamation is proposed to be effected; (4) before an application to the court notice must be given to the Central Government of the intention to make an application enclosing (a) the draft agreement and the deed for amalgamation or for transfer, (b) the statement of the assets and the liabilities of amalgamating companies, (c) acturial or other reports on which the scheme is founded, including a report of an independent actuary on the proposed amalgamation. The scheme has got to be kept open to inspection by members and policy holders for two months; (4) the court will cause notice of application to be sent to other holders of policies and cause it to be pub-

lished under section 37 and after hearing of the interested parties may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established.

Where an amalgamation takes place statements as specified in section 37 have to be furnished to the Central Government. Notwithstanding the special provisions of the Insurance Act which are binding, the amalgamation is nonetheless one under section 153 of the Indian Companies Act.(a).

Sections 40 to 44 of the Insurance Act provide for the payment of commissions to insurance agents and under this provision it is only the licensed insurance agents who are entitled to procure business and to be paid commission subject to the maxima provided in section 40 sub-section 2.

Commissions to agents

Winding Up

Sections 53 to 61 provide for winding up of insurance companies. Section 53 provides the following grounds on which the court can wind up a company in *addition to those under the Indian Companies' Act.* It may wind up an insurance company:—(a) if with the sanction of the court previously obtained a petition in this behalf is presented by shareholders representing not less than one-tenth of the share capital or by not less than fifty policy holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees, or (b) if the Superintendent of Insurance, who is hereby authorised to do so, applies in this behalf to the court on any of the following grounds, namely:—(i) that the company has failed to deposit or to keep deposited with the Reserve Bank of India the amounts required by section 7, (ii) that the company having failed to comply with any requirement of this Act has continued such failure for a period of three months after notice of such failure has been conveyed to the company by the Superintendent of Insurance, (iii) that it appears from the returns furnished under the provisions of this Act or from the results of investigation made thereunder that the company is insolvent, or (iv) that the continuance of the company is prejudicial to the interests of the policy-holders.

Voluntary winding up except by way of amalgamation is altogether forbidden in the case of insurance companies.

The rules for the distribution of assets in the case of insurance companies are naturally different from those of other companies. The sixth schedule of the Insurance Act gives the following rules with regard to the valuation of the liabilities:—

Distribution of assets

The liabilities of any insurer in respect of current contracts effected in the course of life insurance business including annuity business shall be calculated by the method and upon the basis to be determined by an

(a) *Light of Asia Insurance Co.* 48 C. W. N. 44.

actuary approved by the Court, and the actuary so approved shall, in determining as aforesaid, take into account—

(a) the purpose for which such valuation is to be made,

(b) the rate of interest and the rates of mortality and sickness to be used in valuation, and

(c) any special directions which may be given by the court.

The liabilities of an insurer in respect of current policies other than life policies shall be such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid.

Under section 55 valuation is to follow the rules in the sixth schedule as far as possible. The *Life Insurance Fund* is to be applied in the first instance in the satisfaction of the liabilities in respect of life insurance *business of the insurance company* and when there is a surplus it can be applied to the satisfaction of other liabilities of the company in accordance with the principles laid down in section 56

Partial winding up

Section 58 lays down the special procedure for the *partial winding up* of any one class of undertaking of the company leaving the company to carry on the business of the other classes of insurance either by itself or by transfer to some other company

The rules with regard to *provident insurance societies* and *mutual companies* are in many respects different from those of insurance companies A provident society is defined under section 65 to mean persons who receive *premium or contributions for securing annuities or for the payment of* moneys in any contingency like birth, marriage or death, failure of issue, loss or retirement from employment *etc* Mutual societies are defined as companies which have no share capital and, by whose constitution, only all policy holders are members. These companies are dealt with in parts III and IV of the Insurance Act.

COMPANIES REGISTERED OUTSIDE BRITISH INDIA.

The requirements as to companies established outside British India but having a place of business in British India are detailed by section 277 of the Act, which runs thus:—

Section 277:—(1) Every company incorporated outside British India, which at the commencement of this Act has a place of business in British India and every such company which after the commencement of this Act establishes such a place of business within British India, shall, within six months from the commencement of this Act, or within one month from the establishment of such a place of business, as the case may be, file with the registrar in the province in which such place of business is situated:—

(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 written 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 managers (if any) of the company;

(d) the names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company;

(e) the full address of that office of the company in British India which is to be deemed the principal place of business in British India of the company;

and in the event of any alteration being made in any such instrument or in any such address or in the directors or managers or in the names or addresses of any such persons as aforesaid the company shall, within the prescribed time, file with the registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served, if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been filed.

(3) Every company to which this section applies shall in every year file with the registrar of the province in which the company has its principal place of business:—

(i) in a case where by the law, for the time being in force, of the country in which the company is incorporated such company is required to file with the public authority an annual balance-sheet, three copies of that balance sheet and if the balance sheet does not contain all the information provided for in the form marked H in the third Schedule, such supplementary statement in triplicate as shall furnish such information; or

(ii) in a case where no such provision is made by the law, for the time being in force, of the country in which the company is incorporated such a statement in triplicate in the form of the balance sheet as such company would, if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act;

(4) Every company to which this section applies and which uses the word "Limited" as part of its name, shall—

(a) in every prospectus inviting subscriptions for its shares or debentures in British India, state the country in which the company is incorporated; and

(b) conspicuously exhibit at every place where it carries on business in British India the name of the company and the country in which the company is incorporated in letters easily legible in English characters and also, if any place where it carries on business is beyond the local limits of the ordinary original

civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place; and

(c) have the name of the company and of the country in which the company is incorporated mentioned in legible English characters in all billheads and letter papers, and in all notices, advertisements and other official publications of the company.

(5) Every company to which this section applies shall if the liability of the members of the company is limited cause notice of that fact to be stated in legible characters in every prospectus inviting subscriptions for its shares, and in all bill-heads and letter paper, notices, advertisements and other official publications of the company in British India and to be affixed on every place where it carries on business.

(6) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred rupees, or in the case of a continuing offence, fifty rupees for every day during which the default continues

(7) For the purposes of this section:—

(a) the expression "certified" means certified in the prescribed manner to be true copy or a correct translation;

(b) the expression "place of business" includes a share transfer or share registration office;

(c) the expression "director" includes any person occupying the position of director by whatever name called, and

(d) the expression 'prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(8) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five rupees or such smaller fee as may be prescribed.

The amendment of 1936 has introduced other new restrictions upon foreign companies trading in India. Under section 277A foreign companies are forbidden to issue or circulate in British India any *prospectus* offering shares or any form of application for shares or debentures of such companies without complying with the requirements of the section regarding furnishing the Registrar with copies of prospectus and other matters and provisions relating to prospectus are made applicable to such documents inviting shares or debentures. Section 277B gives in detail the requirements of the prospectus to be filed with the Registrar before being qualified to sell shares in British India. The requirements are generally similar to those for British Indian companies with adaptation to foreign companies.

Issuing Prospectus by foreign companies.

Section 277C restrains the canvassing for sale of shares by foreign companies by going from house to house. The provisions of sections 109

Canvassing forbidden.

to 117 and 120 to 125 of the Act are made applicable by section 277D to charges on properties in British India, held by foreign companies with the proviso that where a charge is created outside British India sections 109 to 109A shall apply as if the property wherever situated were situated outside British India.

Section 277E makes section 118 and 119 applicable *mutatis mutandis* to foreign companies having a place of business in India.

Application of the Act

The Act shall apply to companies registered under the former Companies Act in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares, (*vide* section 250) subject to the proviso of the said section.

But the Act shall not affect companies registered under the provisions of the Insurance Act IV of 1938 (sec. 287 read with sec. 123 of Act IV of 1938); and save the provisions in sections 188 and 189 nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay (sec 289) at present the Imperial Bank of India.

Winding up of Unregisterd Companies

The Act provides for the liquidation of companies not registered under the Act The term unregistered company does not, for the purpose of winding up under this Act, include a Railway Company incorporated by an Act of Parliament or of the Governor-General in Council or a company registered under any of the older Companies Acts but includes any partnership, association or company consisting of more than seven members

The general rules relating to the winding up of registered companies apply with certain modifications:—

(1) For the purpose of determining the jurisdiction of the Court, an unregistered company is deemed to be registered in the province where its principal place of business is situate.

(2) An 'unregistered company' cannot be wound up either voluntarily or under supervision but must be liquidated directly by the Court.

(3) It can be wound-up only (a) when the company is dissolved or has ceased to carry on business, (b) if the Court is of opinion that it is just and equitable that the company should be wound up, or (c) when it is unable to pay its debts. It is deemed to be unable to pay its debts (a) if it is unable to meet the demand of a creditor for a sum over Rs. 500/- within three weeks of the service of demand, (b) if it fails to satisfy a creditor who has served a notice of the institution of a suit or other legal proceeding against the company or any member in his character as a member of the company, within 10 days after the service of the notice or if it failed to procure a stay of proceedings, (c) if execution or other process issued on a

decree obtained by a creditor is returned unsatisfied and (d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts. (section 271).

Contributories in a winding up of an unregistered company are deemed to be persons who are liable to pay or contribute to the payment of any debt or liability of the company or to the payment of any sum for the adjustment of the rights of the members amongst themselves or to the payment of the costs and expenses of the winding up. In the event of the death or insolvency of a contributory, the provisions of the Act regarding legal representatives and heirs of deceased contributories apply.

The Court has the power to stay or restrain proceedings against any contributory of the company, where the application to stay or to restrain is by a creditor, and no suit or other legal proceeding against any contributory of the company may be commenced or proceeded with except by leave of the Court

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CHAPTER XXI

INCOME-TAX

Income-Tax laws affect a company in two ways. A company is subject to these laws as an assessee, being liable to pay Tax on its profits; on the other hand, the Income-Tax Act entails certain duties on a company in relation to its share-holders and employees. It is not possible to treat the matter with any degree of comprehensiveness within the compass of a single chapter and an attempt will therefore be made to outline the salient features of the law pertaining to the subject.

In addition to Central Income-tax, a company carrying on agricultural operations is now liable, under the various provincial Agricultural Income-tax Acts, to pay agricultural income-tax on its income which is referrible to agriculture and is thus exempt from Central Income-tax.

The provisions of these Acts are generally on the lines of the Central Act in material particulars.

Company as Assessee

A company, as defined by the Income-Tax Act, includes not only a company incorporated under the Indian Companies Act, 1913 but any corporate body formed in pursuance of an Act of Parliament, Royal Charter, Letters Patent or an Act of Legislature of a British possession and also any foreign association carrying on business in British India, whether incorporated or not, which the Board of Revenue may, at its discretion, declare to be a "Company" for the purposes of Income-Tax Act. It includes such foreign unincorporated associations as the French Socie-

"Company" under the I. T. Act.

ties Anonymes, which carry on trading operations in India, if and when they are declared by the Board of Revenue to be treated as a company. It does not however include any company formed under section 26 of the Indian Companies Act, as it is formed not for profit but "for promoting commerce, art, science, charity or any other useful object and applies or 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." A company formed for charitable purposes or for some public benefit is therefore exempted and as agricultural income is not taxable, a company formed for purely agricultural purposes is also exempted from payment of Income-Tax. A company which combines agricultural work with manufacturing business, *e.g.*, a Tea, a Sugar manufactory or an Indigo concern, is liable to pay Income-Tax on that part of its income, which is derived from manufacturing processes as distinct from that derived from agricultural sources. Income derived from processes ordinarily employed by a cultivator to render his produce fit for the market is not deemed as derived from manufacturing process, but where other processes are employed *e.g.*, by a Tea Factory or an Indigo Factory, profits are apportioned to respective sources—agriculture and manufacture—and the portion deemed to be derived from the manufacturing processes is held liable to tax. (Vide Patna High Court Case No. 74 of 1919 and Calcutta High Court Case No. 83 of 1920). Killing Valley Tea Co., Ltd *v.* the Secy of State for India).

Resident and non-resident company.

Under Section 4 of the I. T. Act as amended, a distinction is made in the incidence of tax on resident, ordinarily resident and non-resident assessees and a company is accordingly so distinguished. A company is resident in British India in any year if the control and management of its affairs is situated wholly in British India in that year or if its income arising in British India in that year exceeds its income arising without British India in that year, and it is "ordinarily resident" if it is "resident" in British India. When a company is not resident is British India, only such part of its income as may accrue, arise or be *deemed to* accrue or arise in British India will be taxable in British India, whereas if it is a 'resident' company, its total world income will be taxable in India, wherever it may accrue or arise provided that foreign income up to a maximum of Rs. 4,500/- will not be taxable if it is not brought to British India.

Definition of "principal Officer" of a company.

Communications with a company are made by the Income-Tax Officer with its Principal Officer, which has been defined as the Secretary, Treasurer, Manager or Agent of the Company or "any person connected with the company," upon whom a notice has been served by the Income-Tax Officer, purporting to treat him as the "principal officer" of a company (vide sub-sec. 12 of sec. 2 of I. T. Act). Accordingly the Managing Agent or his principal representative may be treated as "Principal Officer" of the company and such person shall be held liable

for offences in complying with the requirements of the Income-Tax Act under Section 51 of the said Act.

Mode of charging Tax.

On or before the 1st day of May in each year the Income-Tax Officer shall give notice by publication in the press requiring every assessee to file a return of income and within 60 days from the publication of such notice, the Principal Officer of a company is required under Section 22 of the Income-Tax Act to file a return of the total income of the company during the previous year in the prescribed form (see Form No. 59). The Income-Tax Officer will thereupon ascertain the assessable amount and levy Income-Tax thereon at the rate current for the Government year (1st April to 31st March) as fixed by the annual Finance Acts. The minimum assessable amount, under the present Finance Act, is Rs. 3,000/- for individuals but a company is charged on its total assessable income whatever may be the amount, at the maximum rate obtaining at present (@ 60 pies per rupee provided that in the case of a company, registered in India, whose total income does not exceed Rs. 25,000/- income-tax would be charged at the rate of 30 pies per rupee Companies, like individuals are entitled to rebate of 20%, but not exceeding a maximum of Rs 4,000/-, for earned income. Apart from the Income-Tax payable as above a company is also required to pay Super-Tax or Corporation Tax at the fixed rate of two annas per rupee in respect of its total income

Basis of Taxation.

As indicated above, Income-Tax is charged on the profits of a fixed period Where there are no profits, the loss if any is now allowed to be carried forward to be set off against the profits of the subsequent period. Before the Income Tax (Amendment) Act of 1939, business loss was not so allowed to be carried forward and when the amending Act introduced the change, although the equity of the allowance was recognised it was made gradually effective in order to avoid any serious deficiency in Government revenue. Accordingly under the amended section 24, losses incurred in a business should in the first instance be set off against other income for the same year, failing which it may be carried forward and set off against the profits, if any, *from the same business* for the following year and so on, but no loss can be carried forward for more than six years.

Tax charged on a fixed period—assessee also allowed to carry forward loss.

It may be noted here that depreciation can be carried forward, without any limitation, until it can be set off against future profits and in view of the fact that business loss can be carried forward for a limited period only, such loss is allowed to be set off against profits in priority to depreciation.

The Government Financial year closes on 31st March and at the end of each Financial year, the Finance Act is published detailing the rate of taxation for the next Financial year. The basis of taxation is the profits of the assessee earned during the *previous year*. The tax is therefore levied in arrear

Definition of "previous year."

on an ascertained income. Under the Act of 1918 (since repealed), the assessment was made on the income of the year of assessment and as this obviously could not be ascertained before the year was over, the tax was levied provisionally on the income of the previous year, subject to subsequent adjustments. The present Act does away with this legal fiction and as the tax is collected in arrear, no subsequent adjustment is necessary. The tax is therefore levied for the current Government Financial year on the profits of the company's previous year of account. The term "previous year" is readily understood if the company's financial year coincides with the Government year, where the term will indicate the period ending on the 31st March immediately preceding the Government year for which assessment is made. But the financial year of a company may not close on 31st March, in which case the previous year, for Income-Tax purposes, would be the year ending on the day within the preceding twelve months, up to which the accounts of the assessee have been made up. Thus, if a company closes its annual account on 31st December, the tax payable by the company for the Government year 1947-48 will be assessed on the profits of the Company for the year ended 31st December, 1946, because this date comes within the previous Government year ended 31st March 1947. Similarly, a company having its annual closing on 30th June, will be assessed for Government year 1947-48, on the income earned by it during the year ended 30th June 1946, because this date is within the year from the 1st April 1946 to 31st March 1946, which is the previous year, as defined by the Act. The company is allowed therefore to close its financial year on any date of the calendar year and by arrangement with the Income-Tax Officer, its financial year may be taken as its previous year. But this option of having a financial year other than the Government Financial year has once been exercised by the assessee (company), it shall not again be allowed to change the time of its financial year to any other time, (so as to vary the meaning of the previous year) without the consent of the Income-Tax Officer [*vide* section 2, sub-sec (11) of the I. T. Act].

Advance payment of tax-section 18A.

As stated above, the tax is levied in arrear on an ascertained income, but during 1944 an amending Act introduced Section 18A to the Indian Income Tax Act, under which the Income Tax Officer may, by an order in writing, require an assessee to make advance payment of tax by quarterly instalments on 15th June, 15th September, 15th December and 15th March in any financial year, calculated on the income of the latest previous year of the assessee at the rates in force during the year when payment is demanded, provided that the income of the relevant previous year exceeds Rs. 6,000/-. It is provided by sub-section (5) that the Central Government shall pay simple interest on the advance paid at the rate of 2% per annum, calculated from the date of payment to the date of regular assessment of the income of the previous year. Further, where an assessee estimates, at any time, before the last instalment is paid, that his income during the year is less than the amount on which he is required to pay advance tax, he may send to Income Tax Officer a revised estimate and accordingly pay the balance of tax on his estimated income, provided that

if the total amount of advance tax paid by him is less than 80% of the tax determined on the regular assessment of his income, he would be required to pay simple interest on the deficit in tax at the rate of 6% per annum.

Thus, where the last completed assessment of the income of a person has been made for 1945-46 and not yet made for 1946-47, he will be require to pay advance tax for 1947-48 on the basis of the assessment for 1945-46 while if an assessment has been completed for 1946-47, he will be required to pay on the basis of this last assessment, subject to his right to submit his own estimate for 1947-48 as stated above.

Return of Total Income.

From the Return of total income filed by the Principal Officer of a company under section 22 (1) of the I. T. Act, the Income-tax Officer ascertains the net assessable income, after taking into consideration the statutory allowances. The Balance at the debit or credit of Profit and Loss Account of a company does not generally agree with the figure of assessable income fixed by the Tax authorities as the methods followed to arrive at the assessable profits for Income-Tax purposes are often found unsuitable for the purpose of ascertaining distributable profits. The allowances for depreciation, fixed by the I. T. Rules, for instance, may be found by the directors of the company to be inadequate and calculated to weaken the stability of the company. Again, it may be considered advisable to build a reserve for any specific purpose or for the general welfare of the Company, which the I. T. Act will not allow to be debited against the profits.

Net assessable income to be determined after deduction of statutory allowances.

The total income of a company, which is the same for Income-Tax and Super-Tax purposes (*vide* section 56 of the I. T. Act), is composed of income, profits and gains of the company under the following heads, namely, "Property," "Business," "Interest on Securities" "Capital Gains" and "Other Sources."

Income from interest on securities.

As provision is made in the Act for the deduction of Income-Tax at source, *i.e.*, at the origin where the income accrues, interest on Securities and Dividend from other companies are received by the assessee company as net income (the tax having been deducted at source) and in arriving at the net assessable figure for income-tax purposes these items are excluded as otherwise there will be double taxation (b) Where an assessee company borrows money specially for investment in *taxable* securities or shares and the money borrowed has been so invested it may set off the interest payable on the borrowing against its income liable to tax, taken as a whole.

(b) But income from investments abroad cannot be taxed at source and are therefore taxed in the hands of the assessee company. For Super-Tax purposes, however, the income from investments together with income-tax paid thereon, is taken into account.

Income from property.

With regard to the income derived under the head 'Property' the law lays down that the tax is payable in respect of the *bona fide* annual value of the property, which is deemed to consist of "buildings or lands appurtenant thereto" and of which the assessee company is the owner, other than such portion of the property which is occupied by the assessee for the purpose of its business. Profits from rentals of lands other than appertaining to buildings is not chargeable under this head but would be taxed under "Income from Other Sources." The *bona fide* annual value is the full *market* value at which the property could be let from year to year "irrespective of any charges by way of Municipal rates or taxes thereon" The actual rental received may fall short of the market value as computed by the I. T. Officer but the amount for taxation will be on the market value.

Income from 'Property.'

The deductions allowed on this head of Income are the following.—

Deductions allowed on Income from Property.

1. Cost of Repairs not exceeding one-sixth of the annual value—this is a fixed allowance irrespective of the fact whether the money has actually been spent or not
2. Premium paid for Insurance against risk of damage or destruction
3. Interest paid on the mortgage or charge on the property except such interest as is payable outside British India, unless tax has been paid thereon under Section 18 or otherwise
4. Interest on capital borrowed for the purpose of acquiring, constructing, repairing or renewing property
5. Ground-rent paid.
6. Land revenue paid for the property.
7. Actual collection charges paid but not exceeding 6 per cent. of the annual value of the property Collection charges include net legal expenses, after deducting costs recovered, if any, from the opposite party.
8. Amount considered allowable by the Income Tax Officer in respect of vacancies.
9. Unrealised rent, in a *bona fide* tenancy, provided legal proceedings have been taken to recover the unpaid rent. This will also be excluded in computing the total income of the assessee.

The total deductions however will in no case be allowed to exceed the annual value and there can be therefore no loss under this head of income, which may be set off against income or profits under any other heads.

Income from Business.

In computing the assessable profits and gains of a company under the head "Business" it must be remembered that when a resident company carries on any business outside British India, the profits earned by such business shall be chargeable to tax although not brought within British India. These profits are deemed to be profits or gains of the year in which they arise.

Income from "Business"

The following items of expenditure are allowed against taxable *profits* :—

Deductions allowed on Income from Business (a) Rent for premises.

1. Any rent paid for the premises in which the business is carried on The Income-Tax Officer has the right to see if the whole of the premises for which the rent is paid is used for the business or if a part thereof is used by anyone for dwelling purposes. In the latter case the rent of the portion not used for the business will not be allowed, unless this portion is occupied by an employee of the Company free of charges, under the terms of his employment.

(b) Expense of repairs of premises

2 Expenses for repairs of such rented premises, if binding on the tenant assessee under the terms of contract with the owner.

(c) Interest on capital borrowed.

3. The amount of interest paid on the capital borrowed for the purpose of business, provided interest is payable irrespective of profits made or loss suffered by the company. This would include the interest payable on the Debenture Loan issued by the company and also interest payable on Bank overdraft, but would exclude interest payable outside British India unless tax thereon has been deducted at source or otherwise

(d) Insurance premia.

4. The amount of premia paid in respect of insurance against risk, damage or destruction of buildings, machinery, plant, furniture, stocks or stores used for the purpose of the business. If the amount is not actually spent or due but set aside to form a Reserve for insurance purposes, it will not be allowed as a business deduction. The amount of premia for insurance against "loss of profit" though not specifically mentioned is allowable under sec. 10(2)xv as a deduction. When any amount is received from an Insurance Company on such policies it will be treated as income and taxed on the principle laid down by the Privy Council in the *Fir and Cedar Timber Co. case* (101 LJ, P.C. 113; 1932 A.C. 441) which principle holds good under the India Income Tax Act.

5. Expenses of current repairs to buildings, machinery, plant or furniture. The phrase "Current repairs" means ordinary repairs necessary to keep machinery, plant etc. in working order due to ordinary wear and tear. It also includes minor replacements, which cannot be taken under Capital Expenditure. Substantial alterations or additions would entail expenditure, which would go under Capital Expenditure and would therefore be excluded.

(e) Current repairs to machinery etc.

6. The amount of Depreciation of buildings, machinery, plant or furniture is a sum equivalent to such percentage on the written down value of each such asset as may be prescribed. The "written down" value of an asset acquired during the "previous year", is the actual cost of the asset borne by the assessee and where an asset has been acquired at any time before the previous year, the actual cost less all depreciation that has been actually allowed When a new building has been erected between 1st April 1946 and 31st March 1948, a further sum of 15% of the cost and in the cases of other buildings, 10% per cent of the cost will be allowed as a deduction. Similarly in the case of *new* machinery and or plant installed after the 31st March, 1945, an additional sum equivalent to 20% of the cost will be allowed as a deduction.

(f) Depreciation of Buildings, Machinery, Plant or Furniture

In the case of ships, however, other than ships ordinarily plying on inland waters, depreciation is allowed at a fixed percentage on the original cost

The aggregate of such annual allowance should in no case exceed the original cost borne by the assessee. The cost of original block and the costs of additions in particular year should in each instance be treated as separate units and the depreciations allowed should be computed separately for each in chronological order, so that when the full value of block in each instance is written off, the block item will be eliminated and considered to be valueless. The term "Original Cost" is held to include the actual cost of purchase, the cost of freight, the cost of erection of plant or machinery and the costs of experiments to test if the machinery is in working order. Rule 8 of the Income-Tax Rules 1822 (See Form No. 58) prescribes the rates of depreciation allowable on the particular items mentioned therein and no depreciation will be allowed on any item other than what is detailed there. Where the total of statutory allowances for depreciation exceeds the business profits or where there is loss under the head "Business," the amount of unabsorbed Depreciation is set off against assessee's income from other heads as 'Business Loss' is allowed to be set off or carried forward and any part that cannot be so set

Unabsorbed Depreciation is allowed to be carried forward.

off is carried forward from year to year until there is sufficient income under all heads to absorb the total amount of Depreciation thus carried forward, but so that Business Loss is set off in priority to Depreciation.

Depreciation of furniture is an item which is allowed only when such allowance is asked for, as it may not suit the convenience of small trading companies to keep a Depreciation account for petty items of furniture and consequently where Depreciation is not asked for, cost of replacement are allowed as business expenditure.

Where allowance for depreciation is claimed, it is necessary to furnish the particulars showing (a) the written down value at the beginning of the accounting period, (b) capital expenditure incurred during the year for additions, alterations, improvements and extension to the assets, (c) dates of all such alterations etc., (d) particulars of machinery sold or discarded, showing original cost, depreciation allowed, value realised or scrap value and the relevant dates of purchase, sale or discarding, (e) amount on which depreciation is allowable in the particular year and the total amount of depreciation claimed and (f) the prescribed rate per cent for depreciation The particulars are to be furnished in the prescribed form given in Part V of the form for return of income (Rule 19)

As already stated, apart from what is detailed in Rule 8 Depreciation is not allowed on any other asset and therefore no allowance is permissible on such items as Amortisation funds or wasting assets such as coal. Appreciation or Depreciation of Shares and Securities, when held as part of the Capital of a business is outside the scope of the Act; but when a company habitually deals in Shares and Securities with a view to making a profit, the profits secured or losses incurred are regarded as trade profits and losses and as such taken into account in determining the assessable profits.

(g) Allowance in respect of obsolescence of Machinery or Plant.

When Machinery or plant is sold or discarded, the difference between the written down value to the Assessee and the amount for which such machinery or plant is actually sold or its scrap value is allowed as a legitimate deduction provided that the amount is actually written off in the books of the assessee. As for example, machinery originally purchased for Rs. 5,000/- is sold at Rs. 2,000/- depreciation whereon has been allowed up to Rs. 1,500/- only, reducing the written down value to Rs. 3,500/-, in computing the amount of exemption the total of sale price (Rs. 2,000/-) has to be deducted from the written down value giving a balance of Rs. 1,500/- to be claimed against the books of the year in which the machinery is sold. Where,

however, the sale value exceeds the written down value the excess is to be regarded as profits during the year and the balance as Capital receipt. When machinery or plant is sold or is destroyed by accident, the depreciation allowance at the fixed rate ceases as there is no asset on which Depreciation may be claimed. When the asset is sold the value received is treated as Capital Receipt and is not included in the assessable profit and similarly when it is destroyed by accident, if covered by insurance, the amount received from Insurance Company is treated as a Capital Receipt. Where however the sale price or the insurance money exceeds the written down value, the excess received will be deemed as profits of the year and will be chargeable to tax. Where the asset destroyed is not covered by insurance the loss is regarded as a Capital loss and no allowance can therefore be made in respect thereof.

(h) Allowance for dead or useless livestock.

8. Allowance in respect of Live-stock that has died or become permanently useless to the assessee is granted not exceeding the difference between the original cost and the amount if any realised in respect of the carcasses or animals.

(i) Allowance for local rates in repect of premises used for business.

9 Any amount paid for land revenue, local rates or Municipal Taxes in respect of such part of the *premises* as is used for the business Any other tax, which is not incurred solely for the purpose of earning a profit or is dependent on the profits earned, *e g*, Income and Super-Taxes, Road-cess etc are not allowed as deduction The test to be applied to find if a tax can be allowed as business deduction or not is to consider if the payment of a tax is conditional on the making of an income and if it is to be calculated on the amount of such income. Where it is payable irrespective of any profit earned or loss incurred it is allowable as a business deduction under section 10 sub-sec. (2) of the I T Act The specific provision for deduction of land revenue, local rates and Municipal taxes in respect of business premises has been made "because the local rates paid on account of such premises are usually in the nature of a payment for services rendered (*i e*. by supply of water, conservancy arrangements etc.) but that allowance is closely restricted to a local tax or rate levied in *respect of the premises* used for the purpose of the business."

(j) Bonus or commission paid to an employee where allowable.

10. Any sum paid to an employee as bonus or commission for services rendered over and above his salary provided the amount paid bears a reasonable proportion to his salary and to the profits of the business for the year in question. If payable under agreement of service, the amount paid is a legitimate business deduction.

11. Any expenditure incurred solely for the purpose of earning profits, where such expenditure is not of the nature of Capital Expenditure, is allowed to be set off against profits,

(k) Expenditure solely for earning profits.

The test to be applied is to determine whether or not earning of profit would have been hampered but for the expenditure. It allows for miscellaneous business deductions, which it is not possible to enumerate and discretionary power is left to the Income-Tax Officer to determine, in each instance, if the deduction claimed by an assessee, can be regarded as a reasonable and legitimate business expense, not involving Capital expenditure. In other words all expenses, which may rightly be debited to Revenue A/c., *i.e* salaries, commission, fees, stationery, printing, postage, telegrams, travelling expenses, advertisement, charges general, are all charges which have to be taken into account before arriving at the assessable figure. Reserves of any description are not allowed, but losses in respect of bad debts are allowed against the profit of the year in which the loss is incurred provided it is actually written off as irrecoverable in the books of the assessee When however the amount or any part thereof is ultimately recovered, it will be treated as profit in the year in which it is recovered. As Capital Expenditure is not allowed as a business deduction, the cost of issuing shares, which is Capital Expenditure, is not allowed as a business deduction whereas the premia received on issue of shares, being Capital receipts, are not taxable. Contributions by an employer Company to a Provident Fund for the benefit of employees are allowed when the fund is constituted as an irrevocable trust, where the employer's contributions remain in the hands of the trustees as in the case of a Provident Fund, recognised by the I T. Act, under Section 58C. In any other case actual payments made to employees leaving the service of the Company are allowed as business expenses of the year in which such payments are made.

Contributions to Provident Funds when allowed

12 By an amendment of the Act in 1946, any expenditure (not being in the nature of Capital Expenditure) laid out or expended on scientific research related to the business or any sum paid to a scientific research association for research work on the business carried on by the company or any sum paid to an approved university, college or institution to be used for such scientific research is allowable as a business expense in arriving at the taxable profit of the company. Where any capital expenditure is involved for the purpose of research, such capital sum is allowed to be written off from profits during the course of five years in the shape of an annual allowance equal to one-fifth of such expenditure.

(l) Allowance for expenditure on scientific research.

Recognised Provident Fund

In order that a Provident Fund may be a "Recognised" fund, certain conditions are to be fulfilled, which are briefly:—

(a) The employees must be employed in India or employed by a company, whose principal place of business is in British India. The Commissioner of Income-Tax has however the discretion to "recognise" a fund under suitable restrictions, maintained by a company whose principal place of business is not in British India notwithstanding that a proportion not exceeding ten per cent. of the employees is employed outside India.

(b) The contribution of an employee in any year must be a definite proportion of his salary for the year and must be credited to the Fund Provided that an employee who retains his employment while serving His Majesty's forces or employed under the National Service Act, 1940 or the National Service Ordinance 1940, may contribute to the Fund to the same extent as he would have done if not employed in military duty as aforesaid, irrespective of what salary he may or may not receive from his employers.

(c) The contribution of the employer company must not exceed the contribution of the employee, unless specially permitted by the Tax authorities.

(d) The Fund must not include any other sum but the total annual contributions by the employer and employees, donations from trustees, if any, interest thereon (both simple and compound) and securities purchased from accumulations thereof and any Capital gains arising from the sale exchange or transfer of Capital assets of the Fund The sums must be invested in securities of the nature specified in clauses (a), (b), (c), (d) or (e) of section 20 of the Indian Trusts Act 1882 and payable both in respect of capital and of interest in British India or in a Post Office Savings Bank Account in British India.

(e) The Fund must be vested in two or more trustees, or in the Official Trustee, under a trust which must be irrevocable except with the consent of all the beneficiaries.

(f) The company shall not be entitled to recover any sum except in cases where the employee is dismissed for misconduct or voluntarily leaves service for reasons other than illness or unavoidable necessity, where the recoveries by the

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(a) See Notifications Nos. 9, 10 and 12 dated the 15th March, 1930 and subsequent alterations thereto.

company must be limited to contributions made as an employer and interest thereon.

(g) The accumulated balance due to an employee must be payable to him on the day his service terminates and unless otherwise provided by rules of Government, (a) no other sum shall be payable to the employee.

When an existing Provident Fund is accepted by the Tax authorities as a Recognised Fund and the amount of the Fund is transferred to the Trustees to satisfy condition (e) noted above, part of the amount so transferred which is contributed by the employer company is treated as Capital Expenditure and not as Business Expense for the year; *vide* section 58K(1) of the I. T. Act.

But when an employee is paid at the termination of his service, the portion which comes out of the employer's contribution of the transferred balance will be treated as a revenue expenditure of the year in which the payment is made.

It may also be noted here that any income received by Trustees on behalf of a recognised fund is exempt from tax—vide section 4, subsection (3) (ix) and the Trustees can therefore claim refund of Tax paid at source. But provident funds of private companies and firms, which are not 'recognised,' cannot claim such refund, although they are not separately assessed to tax and cannot be charged to Super-tax.

The accounts of a recognised Provident Fund are required to be prepared at intervals of not more than twelve months and are to be maintained in the prescribed form (Rule 6) and under section 58I, such company is also required to file a Return in the prescribed form.

The two other heads of income are Capital Gains and income from "Other Sources." The latter appears to have been inserted lest the assessee should escape liability on any item which does not come under any other head of income As example of income under this head may be mentioned the income derived from vacant lands, *i.e.* which is not appurtenant to a building and as such taxable under Section 9, or income derived from a sublease of any property etc.

CAPITAL GAINS

In 1947, profit on the sale, exchange or transfer of capital assets was for the first time made subject to taxation. The trend of legislation prior to this innovation was that revenue profits or profits arising from a business were the legitimate targets for taxation, while any profits arising from or accruing to capital assets were deemed to be beyond the purview of taxation as such profits could not be treated as *income*.

By the amending Act of 1947, The Income Tax Act was amended by the introduction of section 12B, under which any profits or gains, not being less than Rs. 15,000/-, arising from the sale, exchange or transfer of a capital asset, effected after the 31st day of March, 1946, would be

deemed to be income of the previous year in which the sale, exchange or transfer took place and as such be taxed in accordance with the new sub-sections (6) and (7) of Section 17, as amended. A 'Capital asset' has been defined as property of any kind (other than agricultural land) but excluding (a) stock-in-trade, consumable stores or raw materials held for the purpose of business, profession or vocation and (b) personal effects, *e.g.* movable property including wearing apparel, jewellery and furniture. Exemption has been made in the case of Capital gains arising from the sale, exchange or transfer of a building or land appurtenant thereto, the income from which is chargeable under Section 9 of the Income Tax Act as income from property provided that such asset has been possessed by the assessee or his parent for not less than seven years prior to the sale or transfer. Where again, a sale or transfer takes place by reason of compulsory acquisition thereof under any law for the time being in force for public purposes or where there is a distribution of capital assets on the partition of a Hindu undivided family or on the dissolution of a firm or liquidation of a company or under an irrevocable Deed of Trust, or Deed of Gift or bequest, profits arising therefrom would not be treated as taxable under this Section. Similarly, a transfer of a capital asset by a Holding Company to a Subsidiary Company where the entire share capital of such subsidiary is owned by the holding company, is beyond the operation of this section

In assessing 'Capital gains' any expenditure incurred solely in connection with the sale or transfer and the actual cost to the assessee of the capital asset inclusive of expenses incurred for additions and alterations which have not been allowed under Sections 8, 9, 10 and 12, will be allowed as legitimate deductions. Where the assessee has obtained depreciation allowance in any year on such capital asset, the actual cost would be deemed to be the written down value thereof Further, in respect of any capital asset held by the assessee prior to 1st January, 1939, he is allowed the option of substituting 'fair market value' for actual cost, such value to be established to the satisfaction of Income Tax Officer Again, in respect of a capital asset which immediately before the sale or transfer was in the use of the assessee for the purposes of his business or vocation or in the case of a residence, was in the use of the assessee or his parents within two preceding years and such assessee has within one year before or after the sale or transfer or in the case of plant or machinery within such time as the Income Tax authorities consider reasonable, has purchased a new capital asset, any gains arising from the sale or transfer of the capital asset, may, if the assessee so elects, be dealt with in the following manner, namely, (a) where *the gain* is greater than the cost of the new asset, the taxable capital gains would be deemed to be the difference between the amount of capital gain and the cost of the new asset, provided that for the purposes of depreciation, or ascertaining the capital gain from the sale of such asset, the cost or written down value of such asset would be deemed to be nil and (b) where the capital gain is equal to or less than the cost of the new asset, no capital gain will be assessed on the sale of the old asset and for the new asset the cost or written down value for the

above purposes would be reduced by the amount of the capital gain of the old asset.

Unlike the taxation on income on other heads, the rates of which are fixed by the annual Finance Acts, the rate of tax on Capital Gains is embodied in the Income Tax Act and Section 17(6) lays down the following rate of income-tax:—

Where the amount of gain	*Rate.*
exceeds Rs. 15,000 but does not exceed Rs. 50,000	One anna in the rupee.
exceeds Rs. 50,000 but does not exceed Rs. 2,00,000	Two annas in the rupee.
exceeds Rs. 2,00,000 but does not exceed Rs. 5,00,000	Three annas in the rupee.
exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	Four annas in the rupee.
exceeds Rs. 10,00,000	Five annas in the rupee.

In marginal cases, the income tax payable is that on the lower limit plus one-half of the amount by which the Capital Gains exceeds that limit. Sub-section 7 of Section 17 lays down that *super-tax is not payable* on the amount of Capital Gains.

Where the assessee sustains a loss exceeding Rs. 15,000/- in the sale or transfer of a capital asset, it may be set off against any profits or gains on the sale or transfer of any other capital asset and where it cannot be wholly set off against capital gains in any year, the portion not so set off may be carried forward to the following year and so on for six years.

Form of Return for Income-tax

As stated already, the Return to be filed by the principal officer of a company should be in the prescribed form. This form provides that the audited book profits as shown in the balance-sheet should be mentioned to which should be added sums that have been deducted in arriving at the book profits, but which are not allowed by the Act as legitimate business deductions. From the total, items that have already borne tax, *e.g.* income from securities and shares and debentures in other companies should be deducted The depreciation at scheduled rates should thereafter be deducted to arrive at the net assessable figure. An easier method to arrive at this figure would be to show the balance at the credit of Revenue A/c., and to deduct therefrom the total of depreciation at the scheduled rates, interest on debenture loan and bank overdraft and law charges, the balance would be the net assessable figure.

Items on which allowance is not granted.

From a consideration of foregoing paragraph, it will be evident that the non-allowable items mentioned in the Form of Return are really those which do not come under the allowances granted by the Act itself and have already been discussed. These are:—

1. "Any profits or gains not included in arriving at the figure of profit" These would include such items of gain which are not included in the Profit and Loss account and are credited directly to the Balance-sheet. For instance, when machinery is sold, the sale price may exceed the written down value and such excess if not included in the Profit and Loss account shall be shown in the Return as taxable profit.
2. "Reserve for bad debts." As already explained, no reserve of any kind can be allowed as a deduction, but actual losses in respect of bad debts would be allowed as a deduction if it is written off the books as irrecoverable.
3. "Sums carried to Reserve for provident or other funds" except of course the sums paid to the trustees of a "Recognised Provident Fund." All other expenses such as payment of gratuities or pensions to ex-employees are allowed as business deductions, when they are actually paid.
4. "Interest credited to reserves or other funds"—As 'reserves' are not allowed as deduction, interest thereon is also not allowable nor interest on any other fund built out of the profits.
5. "Expenditure in the nature of charity or present." This means that contributions towards expenditure incurred by outside bodies which may incidentally benefit the employees of the Company, *e.g.* contributions to the maintenance of a school, hospital or library, are not allowable. But bona-fide expenditure for the welfare of the employees, *e.g.* premia paid by an employer to cover the liability to pay compensation to employees under the Workmen's Compensation Act are allowed as legitimate business expenses.
6. "Expenditure in the nature of Capital" includes such items as loss of Capital by burning of factory houses, loss of goods in transit and such other items. But loss of stock-in-trade is allowed.
7. "Income-Tax or Super-Tax," because these are dependent on profits earned and are computed on such profits, and profits are not dependent on their payment.
8. "Rental value of property owned and occupied"—this means the amount of rent which is debited in the Company's books on account of premises owned by the Company and used by it for business purposes.
9. "Cost of additions to, or alternations, expenditures improvements of, any of the assets of the business." Costs of substantial alterations to any of the assets of the Company, *i.e.* land, buildings, factory houses, machinery, plant fur-

niture or stock-in-trade are regarded as Capital expenditure and therefore excluded—petty repairs are however allowed.

10. "Losses sustained in former years and charged in arriving at the figure of profit (or loss) shown above"—As the profits of each year are to be computed separately for taxation purposes, any amount representing losses of previous periods shown in the balance sheet is to be excluded in arriving at the taxable profits for a particular year. Under the amended Act, an assessee is now allowed to carry forward its losses and accordingly after the profits of the period have been arrived at in accordance with law, the amount of loss carried forward may be set off against such profits subject to the limitations imposed by the Act.

11. "Depreciation on any of the assets of the business"—This indicates that the I. T. Act takes no heed of the amount of depreciation considered by the directors of the company as suitable and therefore the amount of depreciation charged against the profits in the balance-sheet has to be added back. On ascertaining the total profits, the I. T. Officer allows deduction for depreciation at the scheduled rates.

12. "Any other expenditure not incurred wholly and exclusively for the purpose of the business, profession or vocation".

13. "Any other expenditure which is not allowable under the provisions of section 10 of the Income-Tax Act, 1922." This item refers to such expenses, which although incurred exclusively for the business, are taxable in British India but have escaped taxation *e g.* any interest amount which is payable without British India, tax whereon has not been deducted at source or any payment chargeable under the head "Salaries", payable without British India, when Indian tax thereon has not been deducted.

Where the business has suffered loss and the Profit and Loss account shows loss instead of profit, all the above items would require to be deducted from the 'Loss', to arrive at the proper 'Loss' figure, allowable under I. T. Act.

Agricultural Income exempted.

Agricultural income as already noted is tax-free, but where the income is derived in part from agriculture and in part from business, Rule 23, Part II of the I. T. Act provides for the separation of industrial from agricultural profits. The assessee is entitled to deduct the market value of the raw produce utilised by him in his business or which is shown as sale receipts in the Accounts. The "Market Value" is defined in Rule 23, as follows:—

How to ascertain market value of agricultural produce.

"Where agricultural produce is ordinarily sold in the market in its

raw state or after application to it of any process ordinarily employed by a cultivator or receiver of rent in kind to render it fit to be taken to market, the value calculated according to the average price at which it has been so sold during the year previous to that in which the assessment is made;" where it cannot be ascertained in this way, the market value would be deemed to be the aggregate of the expenses of cultivation, land revenue or rent paid for the area in which the produce is grown and such amount as the I. T. Officer may consider as reasonable profit on sale of the produce In the case of Tea Companies, however, where the income is derived from the sale of tea grown and manufactured by the Company, Rule 24, Part II of I. T. Manual provides that the profits of the business considered to be derived from manufacture and therefore liable to tax should be deemed to be 40 per cent. of the total income. It may be pointed out here that a Tea Company may have purely Agricultural Income, which would be tax-free, *e.g.* from rent or cultivation of land on which tea is not grown or from sale of tea seeds.

Income of Tea Companies how ascertained.

It is the statutory duty of the principal officer of the company to file a Return of Income within the prescribed time, under section 22 of the I T. Act and the I. T Officer is not bound to demand such Return from a company In default of furnishing the Return in due time the principal officer of the company may be convicted before a Magistrate and be punishable with a fine of Rs. 10/- for each day during which the default continues under the provisions of Section 51 of the I. T. Act. He may also be criminally liable under Section 52 if any discrepancy is found in such returns or statements which he either knows or believes to be untrue. But no payment is required to be made for tax until a Notice of Demand is served on the principal officer of the district in which the registered office of the Company is situate. In making assessment for Income-Tax the I T Officer also determines the amount of Super-Tax to be paid by the company.

Penalty for failure to file Return of Income.

Super-tax

Super-Tax at a flat rate of at present two annas per rupee is payable by the company in respect of its total income in accordance with Section 55 of the I. T. Act as supplemented by Schedules of Super-Tax in the Indian Finance Act for the year. The total income as assessed for Income-Tax purposes holds good for Super-tax purposes. It will be noticed, however, that where an assessee holds securities and shares, the interest and dividend received by the assessee thereon will have paid Income-tax at source. Super-tax is however charged on the total income including income from investments in securities and shares. To arrive at the gross income from interest on securities and dividends, the tax paid at source on the same has to be added back. At the rate of Income-Tax current in the year ended 31st March, 1948, *i.e.* 60 pies, the amount to be added for dividends and interest

Super-tax assessment.

received works out to 5/11ths. of the net amount received as such dividend or interest when the whole of such amount has paid Income-tax at source. Where however, a portion of such income is from tax-free securities the gross amount of dividend will be obtained by multiplying the net dividend

received by $\frac{1}{1 - \frac{X}{100} \times \frac{R}{192}}$ where X is the percentage of taxed income and R is the rate of tax Though income from tax-free securities is taken into account in computing the total income for Super-Tax purposes, Agricultural Income, being outside the scope of the Act, is not taken into account. This tax is payable in addition to the Income-Tax.

On receipt of the Notice of Demand, the principal officer of the company shall pay the amount demanded and if default is made the I. T. Officer may, under Section 46, direct the payment of a sum as penalty, not exceeding the amount of tax in arrears. Under section 30, the assessee has the right to appeal against the order of the I. T. Officer to the Appellate Assistant Commissioner of Income-Tax in the prescribed form within 30 days of the receipt of Demand Notice. Under the provisions of sections 34 and 35 the Tax authorities have the right of assessing income-tax on such amount as might have escaped notice or was assessed at a rate too low or may rectify any mistake apparent from the record within four years from the date of demand. The time-limit for section 34 is four years from the last day of the year in which the income escaped assessment, while in sec. 35, it is four years from the date of assessment order. Where however the I. T. Officer has reason to believe that the assessee had wilfully concealed any particulars, the limitation period is extended to 8 years instead of 4

Refunds.

Where the company shows a loss for Income-Tax purposes, it is entitled to claim refund of tax paid at source in respect of interest on investments, if any, consisting of securities, either of the Government of India or of Local Governments and debentures and shares of other companies. When there is a net loss after setting off income from securities and shares against business loss, the company may claim and obtain refund of the tax on the receipts from such investments, deducted at source. For the I. T. Officer to admit the claim for Refund, the application must be supported by Certificates from the respective sources of income in accordance with Rules 13, 13A, 13B and 14.

Relief in respect of Income from U. K.

Where the total assessable income includes any foreign income, the assessee is entitled to certain reliefs in respect of its foreign income, when that income has borne foreign income-tax and there is reciprocal arrangement with such foreign country. Reciprocal arrangements have been entered into with the Governments of the United Kingdom, Uganda, Kenya, Tanganyika, Zanzibar, Ceylon and Burma and also with certain Native Indian States. In any other case where the foreign

country concerned does not allow any relief in respect of income-tax charged in British India, the assessee will be allowed a relief in India to the extent of one-half of Indian tax or half the foreign tax, whichever is lower.

Under the terms of an arrangement with the Government of India and the Government of the United Kingdom, a person part of whose income is assessed both in India and the United Kingdom is entitled to obtain from the tax authorities in the United Kingdom a refund or rebate on account of the tax paid in India on that part of his income up to one-half of the U. K. appropriate rate of tax. The Indian *rate* of tax will be calculated (i) by dividing the amount of income-tax exclusive of reliefs (but not the relief obtainable under Section 49) by his total *taxable* income, *i.e.* after deducting allowable exemptions, and (ii) by adding thereto the rate obtainable by dividing his *total* income by the amount of super-tax paid.

A comparison is then made of the English appropriate rate with the Indian effective rate, and, if it is found that the English rate is higher than the Indian rate, the United Kingdom tax authorities grant a refund at the Indian rate, provided that if the Indian rate exceeds half the English rate relief is granted only up to half the English rate. Relief having been obtained in the U. K., the assessee company applies for further relief in British India. If the British Indian tax authorities find on a comparison of the Indian rate with the rate of relief obtained in the U. K., that the former exceeds the latter, then they grant a refund calculated at the difference between the two rates, provided that if the difference exceeds half the Indian rate of tax, relief is allowed only up to half the Indian rate.

Similarly, arrangements have also been made with the Governments of Uganda, Kenya, Tanganyika, Zanzibar, Burma and Ceylon and with the undernoted Indian States, under which relief is granted in British India at a rate equal to half the above Dominion rates or Indian States' effective rates subject to a maximum of half the British Indian rate and the Dominions or the Indian States grant a relief to the extent of the other half of their rates. There are forty-seven Indian States with whom this arrangement has been arrived at, namely, Baroda, Travancore, Dhar, Patiala, Bhawalpur, Jind, Kapurthala, Loharu, Maler Kotla, Baghat, Sachin, Akalkot, Phaltan, Chhota Udepur, Benares, Bastar, Kanker, Raigarh, Jashpur, Sarangarh, Makrai, Kawardha, Khairagar, Korea, Nandgaon, Chhuikhadan, Mayurbhanj, Patna, Sonpur, Kalahandi, Rairakhol, Bandh, Cochin, Seraikela, Talcher, Gangpur, Kharsawan, Keonjhur, Jammu & Kashmir, Sandur, Bhopal, Mandi, Faridkote, Ram Drug, Kolhapur, Sangli and Jamkhandi.* The application for relief should be in the prescribed form.

The new Section 49AA provides that the Central Government of the Indian Union may enter into an agreement with Pakistan for the avoidance of double taxation of income, profits and gains and may by notification in the official Gazette make such

* The effect of recent union and merger of States is not yet clear.

Agreement with Pakistan for the avoidance of double taxation of income.

provision as may be necessary for implementing such agreement. An agreement was accordingly entered into and by Notification No. 28 dated the 10th December 1947 the Ministry of Finance (Revenue Division) of the Central Government directed the implementation of the Agreement. The main clause in the agreement is Article IV, under which it is agreed that each dominion shall make assessment in accordance with its own laws and where any income is liable to taxation in both dominions, each dominion shall charge in accordance with a schedule annexed to the agreement and give relief to the assessee in terms of the schedule, if the income has been taxed fully. For the particulars of the schedule see Form No. 62 in the Additional Forms.

With regard to Limitations of Claims for Refund, Section 50 of the I. T. Act lays down that no claim to any refund of income tax or super-tax will be allowed, unless made within four years from the expiry of the 'previous year' in which the income arose or was deemed to have arisen or was brought into British India. In the case of a claim for refund of tax paid prior to the commencement of the amending Act of 1939, however, it would not be allowed if not made within one year from the last day of the year in which the tax was recovered or the last day of the financial year commencing after the 'previous year', whichever period may expire later. Further, in respect of such claims, the Commissioner or Assistant Commissioner may extend the date if they are satisfied that the claimant had sufficient cause for the delay.

"Limitation" for Income-tax purposes.

Before finishing the subject of income-tax relating to a Company as an assessee, it should be noted that where a Company acts as an agent (say selling agent) of a non-resident person or a foreign company which is non-resident in British India, the Agent Company will be regarded by the tax authorities as the assessee and all profits arising out of this agency, which may be due to the foreign principal, will be subject to income-tax in the hands of the Agent Company; *vide* section 42 of the I T. Act.

"Agent" is an assessee.

Further, under Section 23A, if the Income-Tax Officer is satisfied that a Company has not within six months of its general meeting, distributed at least 60% of its assessable profits of the previous year less the amount of income-tax and super-tax payable thereon, without reasonable cause (*e.g.* smallness of profits or losses suffered in past years) he may, with the previous approval of the Inspecting Assistant Commissioner, make an order in writing that the undistributed portion of such profits would we regarded as having been received by the shareholders and super-tax (where due) will be payable by them. Should the distribution by the Company amount to 55% or more of the assessable profits (less taxes) the Company is allowed another three months from the date of notice by the Income-Tax Officer, to distribute further sum to arrive at 60% distribution.

Power of I T Officer to refrain from taxing a company in certain circumstances.

If the accumulated reserves of the Company exceeds the paid up capital of the Company together with any amount of loan that may be due to the shareholders or the actual cost of the fixed assets, whichever is greater, the minimum distributable quota is raised from 60% to 100%. The tax payable by the shareholders will be realised by the I. T Officer from the Company if it cannot be recovered from the shareholders.

This section will not however apply to a Company in which the public are substantially interested or to a subsidiary of such public Company provided that the *whole* share capital of the subsidiary is owned by the parent Company.

Substantial interest of the public is assumed if not less than 25 per cent. of the voting power is exercised unconditionally by the public and if the shares of such Company are the subject of dealings in any stock exchange in British India.

Deduction of Tax on Salaries

The Act provides for speedy realisation of tax from individuals by making it obligatory on the employers under section 18 of the Act to deduct income-tax and super-tax (where payable) from salaries of their employees in accordance with the schedule of taxation as fixed by the annual Finance Acts. A Company, therefore, is required to deduct tax at source from the salaries of its employees, before such payments reach the hands of recipients. The tax so deducted is required to be paid to the credit of the Central Government by remitting the amount to the I. T. Officer concerned or to such Officer as he may direct within one week from the date of deduction or by quarterly payments on June 15th. September 15th, December 15th and March 15th. if specially permitted by the Income-Tax Officer with the sanction of the Assistant Commissioner (*vide* Rule 10, Part II of the I. T. Act). Under section 21 of the Act, the Principal Officer of a Company is required to file with the Income-Tax Officer of his district an annual Return within thirty days from the 31st of March in each year, showing the names and addresses of persons to whom gross annual salaries above Rs. 1,599/- have been paid within the Government year, the amount of tax deducted and the net amounts paid to each employee. For the form of such Return see Form No. 60.

Deduction of tax from the salaries of employees obligatory.

Filing of a Return of employees whose income is taxable.

The income of an employee (or ex-employee) under the head "Salaries" includes "not only fixed salaries or wages and annuities or pensions, but also any fees, commissions, perquisites or profits received in lieu of, or in addition to, salaries or wages which are paid to an employee by or on behalf of any employer". In computing the salary of an employee, value of rent-free quarters is taken into account but other perquisites or benefits which are not capable of conversion into money are exempt.

Items to be included under head "Salaries"

Such items as house allowances, commissions, rewards for passing language examination, where the employee is required under the terms of appointment to pass the examination, are all liable to tax under the head "Salaries" The pensions of employees are, however, exempted from tax when paid outside India; *vide* Section 4(1) (c) Expl: (2) When the Company has started a "Recognised Provident Fund," the contributions of the employees to the fund are exempted from tax in the hands of each individual employee, provided that the contributions together with any life insurance premia do not exceed one-sixth of the total income of the employee. When accumulated balance to which an employee is entitled is paid to him at the termination of his service, income-tax and super-tax thereon shall be deducted by the employer Company before payment is made, provided that sums paid by a Recognised Fund shall not be so charged; *vide* Section 58G of the I T. Act. Further, when an existing Provident Institution is accepted as a Recognised Provident Fund, and the Fund is transferred to Trustees to satisfy clause (e) of section 58C, the I T. Officer shall examine the aggregate of all sums comprised in the transferred balance and if there is any sum in it which would have been liable to tax if recognition had been granted to the Fund at its inception, that part of the transferred balance shall be deemed to be income received by the employee in the year in which the recognition takes effect and shall be included in his total income for that year and the employer Company shall deduct tax thereon at the appropriate rate (*vide* section 58J, subsec 3).

Deduction of tax to be made at the appropriate rate.

The deduction from salary shall be made by the Company at a rate which should approximate as closely as possible to the rate appropriate to the total annual assessable income of the employee under the head "Salaries," so that if the salary is paid monthly, the monthly deduction shall be based on the annual income calculated on such monthly salary. For example, if an employee's regular monthly salary is Rs 500/- tax should be deducted by the Company at the rate appropriate to Rs. 6,000/- (*i.e.* 500×12). Should the employment terminate, say at the end of three months, it is left to the employee to claim refund of tax paid at source, from the Income-Tax Officer, as his total income for the year would be Rs. 1,500/- only and therefore not taxable at that rate. The Company is further empowered to rectify in subsequent deductions any mistake made in previous deductions. Thus, following the above example, if the employee received a commission or bonus or arrears of pay or officiating allowance amounting to a further Rs. 5,000/-, deduction has to be made at the rate appropriate to an income of Rs. 11,000/- and the Company may also make up the deficiency in previous collections owing to the lower rate having been applied (proviso to section 18(2) of I. T. Act).

Abatement of tax in marginal cases.

It may be noted here that under the Finance Act, current for the year ended 31st March 1948, no income-tax would be payable on a total income less than Rs. 3,000/- and in no case shall the tax payable exceed half the amount by which the total income exceeds Rs. 3,000/-.

Deduction of Tax on Interest on Securities

Section 18, sub-section (3) provides that the person responsible for paying any income chargeable under the head 'Interest on Securities,' shall, at the time of payment, deduct income-tax (but not super-tax) on the amount of the interest payable at the maximum rate. It is therefore incumbent on the Company if it has issued a Debenture Loan to deduct tax from the periodical interest payable to Debenture holders at the maximum rate, at present at 60 pies per rupee. As the Company, deducting tax at source, is not supposed to know the total income of the payee of interest, provision is made for deduction of tax at the maximum rate, leaving it to the individual payee to claim refund under section 48(1) if his total income is less than the income to which the maximum rate applies. It should be noted here that the rate applicable to such deductions is the rate obtaining at the time when the payment is actually made and not at the time when the interest is due. Thus, tax on interest payable on say 15th February in each year shall be deducted at the rate current in the financial year ending on the 31st March next, provided such interest is actually paid within that period. When, however, interest is actually paid after 31st March, the deduction should be made by the Company at the rate fixed for the next financial year, irrespective of the fact that the right to receive such interest arose in the previous year. In order that a security-holder may substantiate his claim for a refund as indicated above, it is necessary that his claim be supported by a certificate from the Company, specifying the amount of tax deducted from the interest and the rate at which it has been deducted. Rule 13A, Part II of the Act prescribes a Form for such Certificates, which is as shown below:—

Certificate of deduction of Income Tax from interest on debenture issue to be granted by the Company.

"Name of the Company:

Address:

To (Name and address of payee):

I
——— hereby certify that Rs. being income-tax at the rate
We
of pies per Rupee has been deducted from Rs. , being the amount of interest at the rate of per cent, per annum due on (fill in date when payment is due) on Debentures No. of Rs. each of the (fill in name of Company) and that it has been or will, within the prescribed period, be paid by me/us to the Central Government at

Dated 19 .

Principal Officer or

Managing Agents.

(To be signed by the Claimant).

I hereby declare that the Securities on which interest as above specified has been received were my own property and were in the possession of at the time when Income-Tax was deducted.

Signature

Dated 19 .

Where interest on Debentures is collected by a Bank on behalf of its constituents the Certificate will be granted by the Company to the collecting Bank. The Bank is authorised to grant subsidiary Certificates to its constituents.

Under section 18 (3A), if any interest (not being interest on securities) or any other sum chargeable to tax falls payable to a non-resident, the Company is required to deduct income-tax thereon at the maximum rate; otherwise the Company will be regarded as an "agent" for the non-resident person and will be responsible for the payment. When the amount payable to the non-resident attracts super-tax, such super-tax should also be deducted at the appropriate rate [section 18 (3c)].

Deduction of Tax re: Dividend

I. T. laws regarding the duties of a company in relation to share holders.

With regard to Income-Tax laws which affect a Company in relation to its shareholders, one notices that the aspect of corporate entity of the Company is ignored and it is treated here not as an assessee but as a means of assessing and realising tax on the income of the several individuals who compose the Company in respect of the profits earned by the joint venture. The dividends in the hands of shareholder goes to increase his total income and in accordance with the policy of the Act provision is made to realise the tax at source and the Company itself is assessed at the maximum rate obtaining, on its profits, whatever may be the amount of such profits. The Dividends declared by a Company, therefore, can be paid only from sources which are already taxed or which are outside the scope of the Act, *e.g.*, agricultural income The individual shareholder therefore gets part of his income already taxed at source at maximum rate and when the rate of tax applicable to his total income is less than the maximum rate, he may claim and obtain refund of tax calculated at the difference between the maximum rate and the effective rate which is applicable to his income. Thus, an individual, whose total unearned income is say Rs. 5,000/- out of which Rs. 500/- is derived from Dividends of a Company, is required to pay under the Finance Act current upto 31st March 1949 tax at the rate of 12 pies per Rupee and as a part of his income (Rs. 500/-) has already been taxed at 60 pies, he may claim and obtain a refund of tax on this part of his income at the rate of 48 pies per Rupee. In order to substantiate his claim, he is

required to produce a Certificate of deduction of tax from the Company and section 20 of the I. T. Act makes it obligatory on the principal Officer of the Company to furnish such Certificate at the time of distribution of dividend. The form of Certificate (*vide* Rule 14 Part II of the I. T. Act) as shown below should be adopted as nearly as possible and no information herein required should be omitted from whatever form of Certificate the Company may adopt:—

"Name of Company

Address of Company

Dated 19 .

Warrant for Rs (in words and figures) being dividend at the rate of Rs. (in words and figures) per share for the period (year or half-year) ending on the day of nineteen (here enter whether free of tax or not) on (number of shares) shares in this Company, registered in the name of This dividend was declared at the Meeting held on the 19

I
—hereby certify that Income-Tax on the entire such part as is
We
liable to be charged to Indian Income-Tax of the profits and gains of the Company, of which this dividend forms a part, has been or will be duly paid by me/us to the Government of India.

Signature . . . .

Office . . ...

(To be signed by the Claimant)

I hereby certify that the dividend above mentioned relates to shares which were my own property at the time when the dividend was declared and were in the possession of

Signature

Dated 19 .

When Preference dividend is chargeable to tax.

It will be noticed that the Certificate ought to state whether the dividend paid is free of Income-Tax or not. Dividends paid on the Ordinary Shares must necessarily be free of tax as the Company pays tax on its profits and the Company of composed of Ordinary Shareholders. The Preference Shareholders however stand on a different footing. Where the Articles of Association of a Company provide that the Preference Dividend will be paid free of income-tax, Preference dividend cannot be paid after deduction of tax.

Where there is no such provision, it is for the Ordinary Shareholders to decide if the Preference Dividend should be paid free of tax or not, because if it is paid free of tax the amount divisible amongst themselves would consequently be less. Where, therefore, the Preference Dividend is not declared free of tax at the Ordinary Shareholders' Meeting the dividends received by the Preference Shareholders will be chargeable to tax. Should the Ordinary Shareholders decide at their meeting that the Preference dividend will not be tax-free, the Company will deduct tax before paying Preference Dividend thus shifting the proportionate burden of tax on the Preference Shareholders. It should be remembered however that the Income-Tax Officer will always gross up the net amount of tax paid at source by the Company, when assessing individual shareholders, whether Ordinary or Preference.

Refund may be claimed by a shareholder only in respect of the percentage of taxed profits of his dividend.

The total income of a Company out of which dividends are paid may consist of taxed profits, income from tax-free securities and agricultural income. The refund that may be claimed by a shareholder by reason of his total income not being chargeable with the maximum rate will therefore be paid to him in respect of that part of his dividend which is derived from taxed sources and not of the part that is derived from sources which are not taxed, *i.e.* income from tax-free securities and agricultural income. Thus a shareholder who receives his dividend from a Company whose total income is composed of 75 p.c. of taxed profits, 20 p.c. of agricultural income and 5 p.c. of income from tax-free securities will receive a refund at the appropriate rate on 75 p.c. of his income from dividend. The form of Certificate therefore provides that the portion of taxed income should be shown, *i.e.* whether the entire profits out of which the dividend has been paid were liable to tax or whether any part was derived from tax-free and agricultural sources.

Procedure in granting certificates when dividends are paid half-yearly.

When dividends are paid annually it is possible to show the percentage of taxed income on the Income-Tax Certificates but dividends are generally declared half-yearly and it is obvious that the percentage cannot be shown on the Certificates issued with the dividends paid in respect of the first half-year. Such information should therefore be incorporated in the Certificates of the second half-year when the total taxable income of the Company has been ascertained or additional certificates may be granted, where necessary. Further, as the Company is not aware of the rate at which it will be taxed on the profits of the year for the next financial year, the rate of tax need not be shown on the Certificate. It is enough for the purposes of the tax authorities if it is mentioned that the tax "has been or will be duly paid" to the Government of India and it is assumed for the purposes of refund that the dividend has borne tax at the maximum rate applicable to it on the *date of declaration of dividend*, although in actual fact, the profits out of which the dividends are distributed may have formed the basis for taxation for the next financial year.

Dividend may, however, be paid by a Company for a particular period although it may not be assessable to income-tax. It may be paid out of a Dividend Reserve built out of past undistributed though taxed profits or from unabsorbed Depreciation. Part of the Company's profits out of which the Reserve was built may have been derived from tax-free sources and it would consequently be impossible for the Company to show the percentage of taxed profits on its Certificates The rule for guidance in such cases previously was that if the amount distributed consisted of any amount from tax-free sources, however small, no refund could be granted as the amount distributed was, by a convenient fiction, deemed to have been paid out of tax-free sources only; on the other hand, if there was no tax-free income, it was deemed to have been paid out of taxed sources only. Recently the law on the subject has been modified and a Circular letter issued by the Commissioner of Income-Tax, Bengal, to all Companies runs as follows:—

Procedure where dividend is paid out of unabsorbed depreciation and where the dividend includes income from tax-free sources

"When the amount distributed as dividends exceeds the total income, profits or gains taxed or untaxed, as calculated for the Income-tax purposes of the Company in question (which formula includes cases where there is no income, profits or gains or a loss as for example where the net receipts from non-tax-free sources are wiped out or exceeded by the depreciation allowance) the total amount distributed less tax-free income, should be considered as having been taxed and the proportion borne by this income to the tax-free income should be shown as the percentage of taxable profits." "The term tax-free income as used here includes interest on tax-free securities, agricultural income and income outside British India which has not been brought into British India" Thus where a Company which has sustained a loss from Income-Tax point of view owing to statutory allowances for depreciation and which has tax-free income of say Rs. 25,000/- declares a dividend which is paid out of a Reserve or from unabsorbed Depreciation, the total amount distributed being Rs. 1,00,000/- the proportion borne by tax-free income to taxed income is 1 : 3 and the percentage of taxed income to be shown on the Certificates of Income-Tax would therefore be 75 per cent. It may pertinently be remarked that even this arrangement creates a legal fiction, as it is impossible to determine the tax-free portion, when dividend is paid out of a Reserve built out of past profits composed of both taxed and tax-free income.

In claiming a Refund a shareholder is not entitled to a refund of the proportionate Super-tax paid by the Company. Super-tax is not deducted at source and every individual is assessed to Super-tax directly by the I. T. Officer, when his total income exceeds the statutory minimum of Rs. 25,000/-. A company is not charged to Super-tax at the maximum rate but at a flat rate of anna one per rupee and this is levied on the company on account of the special privileges which companies enjoy by statute in the shape of

Super-Tax not to be deducted from dividends except from dividends paid to foreign share-holders.

corporate finance and limited liability. Consequently, no refund of Super-tax is allowed to shareholders as the company is here assessed to Super-tax as an assessee as apart from its shareholders. As Super-tax is assessed by the I. T. Officer direct, deduction of Super-tax on dividends paid to shareholders is not made by the company at source. The only exception to this rule is made in the case of dividends paid to a shareholder who is not a resident of British India; *vide* Section 18 (3D and E) of the Act. Super-tax payable by a non-resident shareholder on his dividend should therefore be deducted by the company before payment is made, at the appropriate rate in accordance with the annual Finance Acts. The company should also mention in its Income-Tax Certificate the effective rate of Super-Tax borne by the dividend in order to enable the shareholder to claim refund of tax from the United Kingdom Tax Authorities as relief from double taxation in accordance with section 49 of the I. T. Act.

Under section 18 (3E), a company is required to deduct Super-tax from dividends payable to a non-resident, when the gross amount of such dividends (after adding back the proportionate income-tax payable thereon) exceeds the maximum amount of income which is not chargeable to Super-tax (at present Rs 25,000/-). The Super-tax to be thus deducted is to be calculated at the rates fixed by the annual Finance Acts on such part of the gross dividends as exceeds the tax-free limit. It will be noticed that as a company is charged Super-tax on its entire profit without any tax-free limit at a flat rate of anna one (as at present) any dividend, even if it is one rupee only, paid to a non-resident shareholder Company, will attract Super-tax at source.

Return under section 19A.

In order to enable the I. T. Officer to check the Returns of Income made by individual shareholders and also to facilitate the imposition of Super-tax on individuals, Section 19A as supplemented by Rules 42 and 43 provides that the Principal Officer of the Company shall on or before the 15th June, in each year submit a Return, showing the names of shareholders to whom a dividend or aggregate of dividends exceeding (at present) Rs. 5,000/- net or in the case of a company exceeding Rupee one has been paid during the previous year and also the actual amounts so paid. The names of such shareholders only should be furnished, to whom net dividends exceeding Rs. 5,000/- has been paid, i.e. before adding back tax and in a separate column the gross amount after adding the amount of Income-Tax should be shown. Rule 43 lays down that two separate lists should be furnished—one for resident shareholders and another for non-resident shareholders. For Form of Return, see Form No. 61.

Owing to the system of blank transfer prevalent in the Calcutta Stock Exchange it very often happens that the registered holders are not the actual owners of the shares and dividends on such shares are collected by Banks on behalf of their constituents, who own the Shares. In the Return to be submitted, the names of registered holders need only be shown and

the I. T. Officer cannot ask for information as regards actual payees in the Return in accordance with the Act.

A company which pays to any person a sum as interest other than interest on securities exceeding Rs. 400/- in a year is required under section 20A, to furnish the Income-Tax Officer within the 15th day of June in each year a Return in the prescribed form, showing the names and addresses of the payees and the amounts of interest thus paid. For prescribed form see Form No. 61A in Appendix B.

Before concluding the chapter, the following sections of the Income-Tax Act may be noted:—

Miscellaneous points from the I. T. Act.

(1) The provisions of section 36 and sub-section (1) of section 124 of the Indian Companies Act regarding the inspection of the Register of Members and the Register of Mortgages and Charges by any person on payment of a fee not exceeding Rupee one shall have no application in the case of the Income-Tax Officer or Assistant Commissioner or any other person duly authorised by them, as such officers, under section 39 of the I. T. Act, may inspect and if necessary may take copies of those Registers free of charge. Refusal in granting inspection or in taking copy is punishable under the provisions of section 51 of the I. T. Act.

(2) By section 37 of the Act, the Income-Tax Officer, Appellate Assistant Commissioner, Commissioner and Appellate Tribunal are vested with the same powers as are vested in a Court under Civil Procedure Code, in respect of—

(*a*) enforcing the attendance of any person and examining him on oath or affirmation,

(*b*) compelling the production of documents, and

(*c*) issuing commissions for the examination of witnesses.

(3) Section 61 of the I. T. Act authorises the Principal Officer who is summoned by the I. T. Officer to appear by a duly authorised representative, provided such representative is a person regularly employed in the business of the assessee or is a lawyer or accountant or Income-Tax practitioner as defined in the section.

(4) The Income-Tax in respect of the Profits earned by a company shall be levied by the I. T. Officer of the area in which the principal business of the company is carried on though it may have innumerable branches in different places (section 64 of the I. T. Act).

(5) If an assessee objects to an order passed by the Income-Tax Officer, he may appeal in the prescribed stamped form within 30 days of such order to the Appellate Assistant Commissioner of his district in accordance with section 30 of the Act.

(6) Under section 33 of the Act, an appeal will lie against any order passed by the Assistant Commissioner with the Appellate Tribunal within 60 days.

(7) If in the course of assessment a question of law arises the Commissioner may require the Appellate Tribunal to refer the case with a statement on the subject to the High Court for decision under section 66 of the Act. If this is done at the instance of the assessee his application to the Commissioner must be made within 60 days together with a fee of Rs. 100/-.

(8) In the event of a company discontinuing business, it is required by section 25 (2) of the Act to give notice of such discontinuance of business to the Income-Tax Officer, within fifteen days thereof and the Income-Tax Officer may at his discretion make an assessment in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of discontinuance in addition to the assessment, if any, made on the basis of the profits of the previous year (section 25 sub-sec. 1).

It may be noted that where a company, which was at any time assessed under the Act of 1918, discontinues business, no tax shall be payable in respect of its profits of the period between the end of the previous year and the date of the discontinuance of business and the company may further claim that the income, profits and gains of the previous year shall be deemed to be the income of the said broken period. "Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference," (section 25 sub-sec. 3). This concession is allowed because at the time when the present Act was enforced in 1922 abolishing the old system and adopting the present procedure of collecting tax in arrears, i.e. on the profits of the previous year, the assessee company had already paid tax for one year in advance.

BUSINESS PROFITS TAX ACT, 1947.

On the expiry of the Excess Profits Tax Act after the War, the Finance Member of the Government of India introduced a new Act called the Business Profits Tax Act, 1947 for the purpose of imposing a special tax on income arising from business in addition to the Income-tax and Super-tax payable under the Indian Income-Tax Act, 1922.

Under Section 2, sub-section 4 of this Act the chargeable accounting period has been defined to be the accounting period of a company which has been determined as the 'previous' year of its business in accordance with Income Tax Act but which falls wholly within the term beginning on the 1st of April 1946 and ending on the 31st of March 1947 and where any accounting period falls partly within and partly without this term such part of that accounting period as falls within the fiscal year 1946-1947 would be regarded as the chargeable accounting period. Although in accordance with this definition the operation of the Act should automatically lapse after the assessment of profits earned during the fiscal

year 1946-1947, the Act provides for certain allowances to be carried forward to subsequent years and this provision has been made for the continuance of this Act for subsequent years.

The Act originally provide that a tax equivalent to 16 2/3rd per cent of the taxable profits of the company earned during the chargeable account period would be levied and in computing the taxable profits abatement would be allowed to the extent of 6 per cent of the Capital of the company or the sum of Rupees one lac whichever is greater.* Computation of profits for the purpose of this Act will be in accordance with the provisions of section 10 of the Indian Income Tax Act, 1922, with the following modifications:—

Accounting period.

(a) All profits from the business of Life Insurance or any sum received by way of bonus or subsidy from the Central Government will be exempted.

(b) Any sum payable without British India as interest for borrowed capital or any allowances under the head Salaries' payable without British India shall be treated as allowable expenditure.

Deficiency can be carried forward.

(c) The principle of carrying forward of allowances for depreciation or the setting off of losses under section 24 of the Indian Income Tax Act will be disallowed.

(d) Income from investments will not be included unless the company is an investment company, a building society, a banking business or an insurance company provided that income received by way of dividend or distribution of profits or income to which the assessee is not beneficially entitled shall in no case be included.

(e) Where the Directors of a company have a controlling interest therein, the remuneration paid to the directors shall not be treated as an expense. Directors' remuneration does not include the remuneration of any director who is required to devote substantially the whole of his time to the service of the company and who is not either the beneficial owner of or is not able to control more than 5 per cent of the ordinary share capital of the company, nor does it include the remuneration paid to a Managing Agent where such remuneration is included in the profits of the Managing Agent's business for the purpose of this Act.

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* For the year 1948-49, to which period the application of this Act has been extended, abatement would be allowed to the extent of Rs. 2 lacks or 6 per cent of capital employed, whichever is greater and the rate of tax has been reduced from 16.2/3 to [illegible] per cent. Further, in the case of small companies whose income does not exceed Rs. 25,000, a tax rate of -/2/6 in the rupee would be allowed and in the case of all other companies -/1/- in the rupee would be allowed on the amount of undistributed Capital ploughed back into Capital.

Where a company is a subsidiary company, capital or profits or losses of the subsidiary shall be treated for the purpose of this Act as if they were capital of or profits or losses arising from the business of the principal holding company.

Under section 10 of the Act the amount of business profits tax payable by a company for any chargeable accounting period shall be allowed as a deduction in computing the total income for the purposes of income-tax or super-tax assessment.

Under section 6 of the Act provision has been made for relief in cases where the profits of any chargeable accounting period is less than the abatement of 6 per cent of capital allowed by the Act. Where the amount of deficiency exceeds the taxable profits for the previous chargeable accounting period or where there is no chargeable accounting period the balance of the deficiency of profits or the whole of the deficiency, as the case may be, shall be applied in reducing any taxable profits for the next subsequent chargeable accounting period and will also be allowed to be carried forward if the profits of the next accounting period cannot absorb the amount

In ascertaining the capital of the company for the purpose of the Act, Schedule 2 of the Act provides that the capital shall be the sum of the amounts of its paid-up share capital and of its reserves in so far as they have not been allowed in computing the profits for income-tax and super-tax purposes, diminished by the cost to the company of its investments in so far as that cost exceeds any debt for borrowed money. In the case of Investment companies or building societies or banking and insurance companies however whose business is wholly or mainly dealing in or holding of investments of other property, the costs of its investments will be disallowed. Further any premium realised by a company from the sale of its shares which is retained in the business shall be regarded as forming part of its paid up capital.

Excluding deposits u/s 10, Finance Act.

APPENDIX A

The Indian Companies Act

(ACT VII OF 1913)

&

THE INDIAN COMPANIES RULES

OF 1941

ACT No. VII OF 1913.[1]

[*27th March, 1913.*]

[*As modified up to the 1st January, 1947.*]

An Act to consolidate and amend the law relating to Trading Companies and other Associations.

WHEREAS it is expedient to consolidate and amend the law relating to Trading Companies and other Associations ;

It is hereby enacted as follows :—

PART I

PRELIMINARY

1. Short title, commencement and extent.—(1) This Act may be called the Indian Companies Act, 1913.

(2) It shall come into force on the first day of April 1914 ; and

(3) It extends to the whole of British India including British Baluchistan and the Santhal Parganas.

2. Definitions—[2][(1)] In this Act, unless there is anything repugnant in the subject or context,—

(1) "articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in [3]Table B in the Schedule annexed to Act No XIX of 1857 or in [4]Table A in the First Schedule annexed to the Indian Companies Act, 1882 (VI of 1882), or in Table A in the First Schedule annexed to this Act :

(2) "company" means a company formed and registered under this Act or an existing company :

(3) "the Court" means the Court having jurisdiction under this Act :

(4) "debenture" includes debenture stock :

(5) "director" includes any person occupying the position of a director by whatever name called :

(6) "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 :

(7) "existing company" means a company formed and registered under the [5]Indian Companies Act, 1866 (X of 1866), or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882 (VI of 1882) :

(8) "Insurance company" means a company that carries on the business of insurance either solely or in common with any other business or businesses :

[6][(9) "manager" means a person who, subject to the control and direction of the directors has the management of the whole 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 ;

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1 For Statement of Objects and Reasons, *see Gazette of India*, 1912, Pt. V. p. 151 ; for Report of the Select Committee *see ibid*, 1913, Pt. V. p. 45 ; and for Proceedings in Council, *see ibid*, 1912, Pt. VI p. 586, and *ibid*, 1913, Pt. VI, pp. 6, 106 and 300

2 Section 2 was re-numbered as sub-section (1) of that section by s. 2 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

3 *See* Appendix I, p. 153, *infra*.

4 *See* Appendix II, p. 160, *infra*.

5 Repealed by the Indian Companies Act, 1882 (VI of 1882), which was in turn repealed by this Act.

6 These clauses were substituted by s 2 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

(9A) "managing agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement and includes any person, firm or company occupying such position by whatever name called :

Explanation —If a person occupying the position of a mananing agent calls himself a manager he shall nevertheless be regarded as managing agent and not as manager for the purposes of this Act.]

(10) "memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act :

(11) "officer" includes any director, [1][managing agent,] manager or secretary but,, save in sections 235, 236 and 237, does not include an auditor :

(12) "prescribed" means as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the High Court, and, as respects the other provisions of this Act, prescribed by the [2][Central Government] :

[3][(13) "private company" means a company which by its articles—

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

(b) limits the number of its members to fifty not including persons who are in the employment of the company ; and

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

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

[4][(13A) "public company" means a company incorporated under this Act or under the Indian Companies Act, 1882 (VI of 1882), or under the Indian Companies Act, 1866 (X of 1866), or under any Act, repealed thereby, which is not a private company :]

(14) "prospectus" means any prospectus, notice, circular, advertisements or other invitation, offering to the public for subscription or purchase any shares or debentures of a company [5][but shall not include any trade advertisement which shows on the face of it that a formal prospectus has been prepared and filed :]

(15) "the registrar" means a registrar or assistant registrar performing under this Act the duty of registration of companies · and

(16) "share" means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied :

[6][(17) 'trading corporation" means a trading corporation within the meaning of Item 33 in List I in the Seventh Schedule to the Government of India Act. 1935.] (26 Geo. 5, C 2.)

[7][(2) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and

(a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent. of the issued share

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1 These words were inserted by s 2 of the Indian Companies (Amendment Act, 1936 (XXII of 1936)

2 These words were substituted for the words "Governor-General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3 This clause was substituted by s. 2 of the Indian Companies (Amendment) Act, 1936 (XXI of 1936).

4 This clause was inserted, *ibid.*

5 These words were added, *ibid.*

6 This paragraph was inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

7 This sub-section was added by s. 2 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

capital of that other company or such as to entitle the company to more than fifty per cent. of the voting power in that other company, or

(b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act and the expression 'subsidiary company' in this Act means a company in the case of which the conditions of this sub-section are satisfied and includes a subsidiary company of such company :

Provided that where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall, for the purpose of determining under this section whether that other company is a subsidiary company, be taken of the shares so held.]

[1][**2A. Provisions as to companies registered in Burma or Aden before separation from India.**—Notwithstanding anything in the last preceding section, a company which was [2]immediately before the separation of Burma and Aden from India a company as defined by the said section, being a company the registered office whereof is in Burma or Aden.—

(a) shall be deemed for the purposes of this Act to be a company registered and incorporated outside British India, and

(b) shall not, unless the subject matter or context so requires, be included in the expressions 'company', 'existing company', 'public company', and 'private company' :

Provided that—

(i) for the purposes of section 277 of this Act such a company shall, for a period of six months from the separation, be deemed to be a company incorporated and registered in British India ;

(ii) the separation of Burma and Aden from India shall not render valid any mortgage or charge which, immediately before that date, was void against the liquidator or creditors of such a company.]

3. Jurisdiction of the Courts.—(1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate :

Provided that the [3][Central Government] may, by notification in the [4][official Gazette] and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered offices in the district.

(2) 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.

(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.

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1 This section was inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 i. e. immediately before 1st April, 1937.

3 These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

4 These words were substituted for the words "local official Gazette", *ibid.*

PART II

CONSTITUTION AND INCORPORATION

4. Prohibition of 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 an Act of Parliament or some other [1][Indian law] or of Royal Charter or Letters Patent.

(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 Act, or is formed in pursuance of an Act of Parliament or some other [1][Indian law] or of Royal Charter or Letters Patent.

[2](3) This section shall not apply to a joint family carrying on joint family trade or business and where two or more such joint families form a partnership, in computing the number of persons for the purposes of this section, 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) Any person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine not exceeding one thousand rupees]

Memorandum of Association

5. Mode of forming incorporated company.—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 (that is to say), either—

(i) 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) ; or

(ii) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake 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

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

6. Memorandum of company limited by shares.—In the case of a company limited by shares—

(1) the memorandum shall state—

(i) the name of the company, with "Limited" as the last word in its name ;

(ii) the province in which the registered office of the company is to be situate ;

(iii) the objects of the company, [3][and, except in the case of trading corporations, the territories to which they extend] ;

(iv) that the liability of the members is limited ;

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1 These words were substituted for the words "Act of the Governor-General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 These sub-sections were added by s. 3 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

3 These words were inserted by the Government of India (Adaptation of Indian Laws) Order 1937.

(v) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount ;

(2) no subscriber of the memorandum shall take less than one share :

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

7. Memorandum of company limited by guarantee.—In the case of a company limited by guarantee—

(1) the memorandum shall state—

(i) the name of the company, with "Limited" as the last word in its name ;

(ii) the province in which the registered office of the company is to be situate ;

(iii) the objects of the company, [1][and, except in the case of trading corporations, the territories to which they extend] ;

(iv) that the liability of the members is limited ;

(v) 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 afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, 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 :

(2) if the company has a share capital—

(i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount ;

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

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

8. Memorandum of unlimited company.—In the case of an unlimited company—

(1) the memorandum shall state—

(i) the name of the company ;

(ii) the province in which the registered office of the company is to be situate ;

(iii) the objects of the company, [1][and, except in the case of trading corporations, the territories to which they extend] :

(2) if the company has a share capital—

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

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

[2][**9. Printing and signature of memorandum**.—The memorandum shall—

(a) be printed,

(b) be divided into paragraphs numbered consecutively, and

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1 These words were inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 This section was substituted by s. 4 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

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

10. Restriction on alteration of memorandum.—A company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act :

[1][Provided that any provision in the memorandum relating to the appointment of a manager or managing agent and other matters of a like nature incidental or subsidiary to the main objects of the company, shall not be deemed to be such condition.]

11. Name of company and change of name.—(1) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calcutated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(2) If a company, through inadvertence or otherwise, is without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

[2][(3) Except with the previous consent in writing of the [3][Central Government], no company shall be registered by a name which—

(a) contains any of the following words, namely, 'Crown', 'Emperor', 'Empire', 'Empress', 'Federal', 'Imperial', 'King', 'Queen', 'Royal', 'State', 'Reserve Bank', 'Bank of Bengal', 'Bank of Madras', 'Bank of Bombay', or any word which suggests or is calculated to suggest the patronage of His Majesty or of any member of the Royal Family or any connection with His Majesty's Government or any department thereof : or

(b) contains the word 'Municipal' or 'Chartered' or any word which suggests or is calculated to suggest connection with any municipality or other local authority or with any society or body incorporated by Royal Charter.

Provided that nothing in this sub-section shall apply to companies registered before the commencement of this Act.]

(4) Any company may, by special resolution and subject to the approval of the [4](Central Government) signified in writing, [5] * * * , change its name.

(5) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of such a certificate, the change of name shall be complete.

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

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1 This provision was added by s. 5 of the Indian Companies (Amendment) Act, 1935 (XXII of 1936).

2 This sub-section was substituted by s. 6, *ibid.*

3 These words were substituted for the words "Governor-General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

4 These words were substituted for the words "Local Government", *ibid.*

5 The words "under the hand of one of the Secretaries to such Government" were omitted, *ibid.*

12. Alteration of memorandum.—(1) Subject to the provisions of this Act, a company may, by special resolution, alter the provisions of its memorandum so as to change the place of the registered office from one province 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 [1][or

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

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

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

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

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

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

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

13. Power of Court when confirming alteration.—The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

14. Exercise of discretion by Court—The Court shall, in exercising its discretion under sections 12 and 13, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement :

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

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

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1 **This word and clauses *(f)* and *(g)* were inserted by s. 7 of the Indian Companies (Amendment) Act 1935 (XXII of 1936).**

registration under his hand, and 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 so altered shall be the memorandum of the company.

(2) Where the alteration involves a transfer of the registered office from one province to another, a certified copy of the order confirming such change shall be filed by the company with the registrar in each of such provinces, and each of such registrars shall register the same, and shall certify under his hand the registration thereof, and the registrar for the province from which such office is transferred shall send to the registrar for the other province all documents relating to the company registered or filed in his office.

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

16. Effect of failure to register within three months.—No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of section 15, and if such registration is not effected within three months next after the date of the order of the Court confirming the alteration, or within such further time as may be allowed by the Court in accordance with the provisions of section 15, such alteration and order and all proceedings connected therewith shall, at the expiration of such period of three months or such further time, as the case may be, become absolutely null and void :

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

Articles of Association

17. Registration of articles.—(1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule, [1][and shall in any event be deemed to contain regulations identical with or to the same effect as regulation 56, regulation 66, regulation 71, regulations 78, 79, 80, 81, and 82, regulation 95, regulation 97, regulation 105, regulation 107 and regulations 112, 113, 114, 115 and 116 contained in that Table :

Provided that [2][regulations 78, 79, 80, 81 and 82] shall not be deemed to be included in the articles of any private company except a private company which is the subsidiary company of a public company :

Provided further that regulation 107 shall be deemed to require that a statement of the reasons why of the whole amount of any item of expenditure which may in fairness be distributed over several years, only a portion thereof is charged against the income of the year, shall be shown in the profit and loss account, unless the company in general meeting shall determine otherwise].

(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

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1 These words and figures were added by s. 8 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 These words and figures were substituted for the word and figure "regulation 78" by s. 2 of the Indian Companies (Amendment) Act, 1938 (II of 1938).

(4) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration.

18. Application of Table A.—In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, 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.

19. 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 [1][(who shall add his address and description)] of association in the presence of at least one witness who must attest the signature.

20. 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 or add to its articles ; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

(2) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. XIX of 1857 and [2]Act No. VII of 1860 or either of them, extend to altering any provisions in [3]Table I annexed to Act XIX of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

[4][**20A. Effect of alteration in memorandum or articles.**—Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company :

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

General Provisions.

21. Effect of memorandum and articles.—(1) 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 each member and contained a covenant on the part of each member, his heirs and legal representatives, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

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1 These brackets and words were inserted by s. 9 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 This Act was repealed by the Indian Companies Act, 1866 (X of 1866), which again was repealed by the Indian Companies Act, 1882 (VI of 1882), which was also repealed by this Act.

3 For Table B of Act XIX of 1857, *see* Appendix I to this Act, p. 153, *infra*.

4 This section was inserted by s. 10 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

(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.

22. Registration of memorandum and articles.—The memorandum and the articles (if any) shall be filed with the registrar for the province in which the registered office of the company is stated by the memorandum to be situate, and he shall retain and register them.

23. 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, the subscribers of the memorandum, together with such other persons as may from time to time become 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.

24. Conclusiveness of certificate of incorporation.—(1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A declaration by an advocate, attorney or pleader entitled to appear before a High Court who is engaged in the formation of a company, or by a person named in the articles as a director, manager or secretary of the company, of compliance with all or any of the said requirements shall be filed with the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

25. Copies of memorandum and articles to be given to members.—(1) Every company shall send to every member, [1][at his request and within fourteen days thereof] on payment of one rupee or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding ten rupees

[2][**25A. Alteration of memorandum or articles to be noted in every copy.**—(1) Where an alteration is made in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum or articles which are not in accordance with the alteration, it shall be liable to a fine not exceeding ten rupees for each copy so issued and every officer of the company who is knowingly and wilfully in default shall be liable to the like penalty.]

Association not for Profit.

26. Power to dispense with "Limited" in name of charitable and other companies.—(1) Where it is proved to the satisfaction of the [3][Central Government] that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, science,

1 These words were substituted for the words "at his request, and" by s. 11 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 This section was inserted by s. 12 *ibid.*

3 These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

[1][religion], charity, or any other useful object, and applies or 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 [2][Central Government] may, by license under the hand of one of its Secretaries, direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A license by the [2][Central Government] under this section may be granted on such conditions and subject to such regulations as the [2][Central Government] thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the [2][Central Government] so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, [3][and of sending lists of members to the registrar].

(4) A license under this section may at any time be revoked by the [2][Central Government], and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section :

Provided that, before a license is so revoked, the [2][Central Government] shall give to the association notice in writing of its intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation.

Companies limited by guarantee

27. 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 after the commencement of this Act, 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 after the commencement of this Act, 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.

PART III.

SHARE CAPITAL, REGISTRTION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

28. Nature of shares.—(1) The shares or other interest of any member in a company shall be moveable property, transferable in manner provided by the articles of the company.

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1 This word was inserted by s 2 of the Indian Companies (Amendment) Act, 1926 (XXXIII of 1926).

2 These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3 These words were substituted for the words "and of filing lists of members and directors and managers with the registrar" by s. 13 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

29. Certificate of shares or stock.—A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the number to the shares or stock therein specified.

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

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

31. Register of members.—(1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :—

(i) the names and addresses, and the occupations, if any, of the members, and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member.

(ii) the date at which each person was entered in the register as a member ;

(iii) the date at which any person ceased to be a member.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

[1][**31A. Index of members of company.**—(1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an 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 any necessary alteration in the index.

(2) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) If default is made in complying with this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.]

32. Annual list of members and summary.—(1) Every company having a share capital shall [2][within eighteen months from its incorporation and thereafter] once at least in every year make a list of all persons who, on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(2) The list shall state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and persons who have ceased to be members respectively and the dates of registration of the transfers, and shall contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars :—

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1 This section was inserted by s. 14 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 These words were inserted by s. 15 *ibid.*

(a) the amount of the share capital of the company, and the number of the shares into which it is divided ;

(b) the number of shares taken from the commencement of the company up to the date of the return ;

(c) the amount called up on each share ;

(d) the total amount of calls received ;

(e) the total amount of calls unpaid ;

(f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount [1][in respect of any shares or debentures], since the date of the last return [2][or so much thereof as has not been written off at the date of the return] ;

(g) the total number of shares forfeited ;

(h) the total amount of shares or stock for which share-warrants are outstanding at the date of the return ;

(i) the total amount of share-warrants issued and surrendered respectively since the date of the last return ;

(k) the number of shares or amount of stock comprised in each share-warrant ;

(l) the names and addresses of the persons who at the date of the return are the directors of the company and of the persons (if any) who at the said date are [3][the managers or managing agents of the company, and the changes in the personnel of the directors, managers and managing agents since the last return together with the dates on which they took place] ; and

(m) the total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act.

(3) The above list and summary shall be contained in a separate part of the register of members, and shall be completed within [4][twenty-one days] after the day of the first or only ordinary general meeting in the year, and the company shall forthwith file with the registrar a copy signed by a director or by the manager or the secretary of the company, together with a certificate from such director, manager or secretary that the list and summary state the facts as they stood on the day aforesaid.

[5][(4) A private company shall send with the annual return required by sub-section (1) a certificate signed by a director or other officer of the company that the company has not, since the date of the last return 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 where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under sub-clause (b) of clause 13 of sub-section (1) of section 2 are not to be included in reckoning the number of fifty.

[5][(5)] If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

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1 These words were substituted for the words "in respect of any debentures" by s. 15 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 These words were added, *ibid.*

3 These words were substituted for the words "the managers of the company", *ibid.*

4 These words were substituted for the words 'seven days", *ibid.*

5 This sub-section was inserted and the original sub-section (4) renumbered (5) *ibid.*

33. Trusts not to be entered on register—No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the registrar.

[1][**34. Transfer of shares.**—(1) An application for the registration of the transfer of shares in a company may be made either by the transferor or the transferee, provided that where such application is made by the transferor no registration shall in the case of partly paid shares be effected unless the company gives notice of the application to the transferee and subject to the provisions of [2][sub-section (7)] the company shall, unless objection is made by the transferee within two weeks from the date of receipt of the notice, enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee.

(2) For the purposes of sub-section (1) notice to the transferee shall be deemed to have been duly given if despatched by prepaid post to the transferee at the address given in the instrument of transfer and shall be deemed to have been delivered in the ordinary course of post.

(3) It shall not be lawful for the company to register a transfer of shares in or debentures of the company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with the scrip :

Provided that, where it is proved to the satisfaction of the directors of the company that an instrument of transfer signed by the transferor and transferee has been lost, the company may, if the directors think fit, on an application in writing made by the transferee and bearing the stamp required by an instrument of transfer, register the transfer on such terms as to indemnity as the directors may think fit.

(4) If a company refuses to register the transfer of any shares or debentures, the company shall, within two months from the date on which the instrument of transfer was lodged with the company, send to the transferee and the transferor notice of the refusal.

(5) If default is made in complying with sub-section (4) of this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(6) Nothing in sub-section (3) shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(7) Nothing in this section shall prejudice any power of the company under its articles to refuse to register the transfer of any shares]

35. Transfer by legal representative.—A transfer of the share or other interest of a deceased member of a company 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.

36. Inspection of register of members.—(1) The register of members, commencing from the date of the registration of the company [3][and the index of members] shall be kept at the registered office of the company, and except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions, as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the

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1 This section was substitued by s. 16 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 These words, brackets and figure were substituted for the word, brackets and figure "subsection (4)" by s. 3 of the Indian Companies (Amendment) Act, 1938 (II of 1938).

3 These words were inserted by s. 17 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

inspection of any member gratis and to the inspection of any other person on payment of one rupee, or such less sum as the company may prescribe, for each inspection. [1][Any such member or other person may make extracts therefrom.]

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of six annas for every hundred words or fractional part thereof required to be copied [1][and the company shall cause any copy so required by any person to be sent to that person within a period of ten days, exclusive of non-working days and days on which the transfer books of the company are closed, commencing on the day next after the day on which the requirement is received by the company.]

[2][(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding twenty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal or default continues and the Court may by an order compel an immediate inspection of the register and index or direct that copies required shall be sent to the persons requiring them].

37. Power to close register.—A company may, on giving [3][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 for any time or times not exceeding in the whole [4][forty-five] days in each year [5][but not exceeding thirty days at a time.]

38. Power of Court to rectify register.—(1) If—

(a) The name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register:

Provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Procedure, 1908 (V of 1908), on the grounds mentioned in section 100 of that Code.

39. Notice to registrar of rectification of register.—In the case of a company required by this Act to file a list of its members with the registrar, the Court, when making an order for rectification of the register, shall, by its order, direct notice of the rectification to be filed with the registrar [6][within a fortnight from the date of the completion of the order.]

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1 These words were added by s 17 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).
2 This sub-section was substituted, *ibid.*
3 These words were inserted by s 18, *ibid.*
4 This word was substituted for the word "thirty", *ibid.*
5 These words were added, *ibid.*
6 These words were added by s 19 *ibid.*

40. Register to be evidence.—The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

41. Power for company to keep branch register in the United Kingdom. (1) A company having a share capital may, if so authorised by its articles, cause to be kept in the United Kingdom a branch register of members (in this Act called a British register).

(2) The company shall, within one month from the date of the opening of any British register, file with the registrar notice of the situation of the office where such register is kept and, in the event of any change in the situation of such office or of its discontinuance, shall within one month from the date of such change or discontinuance, as the case may be, file notice of such change or discontinuance.

(ii) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

42. Regulations as to British register.—(1) A British register shall be deemed to be part of the company's register of members (in this section called the principal register).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the locality wherein the British register is kept.

(3) The company shall transmit to its registered office in India a copy of every entry in its British register as soon as may be after the entry is made; and shall cause to be kept at such office, duly entered up from time to time, a duplicate of its British register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a British register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a British register shall, during the continuance of that registration, be registered in any other register.

(5) The company may discontinue to keep any British register, and thereupon all entries in that register shall be transferred to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles make such regulations as it may think fit respecting the keeping of a British register.

[1][**42A. Application of sections 41 and 42 to Burma.**—(1) The provisions of sections 41 and 42 shall apply in relation to Burma as they apply in relation to the United Kingdom.

(2) In the application of the said provisions to Burma, references to a British register shall be construed as references to a Burma register.]

43. Issue of share-warrants to bearer.—[2][(1)] A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share-warrant.

[2][(2) Nothing in this section shall apply to a private company]

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1 This section was inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 Section 43 was re-numbered as sub-section (1) of that section and sub-section (2) was added by s. 20 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

44. Effect of share-warrant.—A share-warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

45. Registration of name of bearer of share-warrant.—The bearer of a share-warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share-warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

46. Position of bearer of share-warrant.—The brearer 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, either to the full extent or for any purposes defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

47. Entries in register when share-warrant issued.—(1) On the issue of a share-warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:—

(i) the fact of the issue of the warrant;

(ii) a statement of the shares or stock included in the warrant, distinguishing each share by its number; and

(iii) the date of the issue of the warrant.

(2) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully continues or permits the default shall be liable to the like penalty.

48. Surrender of share-warrant.—Until the warrant is surrendered, the above particulars 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 as if it were the date at which a person ceased to be a member.

49. Power of company to arrange for different amounts being paid on shares.—A company, if so authorised by its articles, may do any one or more of the following things, namely:—

(1) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;

(2) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up;

(3) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others

50. Power of company limited by shares to alter its share capital.—(1) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may—

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

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

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

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

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

(2) The powers conferred by this section [1] * * * must be exercised [2][by the company in general meeting].

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

[3][(4) The company shall file with the registrar notice of the exercise of any power referred to in clause (d) or clause (e) of sub-section (1) within fifteen days from the exercise thereof.]

51. Notice to registrar of consolidation of share capital, conversion of shares into stock, etc.—(1) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares or converted any of its shares into stock, or re-converted stock into shares, it shall within fifteen days of the consolidation and division, conversion or re-conversion, file notice with the registrar of the same, specifying the share consolidated and divided, or converted, or the stock re-converted.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

52. Effect of conversion of shares into stock.—Where a company having a share capital has converted any of its shares into stock, and filed notice of the conversion with the registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is coverted into stock ; and the register of members of the company, and the list of members to be filed with the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

53. Notice of increase of share capital or of members.—(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the registrar, in the case of an increase of share capital, within fifteen days after the passing [4] * * * * of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

[5][(2) The notice to be given as aforesaid shall include particulars of the classes of shares affected and the conditions (if any) subject to which the new shares are to be issued.]

[5][(3)] If a company makes a default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day

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1. The words "with respect to sub-division of shares" were omitted by s. 21 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)
2. These words were substituted for the words "by special resolution", *ibid.*
3. Original sub-sections (3) and (4) were omitted and sub-section (5) was re-numbered (3) and sub-section (4) was added, *ibid.*
4. The words "or in the case of a special resolution the confirmation" were omitted by s. 22, *ibid.*
5. Sub-section (2) was inserted and the original sub-section (2) re-numbered (3) *ibid.*

during which the default continues, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

54. [Re-organization of share capital].—Omitted by s. 2 of the Indian Companies (Amendment) Act, 1942 (XVII of 1942).

Reduction of Share Capital.

[1]**[54A. Restrictions on purchase by company or loans by company for purchase of its own shares.**—(1) No company limited by shares shall have power to buy its own shares or the shares of a public company of which it is a subsidiary company unless the consequent reduction of capital is effected and sanctioned in the manner provided by sections 55 to 66.

(2) No company limited by shares other than a private company, not being a subsidiary company 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 made or to be made by any person of any shares in the company :

Provided that nothing in this section shall be taken to prohibit, where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business.

(3) If a company acts in contravention of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding one thousand rupees.

(4) Nothing in this section shall affect the right of a company to redeem any shares issued under section 105B.]

55. Reduction of share capital—[2][(1)] Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (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 ; or

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or 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][(2) A special resolution under this section is in this Act called a resolution for reducing share capital.

56. Application to Court for confirming order.—Where a company has passed [3]* * * a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

57. Addition to name of company of "and reduced".—On and from the [4][passing] by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then

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1 This section was inserted by s. 24 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 Original sub-section (*1*) of section 55 was omitted and sub-sections (*2*) and (*3*) were renumbered as (*1*) and (*2*) respectively by s. 25 *ibid.*

3 The words "and confirmed" were omitted by s. 26, *ibid.*

4 This word was substituted for the word "confirmation" by s. 27 *ibid.*

on and from [1][the making of the order confirming the reduction], the company shall add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company :

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced".

58. Objections by creditors and settlement of list of objecting creditors — (1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(2) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

59. Power to dispense with consent of creditor on security being given for his debt.—Where a creditor entered on the list of creditors whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount (that is to say),—

(i) if the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim ;

(ii) if the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

60. Order confirming reduction.—The Court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

61. Registration of order and minute of reduction.—(1) The registrar on production to him of an order of the Court confirming the reduction of the share capital of a company, and on the filing with him of a certified copy of the order and of a minute (appoved by the Court) showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the Court may direct.

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1 These words were substituted for the words "the presentation of the petition for confirming the reduction" by s. 27 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

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

62. Minute to form part of memorandum.—(1) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein, and shall be embodied in every copy of the memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

63 Liability of members in respect of reduced shares.—(1) A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute:

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim, then—

(i) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt, or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and

(ii) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves,

64. Penalty on concealment of name of creditor—If any officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any officer of the company abets any such concealment or misrepresentation as aforesaid, every such officer shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

65. Publication of reasons for reduction.—In any case of reduction of share capital the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

66. Increase and reduction of share capital in case of a company limited by guarantee having a share capital.—A company limited by guarantee and registered after the commencement of this Act may, if it has a share capital and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act

[1][*Variation of Shareholders' Rights*]

[1][**66A. Rights of holders of special classes of shares.**—(1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than ten per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and where any such application is made the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section must be made within fourteen days after the date on which the consent was given or the resolution was passed as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The company shall within fifteen days after the service on the company of any order made on any such application forward a copy of the order to the registrar and, if default is made in complying with this provision, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.

(6) The expression 'variation' in this section includes 'abrogation' and the expression 'varied' shall be construed accordingly.]

Registration of Unlimited Company as Limited.

67. Registration of unlimited company as limited.—(1) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited or any company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligation 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 manner Provided by Part VIII of this Act in the case of a company registered in pursuance of that part.

(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.

68. Power of unlimited company to provide for reserve share capital on re-registration.—An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely :—

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which its capital is so increased shall be capable of being called up except in the event and for the purposes of the company being wound up;

1 This heading and section 66A were inserted by s. 28 of the Indian Companies Amendment Act 1936 (XXII of 1936.)

(b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company

69. Reserve liability of limited company.—A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Unlimited Liability of Directors

70. Limited company may have directors with unlimited liability.—(1) In a limited company the liability of the directors or of any director may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of any director is unlimited, the directors of the company (if any) and the member who proposes a person for election or appointment to the office of director shall add to that proposal a statement that the liability of the person holding that office will be unlimited and the promoters and officers of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director or proposer makes default in adding such a statement, or if any promotor or officer of the company makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand rupees and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

71. Special resolution of limited company making liability of directors unlimited.—(1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director.

(2) Upon the [1][passing] of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

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PART IV.

MANAGEMENT AND ADMINISTRATION

Office and Name

[3][**72. Registered office of company.**—(1) A company shall as from the day on which it begins to carry on business, or as from the twenty-eighth day after the date of its incorporation, whichever is the 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 any change therein shall be given within twenty-eight days after the date of the incorporation of the company or of the change, as the case may be, to the registrar who shall record the same.

(3) The inclusion in the annual return of a company of the statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this section.

(4) If a company carries on business without complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business.]

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1 This word was substituted for the word "confirmation" by s. 29 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 Certain words in sub-section (2) and sub-section (3) of section 71 were omitted, ibid.

3 This section was substituted by s. 30, ibid.

73. Publication of name by a limited company.—Every limited company—

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible and in English characters, and also, if the registered office be situate in a place beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place ;

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

(c) shall have its name mentioned in legible English characters in all bill-heads and letter paper and in all notices, advertisements and other official publications of the company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

74. Penalties for non-publication of name.—(1) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every officer of the company, who knowingly and wilfully authorises or permits the default, shall be liable to the like penalty

(2) If any officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any bill-head, letter paper, notice, advertisement or other official publication of the company or 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, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the company

75. Publication of authorised as well as subscribed and paid-up capital.—(1) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication 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) Any company which makes default in complying with the requirements of this section and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding one thousand rupees.

Meetings and Proceedings

[1][**76. Annual general meeting.**—(1) A general meeting of every company shall be held within eighteen months from the date of its incorporation and thereafter once at least in every calendar year and not more than fifteen months after the holding of the last preceding general meeting.

(2) If default is made in holding a meeting in accordance with the provisions of this section, the company and every director or manager of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees

(3) If default is made as aforesaid, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.]

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1 **This section was substituted by s. 31 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).**

[1][**77. Statutory meeting of Company.**—(1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2) The 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) certified as required by this section to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company or by the chairman of the directors if authorised in this behalf by the directors and shall state—

(a) the total number of shares allotted, distinguishing shares allotted as full, 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 alloted ;

(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 on the issue or sale of shares ;

(d) the names, addresses and descriptions of the directors, auditors, managing agents and managers, if any, and secretary of the company and the changes, if any, which have occurred since the date of the incorporation ;

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification ;

(f) the extent to which underwriting contracts, if any, have been carried out ;

(g) the arrears, if any, due on calls from directors, managing agents and managers ; and

(h) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, managing agent or manager or a partner of the managing agent if the managing agent is a firm or if the managing agent is a private company a director thereof.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares and to the receipts and payments of the company, be certified as correct by the auditors of the company.

(5) The directors shall cause a copy of the statutory report certified as required by this section to be delivered to the registrar for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

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1 This section was substituted by s. 32 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

(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 of which notice has not been given in accordance with the articles may be passed.

(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 articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) If a petition is presented to the Court in manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(10) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding five hundred rupees.

(11) This section shall not apply to a private company.]

78. Calling of extraordinary general meeting on requisition.—(1) Notwithstanding anything in the articles, the directors of a company which has a share capital shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.

[1][(4)] Any meeting called under this section by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.

[1][(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene 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.]

[2][**79. Provisions as to meetings and votes.** (1) The following provisions shall have effect with respect to meetings of a company other than a private company not being a subsidiary of a public company and the procedure thereat, notwithstanding any provision made in the articles of the company in this behalf :—

(a) a meeting of a company other than a meeting for the passing of a special resolution may be called by not less than fourteen days' notice in writing; but with the consent of all the members entitled to receive notice of some particular meeting that meeting may be convened by such shorter notice and in such manner as those members may think fit;

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1 Sub-section (*4*) was omitted, original sub-section (5) was renumbered as (*4*) and sub-section (*5*) added by s. 33 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

2 This section was substituted by s. 34, *ibid*

(b) notice of the meeting of a company with a statement of the business to be transacted at the meeting shall be served on every member in the manner in which notices are required to be served by Table A and for the purpose of this clause the expression 'Table A' means that table as for the time being in force; but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting;

(c) five members present in person or by proxy, or the chairman of the meeting, or any member or members holding not less than one-tenth of the issued capital which carries voting rights shall be entitled to demand a poll: Provided that in the case of a private company if not more than seven members are personally present, one member, and if more than seven members are personally present, two members shall be entitled to demand a poll;

(d) an instrument appointing a proxy, if in the form set out in regulation 67 of Table A, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles; and

(e) any shareholder whose name is entered in the register of shareholders of the company shall enjoy the same rights and be subject to the same liabilities as all other shareholders of the same class.

(2) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf :—

(a) two or more members holding not less than one-tenth of the total share capital paid up or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting;

(b) in the case of a private company two members and in the case of any other company five members personally present shall be a quorum;

(c) any member elected by the members present at a meeting may be chairman thereof;

(d) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each hundred rupees of stock held by him, and in any other case every member shall have one vote;

(e) on a poll votes may be given either personally or by proxy;

(f) the instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation, either under seal or under the hand of an officer or an attorney duly authorised; and

(g) a proxy must be a member of the company.

(3) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or to conduct the meeting of the company in manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is given may give such ancillary or consequential directions as it thinks expedient and 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.]

80. Representation of companies at meetings of other companies of which they are members.—A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

81. Extraordinary and special resolutions.—(1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

[1][(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice specifying the intention to propose the resolution as a special resolution has been duly given :

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.]

(3) At any meeting at which an extraordinary resolution [2][or a special resolution is submitted to be passed] a declaration of the chairman on a show of hands that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution

(4) At any meeting at which an extraordinary resolution [3][or a special resolution is submitted to be passed] a poll may be demanded [4]* * * *

(5) In a case where, if a poll is demanded, it may in accordance with the articles be taken in such manner as the chairman may direct ; it may, if the chairman so directs, be taken at the meeting at which it is demanded.

(6) When a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by the articles of the company, [5][or under this Act,]

(7) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles, [5][or under this Act]

82. Registration and copies of special and extraordinary resolutions.—(1) A copy of every special and extraordinary resolution shall, within fifteen days from [6][the passing thereof] be printed or typewritten [6][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 special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one rupee or such less sum as the company may direct.

(4) If a company makes default in so filing with the registrar a copy of a special or extraordinary resolution, it shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

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1 This sub-section was substituted by s. 35 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 These words were substituted for the words "is submitted to be passed or a special resolution is submitted to be passed or canfirmed", *ibid.*

3 Certain words were omitted. *ibid.*

4 These words were added. *ibid.*

5 These words were substituted for the words "the confirmation of the special resolution or from the passing of the extraordinary resolution, as the case may be," by s. 36, *ibid.*

6 These words were inserted, *ibid.*

(6) Every officer of a company, who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

83. Minutes of proceedings of general meetings and of its directors.—(1) Every company shall cause minutes of all proceedings of general meetings and of its directors to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.

[1][(4) The books containing the minutes of proceedings of any general meeting of a company held after the [2]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), shall be kept at the registered office of the company and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge]

[1][(5) Any member shall at any time after seven days from the meeting 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 (4) at a charge not exceeding six annas for every hundred words]

[1][(6) If any inspection required under sub-section (4) of this section is refused or if any copy required under sub-section (5) of this section is not furnished within the time specified in sub-section (5) the company and every officer of the company who is knowingly and wilfully in default shall be liable in respect of each offence to a fine not exceeding twenty-five rupees and to [3][a further fine not exceeding twenty-five rupees] for every day during which the default continue.]

[1][(7) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.]

[4][*Directors*]

[4][**83A. Directors obligatory.**—[5][(1)] Every company shall have at least three directors.]

(2) This section shall not apply to a private company [6][except a private company being a subsidiary company of a public campany]

[4][**83B. Appointment of directors.**—[7][(1)] In default of and subject to any regulations in the articles of a company other than a private company—

(i) the subscribers of the memorandum shall be deemed to be the directors of the company until the first directors shall have been appointed ;

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1 These sub-sections were added by s. 37 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 This Act come into force on the 15th January, 1937.

3 These words were substituted for the words "a further fine to twenty-five rupees' by s. 2 and Sch. I of the Repealing and Amending Act, 1939 (XXXIV of 1939).

4 This heading and sections 83-A and 83B were inserted by s. 2 of the Indian Companies (Amendment) Act, 1914 (XI of 1914).

5 This sub section was substituted by s. 38 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

6 These words were added, *ibid*,

7 Section 83-B was renumbered as sub-section (*1*) of that section by s. 39, *ibid*.

(ii) the directors of the company shall be appointed by the members in general meeting ; and

(iii) any casual vacancy occurring among the directors may be filled up by the directors, but the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed a director.]

[1][(2) Notwithstanding anything contained in the articles of a company other than a private company not less than two-thirds of the whole number of directors shall be persons whose period of office is liable to determination at any time by retirement of directors in rotation :

Provided that nothing herein contained shall apply to a company incorporated before the [2]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), where by virtue of the articles of the company the number of directors whose period of office is liable to determination at any time by retirement of directors in rotation falls below the two-thirds proportion mentioned in this section.]

84. 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 any prospectus issued by or on behalf of the company or in relation to any intended company or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or 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—

(i) signed and filed with the registrar a consent in writing to act as such director ; and

(ii) save in the case of [3][companies] not having a share capital, either signed the memorandum for a number of shares not less than his qualification (if any) [4][or taken from the company and paid or agreed to pay for his qualification shares] or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any) [5][or made and filed with the registrar an affidavit to the effect that a number of shares, not less than his qualification (if any), are registered in his name]

(2) On the application for registration of the memorandum and articles [4][, if any,] of a company the applicant shall file with the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding five hundred rupees.

(3) This section shall not apply to a private company [4][or a company which was a private company before becoming a public company] nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

85. Qualification of director.—(1) Without prejudice to the restrictions imposed by section 84, it shall be the duty of every director who is by the articles required to hold a specified share quatification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

[6]* * * *

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1 This sub-section was added by s. 39 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 The Act came into force on the 15th January, 1937.

3 This word was substituted for the words "a company limited by guarantee and" by s. 40 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

4 These words were inserted, *ibid.*

5 These words were added, *ibid.*

6 Sub-section (2) was omitted by s. 41, *ibid.*

[1][(2)] If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

86. Validity of acts of directors.—The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification : Provided that nothing in this section shall be deemed to give validity to acts done by a director after the appointment of such director has been shown to be invalid.

[2][**86A. Ineligibility of bankrupt to act as director.**—(1) If any person being an undischarged insolvent acts as director or managing agent or manager of any company, he shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand rupees or to both.

(2) In this section the expression 'company' includes a company incorporated outside British India which has an established place of business within British India.]

[2][**86B. Assignment of office by directors.**—If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company :

Provided that the exercise by a director of a power to appoint an alternate or substitute director to act for him during an absence of not less than three months from the district in which meetings of the directors are ordinarily held, if done with the approval of the board of directors, shall not be deemed to be an assignment of office within the meaning of this section :

Provided always that any such alternate or substitute director shall *ipso facto* vacate office if and when the appointor return to the district in which meetings of the directors are ordinarily held.

Explanation.—For the purposes of the provisos to this section, the presidency-towns of Calcutta and Madras shall be deemed to be part of the 24-Parganas and Chingleput Districts, respectively, and the presidency-town of Bombay shall be deemed to be part of the Bombay Suburban and the Thana districts,]

[2][**86C. Avoidance of provisions relieving liability of directors.**—Save as provided in this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise for exempting any director, manager or officer of the company or any person (whether an officer of the company or not) 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, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void :

Provided that—

(a) in relation to any such provision which is in force at the date of the [3]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), this section shall have effect only on the expiration of a period of six months from that date, and

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1 The original sub section (*3*) was re-numbered (*2*) by s. 41 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 This section was inserted by s. 42 *ibid.*

3 The Act came into force on the 15th January, 1937.

(b) nothing in this section shall operate 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, and

(c) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, 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 in connection with any application under section 281 of this Act in which relief is granted to him by the Court]

[1][**86D. Loans of directors.**—(1) No company shall make any loan or guarantee any loan made to a director of the company or to a firm of which such director is a partner [2][or to a private company of which such director is a member or director]

(2) In the event of any contravention of subsection (1) any director of the company who is a party to such contravention shall be punishable with fine which may extend to five hundred rupees, and if default is made in repayment of the loan or in discharging the guarantee shall be liable jointly and severally for the amount unpaid.

(3) This section shall not apply to a private company (except a private company which is the subsidiary company of a public company) or to a banking company]

[1][**86E Director not to hold office of profit.**—No director or firm of which such director is a partner or private company of which such director is a director shall without the consent of the company in general meeting hold any office of profit under the company except that of a managing director or manager or a legal or technical adviser or a banker ;

Provided that nothing herein contained shall apply to a director elected or appointed before the [3]commencement of the Indian companies (Amendment) Act, 1936 (XXII of 1936) in respect of any office of profit under the company held by him at the commencement of the said Act.

Explanation.— For the purposes of this section the office of managing agent shall not be deemed to be an office of profit under the company,]

[1][**86F. Sanction of directors necessary for certain contracts.**—Except with the consent of the directors, a director of the company, or the firm of which he is a partner or any partner of such firm, or the private company of which he is a member or director, shall not enter into any contracts for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract or agreement for such sale, purchase or supply entered into before the [3]commencement of the Indian Companies (Amendment) Act 1936 (XXII of 1936),]

[1][**86G. Removal of directors.**—(1) The company may by extraordinary resolution remove any director, whose period of office is liable to determination at any time by retirement of directors in rotation, before the expiration of his period of office and may by ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected director. A director so removed shall not be re-appointed a director by the board of directors,

(2) This section shall not apply to directors elected or appointed before the [3]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936)]

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1 This section was inserted by s. 42 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 These words were substituted for the words "or to a private company of which such director is a director" by s 5 of the Indian Companies (Amendment) Act, 1938 (II of 1938).

3 The Act came into force on the 15th January, 1937.

[1][**86H. Restrictions on powers of directors.**—The directors of a public company or of a subsidiary company of a public company shall not, except with the consent of the company concerned in general meeting,—

(a) sell or dispose of the undertaking of the company;

(b) remit any debt due by a director.]

[1][**86I. Vacation of office of director.**—(1) The office of a director shall be vacated if—

(a) he fails to obtain within the time specified in sub-section (1) of section [2][85] or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment, or

(b) he is found to be of unsound mind by a Court of competent jurisdiction, or

(c) he is adjudged an insolvent, or

(d) he fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made, or

(e) he or any firm of which he is a partner or any private company of which he is a director without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker, or

(f) he absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months whichever is the longer without leave of absence from the board of directors, or

(g) he or any firm of which he is a partner or any private company of which he is a director accepts a loan, or guarantee from the company in contravention of section 86D, or

(h) he acts in contravention of section 86F.

(2) Nothing contained in this section shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on grounds additional to those specified in this section]

[3][**87. Register of directors, managers and managing agents.**—(1) Every company shall keep at its registered office a register of its directors, managers and managing agents containing with respect to each of them the following particulars, that is to say :—

(a) in the case of an individual, his present name in full, any former name or surname in full, his usual residential address, his nationality and, if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any, and if he holds any other directorship or directorships the particulars of such directorship or directorships;

(b) in the case of a corporation, its corporate name and registered or principal office; and the full name, address and nationality of each of its directors; and

(c) in the case of a firm, the full name, address and nationality of each partner, and the date on which each became a partner.

(2) The company shall within the periods respectively mentioned in this sub-section send to the registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors, managers or managing agents or in any of the particulars contained in the register.

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1 This section was inserted by s. 42 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 This figure was substituted for the figure "84" by s. 4 of the Indian Companies (Amendment) Act, 1938 (II of 1938).

3 This section was substituted by s. 43 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

The period within which the said return is to be sent shall be a period of fourteen 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 fourteen days from the happening thereof.

(3) The register to be kept under this section shall 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 be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one rupee or such less sum as the company may impose for each inspection.

(4) If any inspection required under this section is refused or if default is made in complying with sub-section (1) or sub-section (2) of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine of fifty rupees.

(5) In the case of any such refusal, the Court on application made by the person to whom inspection has been refused and upon notice to the company may by order direct an immediate inspection of the register.]

[1][Managing Agents]

[1][**87A. Duration of appointment of managing agent.**—(1) No managing agents shall, after the [2]commencement of the Indian Companies (Amendment) Act 1936 (XXII of 1936), be appointed to hold office for a term of more than twenty years at a time.

(2) Notwithstanding anything to the contrary contained in the articles of a company or in any agreement with the company a managing agent of a company appointed before the [2]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), shall not continue to hold office after the expiry of twenty years from the commencement of the said Act unless then reappointed thereto or unless he has been reappointed thereto before the expiry of the said twenty years

(3) A managing agent whose office is terminated by virtue of the provisions of sub-section (2) shall upon such termination be entitled to a charge upon the assets of the company by way of indemnity for all liabilities or obligations properly incurred by the managing agent on behalf of the company subject to existing charges and encumbrances, if any

(4) The termination of the office of a managing agent by virtue of the provisions of sub-section (2) shall not take effect until all moneys payable to the managing agent for loans made to or remuneration due up to the date of such termination from the company are paid.

(5) Nothing in this section shall apply to a private company which is not the subsidiary company of a public company.]

[3][**87B. Conditions applicable to managing agents.**—Notwithstanding anything to the contrary contained in the articles of the company or in any agreement with the company—

(a) a company may, by resolution passed at a general meeting of which notice has been given to the managing agent in the same manner as to members of the company, remove a managing agent if he is convicted of an offence in relation to the affairs of the company punishable under the Indian Penal Code (XLV of 1860), and being under the provisions of the Code of Criminal Procedure, 1898 (V of 1898) non-bailable; and for the purposes of this clause, where the managing agent is a firm or company an offence committed by a member of such firm or a director of or an officer holding a general power of attorney from such company shall be deemed to be an offence committed by such firm or company:

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1 This heading and section 87-A were inserted by s 44 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 The Act came into force on the 15th January, 1937.

3 This section was inserted by s. 44 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

Provided that a managing agent shall not be liable to be removed under the provisions hereof if the offending member, director or officer as aforesaid is expelled or dismissed by the managing agent within thirty days from the date of his conviction or if his conviction is set aside on appeal ;

(b) the office of a managing agent shall be vacated if he is adjudged insolvent;

(c) a transfer of his office by a managing agent shall be void unless approved by the company in general meeting :

Provided that in the case of a managing agent's firm a change in the partners thereof shall not be deemed to operate as a transfer of the office of managing agent, so long as one of the original partners shall continue to be a partner of the managing agent's firm. For the purpose of this proviso 'original partners' shall mean, in the case of managing agents appointed before the [1]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), partners who were partners at the date of the commencement of the said Act, and in the case of managing agents appointed after the commencement of the said Act, partners who were partners at the date of the appointment ;

(d) a charge or assignment of his remuneration or any part thereof effected by a managing agent shall be void as against the company ;

(e) if a company is wound up either by the Court or voluntarily, any contract of management made with a managing agent shall be thereupon determined without prejudice, however, to the right of the managing agent to recover any moneys recoverable by the managing agent from the company : Provided that where the Court finds that the winding up is due to the negligence or default of the managing agent himself the managing agent shall not be entitled to receive any compensation for the premature termination of his contract of management ; and

(f) the appointment of a managing agent, the removal of a managing agent and any variation of a managing agent's contract of management made after the [1]commencement of the Indian Companines (Amendment) Act, 1936 (XXII of 1936), shall not be valid unless approved by the company by a resolution at a general meeting of the company notwithstanding anything to the contrary in section 86E.

Provided that nothing herein contained shall apply to the appointment of a company's first managing agent made prior to the issue of the prospectus or statement in lieu of prospectus where the terms of the appointment of such managing agent are there set forth.]

[2][87C. **Remuneration of managing agent.**—(1) Where any company appoints a managing agent after the [1]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), the remuneration of the managing agent shall be a sum based on a fixed percentage of the net annual profits of the company with provision for a minimum payment in the case of absence of or inadequacy of profits, together with an office allowance to be defined in the agreement of management.

(2) Any stipulation for remuneration additional to or in any other form than the remuneration specified in sub-section (1) shall not be binding on the company unless sanctioned by a special resolution of the company

(3) For the purposes of this section 'net profits' means the profits of the company calculated after allowing for all the usual working charges, interest on loans and advances, repairs and outgoings, depreciation, bounties or subsidies received from [3][any Government] or from a public body, profits by way of premium on shares sold, profits on sale proceeds of forfeited shares, or profits from the sale of the whole or part of the undertaking of the company but without any deduction in respect of income-tax, or super-tax or any other tax or duty on income or revenue

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1 The Act came into force on the 15th January, 1937.

2 This section was inserted by s. 44 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936)

3 These words were substituted for the word "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

or for expenditure by way of interest on debentures or otherwise on capital account or on account of any sum which may be set aside in each year out of the profits for reserve or any other special fund.

(4) This section shall not apply to a private company except a private company which is the subsidiary company of a public company or to any company whose principal business is the business of insurance]

[1][**87D. Loans to managing agents.**—(1) No company shall make to a managing agent of the company or to any partner of the firm, if the managing agent is a firm, [2][or to any member or director of the private company], if the managing agent is a private company, any loan out of moneys of the company or guarantee any loan made to a managing agent.

(2) Nothing contained in this section shall apply to any credit held by a managing agent in a current account maintained subject to limits previously approved by the board of directors by the company with the managing agent for the purposes of the company's business.

(3) In the event of any contravention of sub-section (1) any director of the company who is a party to the making of the loan or giving of the guarantee shall be punishable with fine which may extend to five hundred rupees, and if default is made in repayment of the loan or discharging the guarantee shall be liable jointly and severally for the amount unpaid

(4) Nothing in this section shall apply to a private company except a private company which is the subsidiary company of a public company.

(5) Except with the consent of three-fourths of the directors present and entitled to vote on the resolution, a managing agent of the company, or the firm of which he is a partner, or any partner of such firm, or, if the managing agent is a private company, a member or director thereof, shall not enter into any contract for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract for such sale, purchase or supply entered into before the [3]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).]

[1][**87E. Loans to or by companies under the same management.**—(1) No company incorporated under this Act after the [3]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), which is under the management of a managing agent shall make any loan to or guarantee any loan made to any company under management by the same managing agent, and no company shall after the expiry of six months from the commencement of the said Act except by way of renewal of an existing loan or guarantee given make any loan to or guarantee any loan made to any such company :

Provided that nothing herein contained shall apply to loans made or guarantees given by a company to or on behalf of a company under its own management or loans made by or to a company to or by a subsidiary company thereof or to guarantees given by a company on behalf of a subsidiary company thereof.

(2) In the event of any contravention of the provisions of this section, any director or officer of the company making the loan or giving the guarantee who is knowingly and wilfully in default shall be liable to a fine not exceeding one thousand rupees and shall be jointly and severally liable for any loss incurred by the company in respect of such loan or guarantee]

[1][**87F. Purchase by company of shares of company under same managing agent.**—A company other than an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities, shall not purchase shares or debentures of any company under management by the same managing agent,

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1 This section was inserted by s. 44 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

2 These words were substituted for the words "or to any director of the private company" by s. 6 of the Indian Companies (Amendment) Act, 1938 (II of 1938.)

3 The Act came into force on the 15th January, 1937.

unless the purchase has been previously approved by a unanimous decision of the board of directors of the purchasing company.]

[1][**87G. Restriction on managing agent's powers of management.**—A managing agent shall not exercise in respect of any company of which he is a managing agent a power to issue debentures or, except with the authority of the directors, and within the limits fixed by them, a power to invest the funds of the company, and any delegation of any such power by a company to a managing agent shall be void.]

[1][**87H Managing agent not to engage in business competing with the business of managed company.**—A managing agent shall not on his own account engage in any business which is of the same nature as and directly competes with the business carried on by a company under his management or by a subsidiary company of such company.]

[1][**87I. Limit on number of directors appointed by managing agent.**—Notwithstanding anything contained in the articles of a company other than a private company the directors, if any, appointed by the managing agent shall not exceed in number one-third of the whole number of directors.]

Contracts

88. Form of contracts.—(1) Contracts on behalf of a company may be made as follows (that is to say) :—

(i) any contract which, if made between private persons, would be by law 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 :

(ii) any 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) All contracts made according to this section shall be effectual in law and shall bind the company and its successors and all other parties thereto, their heirs, or legal representatives, as the case may be.

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

90. Execution of deeds.—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 [2][either in or outside British India]; and every deed signed by such 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.

91. Power for company to have official seal for use abroad.—(1) A company whose objects require or comprise the transaction of business beyond the limits of British India may, if authorised by its articles, have for use in any territory, district or place not situate in British 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 every territory, district or place where it is to be used.

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1 This section was inserted by s. 44 of the Indian Companies (Amendment) Act, (XXII of 1936.)

2 These words were substituted for the words "not situate in British India" by s. 45 *ibid.*

(2) A company having such an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district or place not situate in British India to affix the same to any deed or other document to which the company is party in that territory, district or place.

(3) The authority of any such agent 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, then 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, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(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.

[1][**91A. Disclosure of interest by director.**—(1) Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement :

Provided that a general notice that a director is a [2][director or a member of any specified company or is a member of any specified firm], and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regards any such transaction be sufficient disclosure within the meaning of this sub-section and after such general notice, it shall not be necessary to give any special notice relating to any particular transaction with such firm or company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees]

[3][(3) A register shall be kept by the company in which shall be entered particulars of all contracts or arrangements to which sub-section (1) applies, and which shall be open to inspection by any member of the company at the registered office of the company during business hours.]

[3][(4) Every officer of the company who knowingly and wilfully acts in contravention of the provisions of sub-section (3) shall be liable to a fine not exceeding five hundred rupees,]

[1][**91B. Prohibition of voting by interested director.**—(1) No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested [4][nor shall his presence count for the purpose of forming a quorum at the time of any such vote] ; and if he does so vote, his vote shall not be counted :

Provided that the directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company.

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1 This section was inserted by s. 3 of the Indian Companies (Amendment) Act, 1914 (XI of 1914).

2 These words were substituted for the words "member of any specified firm or company" by s. 46 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

3 This sub-section was added, *ibid.*

4 These words were inserted by s. 47 *ibid.*

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.]

[1][(3) This section shall not apply to a private company.]

[2][Provided that where a private company is a subsidiary company of a public company, this section shall apply to all contracts or arrangements made on behalf of the subsidiary company with any person other than the holding company.]

[3][**91C. Disclosure to members in case of contract appointing a manager.**—(1) Where a company enters into a contract for the appointment of a manager [4][or managing agent] of the company in which contract any director of the company is directly or indirectly concerned or interested, or varies any such existing contract, the company shall [4][, within twenty-one days from the date of entering into the contract or the varying of the contract,] send an abstract of the terms of such contract, or variation, as the case may be, together with a memorandum clearly indicating the nature of the interest of the director in such contract, or in such variation, to every member ; and the contract shall be open to the inspection of any member at the registered office of the company.

(2) If a company makes default in complying with the requirements of sub-section (1), it shall be liable to a fine not exceeding one thousand rupees ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.]

[3][**91D. Contracts by agents of company in which company is undisclosed principal.**—(1) Every manager or other agent of a company other than a private company, [5][not being the subsidiary company 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 has been made.

(2) Every such manager or other agent shall forthwith deliver the memorandum aforesaid to the company [5][and send copies to the directors], and such memorandum shall be filed in the office of the company and laid before the directors at the next directors' meeting.

(3) If any such manager or other agent makes default in complying with the requirements of this section—

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

(b) such manager or other agent shall be liable to a fine not exceeding two hundred rupees]

Prospectus

92. Filing of prospectus.—(1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such 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, shall be filed for registration with the registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

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1 This sub-section was added by s 2 of the Indian Companies (Amendment) Act, 1920 (XLII of 1920.)

2 This proviso was added by s 47 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

3 This section was inserted by s. 3 of the Indian Companies (Amendment) Act, 1914 (XI of 1914.)

4 These words were inserted by s. 48 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

5 These words were inserted by s. 49, *ibid.*

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding fifty rupees for every day from the date of the issue of the prospectus until a copy thereof is so filed.

93. Specific requirements as to particulars of prospectus.—(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state—

(a) the contents of the memorandum, with the names descriptions and addresses of the signatories and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company [1][and the number of redeemable preference shares intended to be issued with the date or, where no date is fixed, the period of notice required and the proposed method of redemption]; and

(b) the number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and

(c) the names, descriptions and addresses of the directors or proposed directors and of the managers or proposed managers [1][and managing agents or proposed managing agents] (if any) [1][and any provision in the articles or in any contract as to the appointment of managers or managing agents and the remuneration payable to them]; and

(d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount (if any) paid on the shares so allotted; and

(e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or agreed to be issued; and

[2][(ee) where any issue of shares or debentures is underwritten, the names of the underwriters, and the opinion of the directors that the resources of the underwriters are sufficient to discharge the underwriting obligations; and]

(f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount 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 payable to each vendor: Provided that where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors; and

[2][(ff) where any property referred to in clause (f) has within the two years preceding the issue of the prospectus been transferred by sale, the amount paid by the purchaser at each such transfer so far as the information is available and, where any such property is a business, the profits accruing from such business

1 These words were inserted by s. 50 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 This clause was added, *ibid.*

during each of the three years immediately preceding the issue of the prospectus or during each year of the existence of the business if less than three years so far as the information is available. A balance sheet of the business concerned made up to a date not more than ninety days before the date of the issue of the prospectus shall be appended to the prospectus ; and]

(g) the amount (if any) paid or payable as purchase-money in cash, shares or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill ; and

(h) the amount (if any) paid within the two preceding years or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, [1][or as discount in respect of shares issued, showing separately the amount, if any, so paid to the managing agents] : Provided that it shall not be necessary to state the commission payable to sub-underwriters ; and

(i) the amount or estimated amount of preliminary expenses ; and

(k) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment ; and

(l) the dates of, and parties to, every material contract [2][including contracts relating to the acquisition of property to which clause (f) applies], and a reasonable time and place at which any material contract or a copy thereof may be inspected : Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract [3][(except a contract appointing or fixing the remuneration of a managing director or managing agent)] entered into more than two years before the date of issue of the prospectus ; and

(m) the names and addresses of the auditors (if any) of the company ; and

(n) full particulars of the nature and extent of the interest (if any) of every director 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 ; and

(o) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by, [4][and the rights in respect of capital and dividends attached to], the several classes of shares respectively ; [5][and]

[6][(p) where the articles of the company impose any restrictions upon the members of the company in respect of the right to attend, speak or vote at meetings of the company or of the right to transfer shares, or upon the directors of the company in respect of their powers of management, the nature and extent of those restrictions ;] [5][and]

[6][(q) where any part of the sums required for the matters set out in sub-section (2) of section 101 is to be provided out of sources other than share capital particulars of the amount to be so provided and the sources thereof.]

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1 These words were substituted for the words "or the rate of any such commission" by s. 50 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

2 These words were inserted, *ibid.*

3 This word was added, *ibid.*

4 This clause was inserted, *ibid.*

5 This word was inserted by s. 2 and Sch. 1 of the Repealing and Amending Act, 1937 (XX of 1937).

6 This clause was inserted, *ibid.*

[1][(1A) Where the prospectus is issued by a company which has been carrying on business prior to the issue thereof, the prospectus shall set out the following reports in addition to the matters referred to in sub-section (1), namely :—

(i) a report by the auditors of the company with respect to the profits of the company including its subsidiary companies, if any, so far as the information is available in each of the three financial years immediately preceding the issue of the prospectus and with respect to the rates of the dividends, if any, paid by the company on each class of shares in the company for each of the said three years giving particulars of each such class of shares on which such dividends have been paid and the source from which the dividends have been paid and particulars of the cases in which no dividends have been paid on any class of shares for any of those years, and if no accounts have been made up for any part of a period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact ;

(ii) 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 in the purchase of any business, a report made by an accountant or accountants holding the certificate referred to in section 144 who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus ·

Provided that if, in the case of a company which has been carrying on business for less than three years, the accounts of the company have been made up only in respect of two years or any shorter period, this sub-section shall have effect as if references to two years or such shorter period were substituted for references to three years.]

[1][(1B) The statement referred to in clause (ff) of subsection (1) and the report referred to in sub-section (1A) with respect to the profits of a company or business shall show clearly the trading results and all charges and expenses incidental thereto excluding income or profits having no relation to the trading for the period covered and excluding also items of profit or income of a non-recurring nature but including amounts appropriated from profits to such purposes as payment of taxation or reserves.]

[2] • • • • • • •

(2) Where any such prospectus as is mentioned in this section 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, and the number of shares subscribed for by them.

(3) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons.

(4) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and of managers or proposed managers, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business,

[3][Provided that the said requirements, except the requirement as to the amount or estimated amount of preliminary expenses, shall apply to a prospectus filed in pursuance of section 154.]

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1 This sub-section was inserted by s. 50 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 Sub-section (1C) was omitted by s. 3 and Sch. II of the Repealing and Amending Act, 1937 (XX of 1937).

3 This proviso was added by s. 50 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

(5) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

94. Meaning of "vendor" in section 93.—For the purposes of section 93 every person shall 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 issue of the prospectus ; or

(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 ; or

(c) the contract depends for its validity or fulfilment on the result of that issue.

95. Application of section 93 to the case of property taken on lease.—Where any of the property to be acquired by the company is to be taken on lease, section 93 shall apply as if the expression "vendor" included the lessor, and the expression "purchase-money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

96. Invalidity of certain conditions as to waiver or notice.—[1][(1)] Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirements of section 93, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void

[1][(2) It shall not be lawful to issue any form of application for the shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of section 93 ;

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

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

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

If any person acts in contravention of the provisions of this sub-section, he shall be liable to a fine not exceeding five hundred rupees.]

97. Saving in certain cases of non-compliance with section 93.—

[2][(1) If a prospectus is issued which does not comply with the provisions of section 93, every person who is knowingly responsible for the issue of such prospectus shall be liable to a fine not exceeding fifty rupees for every day from the day of the issue of the prospectus until a copy complying with the requirements of section 93 is filed.]

[2][(2)] In the event of non-compliance with [3][or contravention of] any of the requirements of section 93, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance [3][or contravention] if he proves that—

(a) as regards any matter not disclosed, he was not cognisant thereof ; or

(b) the non-compliance [3][or contravention] arose from an honest mistake of fact on his part ; [4][or]

[4][(c) the non-compliance or contravention was in respect of matters which in the opinion of the Court were immaterial, or was otherwise such as ought in the

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1 Section 96 was renumbered as sub-section (1) of that section and sub-section (2) was added by s. 51 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 The original section 97 was re-numbered as sub-section (2) of that section and sub-section (1) was inserted by s. 52, *ibid.*

3 These words were inserted, *ibid.*

4 The word "or" and clause (c) were inserted, *ibid.*

opinion of the Court having regard to all the circumstances of the case reasonably to be excused :]

Provided that, in the event of non-compliance with [1][or contravention of] the requirements contained in clause (n) of sub-section (1) of section 93, no such director or other person shall incur any liability in respect of the non-compliance [1][or contravention] unless it be proved that he had knowledge of the matters not disclosed.

98. Obligations of companies where no prospectus is issued.—(1) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars [2][set out in the form marked I in the Second Schedule].

(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act or, in so far as it relates to the allotment of shares to a company limited by guarantee and not having a share capital.

[3][**98A. Document offering shares or debentures for sale to be deemed a 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 to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of misstatements contained in the document or otherwise in respect thereof.

(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 of the consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 97 shall apply to the person or persons making the offer as though they were persons named in a prospectus as directors of a company, and the provisions of section 93 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) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by all directors of the company or not less than half of the

1 These words were inserted by s. 52 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 These words were substituted for the words "set out in the Second Schedule" by s. 53, *ibid.*

3 This section was inserted by s. 54, *ibid.*

partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.]

99. Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.—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 the company in general meeting.

100. Liability for statements in prospectus.—(1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of himself and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for all loss or damage they may have sustained by reason of any misleading or untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(a) with respect to every misleading or untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that 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 fairly represented the facts or was true ;

(b) with respect to every misleading or untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation Provided that the director, person named as director, promoter or person who authorised the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it ; and

(c) with respect to every misleading or 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, that it was a correct and fair representation of the statement or copy of or extract from the document :

or unless it is proved—

(i) 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 ; or

(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent ; or

(iii) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any misleading or untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Where a company existing at the commencement of this Act has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein unless he has authorised the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains 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, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to

indemnify the person named as aforesaid 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 in defending himself against any suit or legal proceedings brought against him in respect thereof.

(4) Every person who, by reason of his being a director or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under 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 person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section ;—

(a) the expression "promoter" means a promoter who was a party to the preparation of the prospectus, or the portion thereof containing the misleading or 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;

(b) the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

Allotment

101. Restriction as to allotment.—[1][(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 directors must be raised by the issue of share capital in order to provide the sums or, if any part thereof is to be defrayed in any other manner, the balance of the sum required to be provided in respect of the matters specified in sub-section (2) has been subscribed, and the sum of at least five per cent. thereof has been paid to or received in cash by the company]

[1][(2) The matters for which provision for the raising of a minimum amount of share capital must be made by the directors are the following, namely :—

(a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue ;

(b) any preliminary expenses payable by the company and any commision so payable to any person in consideration of his agreeing to subscribe for or of his procuring or agreeing to procure subscriptions for any shares in the company :

(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters, and

(d) working capital.]

[1][(2A) The amount referred to in sub-section (1) as the amount stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription.]

[1][(2B) All moneys received from applicants for shares shall be deposited and kept in a scheduled bank as defined in the Reserve Bank of India Act, 1934, (II of 1934), until returned in accordance with the provissions of sub-section (4) or until the certificate to commence business is obtained under section 103.]

[1][(2C) In the event of any contravention of the previsions of sub-section (2B) every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding five hundred rupees.]

(3) The amount payable on application on each share shall not be less than five per cent, of the nominal amount of the share.

1 This sub-section was substituted by section 55 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

(4) If the conditions aforesaid have not been complied with on the expiration of one hundred and [1][eighty] days after the first issue of the prospectus, all money 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 [2][ninety] 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 seven per cent. per annum from the expiration of the one hundred and [3][ninetieth] day : Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say)—

(a) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment , or.

(b) if no amount is so fixed and named, the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash ;

has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

(8) Sub-section (7) shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act.

102. Effect of irregular allotment.—(1) An allotment made by a company to an applicant in contravention of the provisions of [4][section 98 or section 101] shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later [5][or 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 one month after the date of the allotment and not later], and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of [4][section 98 or section 101] 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.

103. Restrictions on commencement of business.—(1) A 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 ; and

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1 This word was substituted for the word "twenty", by s. 55 of the Indian Companies (Amendment) Act. 1936 (XXII of 1936.)

2 This word was substituted for the word "thirty", *ibid.*

3 This word was substituted for the word ,'thirtieth", *ibid.*

4 These words and figures were substituted for the word and figure 'section 101" by s. 7 of the Indian Companies (Amendment) Act, 1938 (II of 1938.)

5 These words were inserted by s 56 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

(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 or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash : and

(c) there has been filed with the registrar a duly verified declaration by the secretary or one of the directors in the prescribed form, that the aforesaid conditions have been complied with ; and

(d) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar a statement in lieu of prospectus,

(2) The registrar shall, on the filing of a duly verified declaration, in accordance with the provisions of this section certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled :

Provided that in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) 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

(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(5) 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 liable to a fine not exceeding five hundred rupees for every day during which the contravention continues,

(6) Nothing in this section shall apply to a private company or to a company registered before the commencement of this Act which does not issue a prospectus inviting the public to subscribe for its shares or, in so far as its provisions relate to shares, to a company limited by guarantee and not having a share capital.

104. Return as to allotments.—(1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within one month thereafter —

(a) file with the registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allotees, and the amount (if any) paid or due and payable on each share ; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash produce for the inspection and examination of the registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or 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.

(2) Where such a contract as above mentioned is not reduced to writing, the company shall, within one month after the allotment, file with the registrar the prescribed particulars of the contract stamped with the same stamp-duty as would have been payable if the contract had been reduced to writing, and

these particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899 (II of 1899), and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

[1][(2A) If the registrar is satisfied that in the circumstances of any particular case the period of one month specified in sub-sections (1) and (2) for compliance with the requirements of this section is inadequate, he may extend that period as he thinks fit, and, if he does so, the provisions of sub-sections (1) and (2) shall have effect in that particular case as if for the said period of one month the extended period allowed by the registrar were substituted.]

(3) If default is made in complying with the requirements of this section, every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues:

Provided that, in case of default in filing with the registrar [2][within the time specified in sub-sections (1) and (2)] any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such a period as the Court may think proper.

[3][(4) Nothing in this section shall apply to the issue and allotment by a company of shares which under the provisions of its articles were forfeited for non-payment of calls.]

Commissions and Discounts.

105. Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.—(1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorised by the articles and the commission paid or agreed to be paid does not exceed the amount or rate so authorised and if the amount or rate per cent. of the commission paid or agreed to be paid is—

(a) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(b) in the case of shares not offered to the public for subscription disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar and, where a circular or notice, not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice.

(2) Save as aforesaid [4][and save as provided in section 105A,] no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so 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.

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1 This sub-section was inserted by s. 2 of the Indian Companies (Amendment) Act, 1941 (XXVI of 1941).

2 These words, brackets and figures were substituted for the words "within one month after the allotment". *ibid.*

3 This sub-section was added by s. 57 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

4 These words were inserted by s. 58, *ibid.*

(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, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

[1][**105A. Power to issue shares at a discount.**—(1) Subject to the provisions of this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued :

Provided that—

(a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company and must be sanctioned by the Court ;

(b) the resolution must specify the maximum rate of discount (not exceeding ten per cent. in any case) at which shares are to be issued ;

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

(d) the shares to be issued at a discount must be issued within six months after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Every prospectus relating to the issue of the shares and every balance-sheet issued by the company subsequently to the issue of the shares must 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 document in question.

(3) If default is made in complying with sub-section (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty rupees.]

[1][**105B. Issue of 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 redemtion or out of sale proceeds of any property of the company ;

(b) no such shares shall be redeemed unless they are fully paid ;

(c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the amount applied in redeeming the shares, and the provisions of this Act relating to the reduction of the shares capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company ;

(d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable, on redemption must have been provided for out of the profits of the company before the shares are redeemed,

(2) There shall be included in every balance-sheet of a company which has issued redeemable preference shares a statement specifying what part of the

1 This section was inserted by s. 59 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

issued capital of the company consists of such shares and the date on or before which those shares are, or are to be, liable to be redeemed or, where no definite date is fixed for redemption, the period of notice to be given for redemption.

If a company fails to comply with the provisions of this sub-section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand rupees.

(3) 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,

(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 249 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) Where new shares have been issued in pursuance of the last foregoing sub-section, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.]

[1][**105C. Further issue of capital.**—Where the directors decide to increase the capital of the company by the issue of further shares such shares shall be offered to the members in proportion to the existing shares held by each member (irrespective of class) and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined ; and after the expiration of such time, or on receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company]

106. Statement in balance-sheet as to commissions and discounts.—Where a company has paid any sums by way of commission in respect of any shares of debentures or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed or so much thereof as has not been written off, shall be stated in every balance-sheet of the company until the whole amount thereof has been written off.

Payment of Interest out of Capital

107. Power of company to pay interest out of capital in certain cases.—Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may 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 in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant ;

Provided that—

(1) no such payment shall be made unless the same is authorised by the articles or by special resolution ;

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1 **This section was inserted by s. 59 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)**

(2) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the [1][Central Government] which 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 ;

(3) before sanctioning any such payment, the [1][Central Government] may, at the expense of the company, appoint a person to inquire and report to [2][the Central Government] as to 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 ;

(4) the payment shall be made only for such period as may be determined by the [1][Central Government] ; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided ;

(5) the rate of interest shall in no case exceed four per cent. per annum or such lower rate as the [3][Central Government] may, by notification in the [4][official Gazette], prescribe ;

(6) 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 ;

(7) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the amounts relate ;

(8) nothing in this section shall affect any company to which the Indian Railway Companies Act, 1895 (X of 1895), or the Indian Tramway Act, 1902 (IV of 1902), applies.

Certificates of Shares, etc.

108. Limitation of time for issue of certificates.—(1) Every company shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within three months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

Information as to Mortgages, Charges, etc.

109. Certain mortgages and charges to be void if not registered.—[5][(1)] Every mortgage or charge created after the commencement of this Act by a company and being either—

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

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

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

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

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1 These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order 1937.

2 These words were substituted for the words "such Central Government" by s. 2 and Sch. I of the Repealing and Amending Act, 1939 (XXXIV of 1939.)

3 These words were substituted for the words "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937

4 These words were substituted for the words "Gazette of India", *ibid.*

5 Section 109 was re-numbered as sub-section (1) of that section by s. 60 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

[1][(e) a mortgage or a charge, not being a pledge on any moveable property of the company except stock-in-trade ; or]

[1][(f)] a floating charge on the undertaking or property of the company ; shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner are filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge become void under this section, the money secured thereby shall immediately become payable :

Provided that—

(i) in the case of a mortgage or charge created out of British India, comprising solely property situate outside British India, twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be filed with the registrar ; and

(ii) where the mortgage or charge is created in British India but comprises property outside British India, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate ; and

(iii) 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 mortgage or charge on those book debts ; and

(iv) the holding of debentures entitling the holder to a charge on immoveable property shall not be deemed to be an interest in immoveable property.

[2][(2) Where any mortgage or charge on any property of a company required to be registered under this section 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 said mortgage or charge as from the date of such registration]

[3][In this section 'British India' does not include Burma or Aden, whatever the date of the mortgage or charge in question]

[4][**109A Registration of charges on properties acquired subject to charge.**—(1) Where after the [5]commencement of the Indian Companies (Amendment) Act 1936 (XXII of 1936), a company registered in British India 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 manner required

1 This clause was inserted and the original clause (e) was re-lettered (f) by s. 60 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

2 This sub-section was added, *ibid.*

3 These words were inserted by the Government of India (Adaptation of Indian Laws) Order, 1937.

4 This section was inserted by s 61 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

5 The Act came into force on the 15th January, 1937.

by this Act within twenty-one days after the date on which the acquisition is completed ;

Provided that, if the property is situate and the charge was created outside British India, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

(3) If default is made in complying with this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine of five hundred rupees.]

110. 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 be sufficient for the purposes of section 109 if there are filed with the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

(a) the total amount secured by the whole series, and

(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 ; and

(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 or a copy thereof verified in the prescribed manner containing the charge, or if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register.

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.

111. Particulars in case of commissions, etc., on debentures.—Where any commission, allowance or discount has been paid or made either directly or indirectly by the 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 109 and 110 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 provision be treated as the issue of the debentures at a discount.

112. Register of mortgages and charges.—(1) The registrar shall keep, with respect to each company, a register in the prescribed form of all mortgages and charges created by the company after the commencement of this Act and requiring registration under section 109, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(2) After making the entry required by sub-section (1), the registrar shall return the instrument (if any) or the verified copy thereof, as the case may be, filed in accordance with the provisions of section 109 or section 110 to the person filing the same.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one rupee for each inspection.

113. Index to register of mortgages and charges.—The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

114. Certificate of registration.—The register shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of section 109, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of sections 109 to 112 to registration have been complied with.

115. Endorsement of certificate of registration on debenture or certificate of debenture stock.—The company shall cause a copy of every certificate of registration, given under section 114, 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 mortgage or charge so registered :

Provided that nothing in this section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

116. Duty of company and right of interested party as regards registration.—(1) It shall be the duty of the company to file with the registrar for registration the prescribed particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under section 109, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

(2) Where the 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.

[1][(3) Whenever the terms or conditions or extent or operation of any mortgage or charge registered under this section are modified, it shall be the duty of the company to send to the registrar the particulars of such modification, and the provisions of this section as to registration of mortgage or a charge shall apply to such modification of the mortgage or charge as aforesaid]

117. Copy of instrument creating mortgage or charge to be kept at registered office.—Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under section 109 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 such debenture shall be sufficient.

118. Registration of appointment of receiver.—(1) If any person obtains an order for the appointment of a receiver of the property of a company, or appoints such a receiver under any powers contained in any instrument, he shall, within fifteen days from the date of the order or of the appointment under the powers contained in the instrument, file notice of the fact with the registrar, and the registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

119. Filing of accounts of receivers.—(1) Every receiver of the property of a company who has been appointed under the powers contained in any instru-

1 This sub-section was added by s. 62 of the Indian Companies (Amendment) Act 1936 (XXII of 1936.)

ment 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, and shall, also, on ceasing to act as receiver file with the registrar notice to that effect, and the registrar, shall enter the notice in the register of mortgages and charges.

[1][(2) Where a receiver of the property of a company has been appointed, every invoice, order of 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.]

[1][(3) If default is made in complying with the requirements of this section, the company and every director, manager, managing agent, secretary or other officer of the company and every receiver who knowingly and wilfully authorises or permits the default, shall be liable to a fine not exceeding two hundred rupees.]

120. Rectification of register of mortgages.—[2][(1)] The Court, on being satisfied that the omission to register a mortgage or charge within the time required by section 109, or that the omission or mis-statement of any particular with respect to any such mortgage or charge [3][, or the omission to give intimation to the registrar of the payment or satisfaction of a debt for which a charge or mortgage was created] was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or share-holders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or mis-statement be rectified, and may make such order as to the costs of the application as it thinks fit.

[4][(2) Where the Court extends the time for the registration of a mortgage or charge, the order shall not prejudice any rights acquired in respect of the property concerned prior to the time when the mortgage or charge is actually registered.]

[5][**121. Registration of satisfaction of mortgages and charges.**—(1) It shall be the duty of the company to give intimation to the registrar of the payment or satisfaction of any charge or mortgage created by the company and requiring registration under section 109 within twenty-one days from the date of the payment or satisfaction thereof.

(2) The registrar shall on receipt of such intimation cause a notice to be sent to the mortgagee calling upon him to show cause, within a time (not exceeding fourteen days) to be fixed by such notice, why the payment or satisfaction of the charge or mortgage should not be recorded.

(3) The register shall, if no cause is shown, order that a memorandum of satisfaction be entered on the register and, shall if required furnish the company with a copy thereof.

(4) Where 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.]

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1 This sub-section was substituted for the original sub-section (2) by s. 63 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936)

2 Section 120 was re-numbered as sub-section (1) of that section by s. 64, *ibid.*

3 These words were inserted, *ibid.*

4 Sub-section (2) was added by s. 64 *ibid.*

5 This section was substituted by s. 65, *ibid.*

122. Penalties.—(1) If any company makes default in filing with the registrar for registration the particulars—

(a) of any mortgage or charge created by the company; or

[1][(b) of the payment or satisfaction of a debt in respect of which a mortgage or charge has been registered under section 109 or section 109A; or]

[1][(c)] of the issues of debentures of a series,

requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every officer of the company or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company, and every officer of the company, who knowingly and wilfully authorises or permits the default shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

123. Company's register of mortgages.—(1) Every [2]* company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company [3][and all floating charges on the undertaking or on any property of the company], giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding five hundred rupees.

124. Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.—(1) The copies kept at the registered office of the company in pursuance of section 117 of instruments creating any mortgage or charge requiring registration under this Act with the registrar, and the register of mortgages kept in pursuance of section 123, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one rupee for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, the company shall be liable to a fine not exceeding fifty rupees and a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and in addition to the above penalty, the Court may by order compel an immediate inspection of the copies or register.

125. Right to inspect the register of debenture-holders and to have copies of trust-deed.—(1) Every register of holders of debentures of a company

1 Clause (*b*) was inserted and the original clause (*b*) re-lettered (*c*) by s. 66 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936)

2 The word "limited" was omitted by s. 67, *ibid*.

3 These words were inserted. *ibid*,

shall except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of six annas for every one hundred words or fractional part thereof required to be copied,

(2) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust-deed of the sum of one rupee or such less sum as may be prescribed by the company, or, where the trust-deed has not been printed, on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incur the like penalty, and the Court may by order compel an immediate inspection of the register.

Debentures and Floating Charges

126. Perpetual debentures.—A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing 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.

127. 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, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, 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, and 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 not previously been issued.

(2) 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.

(3) 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.

(4) 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.

(5) 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, and any appeal from any such decree or order shall be decided as if this Act had not been passed ; or

(b) 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.

128. 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.

129. Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.—(1) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or 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 V 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) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) 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.

Statements, Books and Accounts.

[1][**130. Books to be kept by company and penalty for not keeping proper books.**—(1) Every company shall cause to be kept 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 takes place ;

(b) all sales and purchases of goods by the company ;

(c) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall be open to inspection by the directors during business hours.

[2][(3) Where a company has a branch office, the company shall be deemed to have complied with the provisions of sub-section (1) and sub-section (2) if proper books of account relating to the transactions effected at the branch office are kept at the branch office and proper summarised returns, made up to dates at intervals of not more than two months, are sent by the branch office to the registered office of the company or other place referred to in sub-section (2)]

[2][(4)] In the case of a company managed by a managing agent the managing agent, or where the managing agent is a firm or company, the partner or director

1 This section was substituted by s. 68 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

2 This sub-section was inserted and original sub-section (3) was renumbered (4) by s. 8 of the Indian Companies (Amendment) Act, 1938 (II of 1938.)

of such firm or company and in any other case the director or directors who have knowingly by their act or omission been the cause of any default by the company in complying with the requirements of this section, shall in respect of such offence be liable to a fine not exceeding one thousand rupees.]

131. Annual balance sheet.—[1][(1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a balance-sheet and profit and loss account or in the case of a company not trading for profit an income and expenditure account for the period, in the case of the first account since the incorporation of the company and in any other case since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months or in the case of a company carrying on business or having interests outside British India by more than twelve months :

Provided that the registrar may for any special reason extend the period by a period not exceeding three months.]

(2) The balance-sheet [2][and the profit and loss account or income and expenditure account] shall be audited by the auditor of the company as hereinafter provided, and the auditor's report shall be attached thereto or there shall be inserted at the foot thereof a reference to the report, and the report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(3) Every company other than a private company shall send a copy of [3][such balance-sheet and profit and loss account or income and expenditure account so audited together with a copy of the auditors' report] to the registered address of every member of the company at least [4][fourteen days] before the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of the members of the company during a period of at least [4][fourteen days] before that meeting.

[5] * * * * * * *

[6][**131A. Directors' Report.**—(1) The directors shall make out and attach to every balance-sheet a report with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to the Reserve Fund, General Reserve or Reserve Account shown specifically on the balance-sheet or to a Reserve Fund, General Reserve or Reserve Account to be shown specifically in a subsequent balance-sheet.

(2) The report referred to in sub-section (1) may be signed by the chairman of the directors on behalf of the directors if authorised in that behalf by the directors.

(3) The provisions of [7][sub-section (4)] of section 130 shall apply to any person being a director who is knowingly and wilfully guilty of a default in complying with this section.]

132. Contents of balance-sheet.—(1) The balance-sheet shall contain a summary of the property and assets and of the capital and liabilities of the

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1 This sub-section was substituted by s. 69 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

2 These words were inserted, *ibid*,

3 These words were substituted for the words "such balance-sheet so audited", *ibid*

4 These words were substituted for the words "seven days", *ibid.*

5 Sub-section (4) of section 131 was omitted, *ibid.*

6 This section was inserted by s. 70, *ibid.*

7 These words, brackets and figure were substituted for the word, brackets and figures "sub-section (3)" by s. 3 and Sch. II of the Repealing and amending Act, 1945 (VI of 1945).

company [1][in accordance with the requirements indicated by the items contained in the form marked F in the Third Schedule] giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at.

(2) The balance-sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit.

[2][(3) The profit and loss account shall include particulars showing the total of the amount paid whether as fees, percentages or otherwise to the managing agent, if any, and the directors respectively as remuneration for their services and, where a special resolution passed by the members of the company so requires, to the manager, and the total of the amount written off for depreciation. If any director of the company is by virtue of the nomination, whether direct or indirect of the company, a director of any other company, any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connection with the management of, that other company, shall be shown in a note at the foot of the account or in a statement attached thereto.]

[3][**132A. Balance-sheet to include particulars as to subsidiary companies.**—(1) Where a company, in this Act referred to as the holding company, holds shares, either directly or through a nominee, in a subsidiary company or in two or more subsidiary companies there shall be annexed to the balance-sheet of the holding company the last audited balance-sheet, profit and loss account and auditors report of the subsidiary company or companies, and a statement signed by the persons by whom, in pursuance of section 133, the balance-sheet of the holding company is signed stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have been dealt with in or for the purposes of the accounts of the holding company, and in particular how and to with extent—

(a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company or of both, and

(b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the company as disclosed in its accounts :

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company or the actual amount of any part or any such profits or losses which has been dealt with in any particular manner :

Provided further that for the purposes of this section an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities, shall not be deemed to be a holding company by reason only that part of its assets consists in 51 per cent. or more of the shares of another company.

(2) If, in the case of a subsidiary company, the auditors' report on the balance-sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance-sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement, which is to be annexed as aforesaid to the balance-sheet of the holding company, shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company

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1 These words were inserted and were deemed always to have been inserted by s. 2 of the Indian Companies (Amendment) Act, 1943 (XXX of 1943).

2 This sub-section was added by s. 71 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

3 This section was inserted by s. 72, *ibid.*

made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the account of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance-sheet shall so report in writing and their report shall be annexed to the balance-sheet in lieu of the statement.

(5) The holding company may by a resolution authorise representatives named in the resolution to inspect the books of account kept in accordance with section 130 by any subsidiary company, and on such resolution being passed those books of account shall be open to inspection by those representatives at any time during business hours.

(6) The rights conferred by section 138 upon members of a company may be exercised in respect of any subsidiary company by members of the holding company as if they were members of that subsidiary company.]

133. Authentication of balance-sheet—(1) Save as provided by sub-section 2) the balance-sheet [1][and profit and loss account or income and expenditure account] shall—

(i) in the case of a banking company, be signed by the manager [1][or managing agent] (if any) and, where there are more than three directors of the company, by at least three of those directors and, where there are not more than three directors, by all the directors ;

(ii) in the case of any other company, be signed by two directors or, when there are less than two directors, by the sole director and by the manager [1][or managing agent] (if any) of the company.

(2) When the total number of directors of the company for the time being in British India is less than the number of directors whose signatures are required by sub-section (1), then the balance-sheet [1][and profit and loss account or income and expenditure account] shall be signed by all the directors for the time being in British India, or, if there is only one director for the time being in British India, by such director, but in such a case there shall be subjoined to the balance-sheet [1][and profit and loss account or income and expenditure account] a statement signed by such directors or director explaining the reason for non-compliance with the provisions of sub-section (1).

[2][(3) If any default is made in laying before the company or in issuing a balance-sheet and profit and loss account or income and expenditure account as required by section 131 or if any balance-sheet and profit and loss account or income and expenditure account is issued, circulated or published which does not comply with the requirements laid down by and under section 131, section 132 section 132A and this section, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to five hundred rupees.]

134. Copy of balance-sheet to be forwarded to the registrar.—(1) [3][After the balance-sheet and profit and loss account [4][or the income and expenditure account as the case may be] have] been laid before the company at the general meeting [4] [5][three copies thereof] signed by the manager or secretary of the com-

1 These words were inserted by s. 73 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 This sub-section was substituted. *ibid.*

3 These words were substituted for the words "After the balance-sheet has" by s. 74 *ibid.*

4 These words were inserted by s. 9 of the Indian Companies (Amendment) Act, 1938 (II of 1938).

5 These words were substituted for the words "a copy of the balance-sheet", *ibid.*

pany shall be filed with the registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the requirements of section 32.

(2) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet, a statement of that fact and of the reasons therefor shall be annexed to the balance-sheet and to the [1][copies] thereof required to be filed with the registrar.

(3) This section shall not apply to a private company.

(4) If a company makes default in complying with the requirements of this section, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty as is provided by section 32 for a default in complying with the provisions of that section.

135. Right of member of company to copies of the balance-sheet and the auditor's report.—Save as otherwise provided in this Act, any member of a company shall be entitled to be furnished with copies of the balance-sheet [2][and the profit and loss account or the income and expenditure account] and the auditor's report at a charge not exceeding six annas for every hundred words or fractional part thereof.

Statement to be published by Banking and certain other Companies.

136. Certain companies to publish statement in schedule.—(1) Every company being a limited banking company or 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 marked G in the Third Schedule, or as near thereto as circumstances will admit

(2) A copy of the statement [3][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, 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 to a copy of the statement on payment of a sum not exceeding eight annas.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(5) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the [4]Indian Life Insurance Companies Act, 1912 (VI of 1912), or of the [4]Provident Insurance Societies Act, 1912 (V of 1912), as the case may be, 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.

Investigation by the Registrar

137. Power of registrar to call for information or explanation.—

(1) Where the registrar, on perusal of any document which a company is required to submit to him under the provisions of this Act, is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in his order.

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1 This word was substituted for the word "copy" by s. 9 of the Indian Companies (Amendment) Act 1938 (II of 1938).

2 These words were inserted by s. 75 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

3 These words were inserted by s. 76, *ibid.*

4 This Act has been repealed by the Insurance Act, 1938 (IV of 1938), s. 106, cf. also s. 102 B of that Act.

(2) On the receipt of an order under sub-section (1), it shall be the duty of all persons who are or have been officers of the company to furnish such information or explanation to the best of their power.

(3) If any such person refuses or neglects to furnish any such information or explanation, he shall be liable to a fine not exceeding fifty rupees in respect of each offence [1][, and the Court may on the application of the registrar and upon notice to the company make an order on the company for production of such documents as in its opinion may reasonably be required by the registrar for his investigation and allow the registrar inspection thereof on such terms and conditions as it thinks fit.]

(4) On receipt of such information or explanation the registrar may annex the same to the original document submitted to him ; and any additional document so annexed by the registrar shall be subject to the like provisions as to inspection and the taking of copies as the original document is subject

(5) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the registrar shall report in writing the circumstances of the case to the [2][Central Government].

[3][(6) If it is represented to the registrar in materials placed before him by any contributory or creditor that the business of a company is carried on in fraud of its creditors or in fraud of persons dealing with the company or for a fraudulent purpose, he may after giving the company an opportunity of being heard by written order call on the company for information or explanation on matters specified in the order within such time as he may specify in the order and the provisions of sub-sections (2), (3) and (5) of this section shall apply to such order. If upon investigation the registrar is satisfied that any representation on which he has taken action under this sub-section is frivolous or vexatious, he shall disclose the identity of the informant to the company.

(7) The provisions of this section shall apply *mutatis mutandis* to documents which a liquidator is required to file under this Act.]

Inspection and Audit

138. Investigation of affairs of company by inspectors.—The [2][Central Government] may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the [2][Central Government] may direct—

(i) in the case of a banking company having a share capital, on the application of members holding not less than one-fifth of the shares issued ;

(ii) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued ;

(iii) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members ;

(iv) in the case of any company, on a report by the registrar under section 137, sub-section (5).

139. Application for inspection to be supported by evidence.—An application by members of a company under section 138 shall be supported by such evidence as the [2][Central Government] may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in,

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1 These words were added by s. 77, of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

3 These sub-sections were added by s. 77 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

requiring the investigation ; and the [1][Central Government] may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

140. Inspection of books and examination of officers.—(1) It shall be the duty of all persons who are or have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company.

(2) An inspector may examine on oath any such person in relation to its business, and may administer an oath accordingly.

(3) If any person refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding fifty rupees in respect of each offence.

141. Results of examination how dealt with.—(1) On the conclusion of the investigation, the inspectors shall report their opinion to the [1][Central Government], and a copy of the report shall be forwarded by the [1][Central Government] [2][to the registrar and another copy] to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

(2) The report shall be written or printed, as the [1][Central Government] directs.

(3) All expenses of, and incidental to, the investigation shall be defrayed by the applicants unless the [1][Central Government] directs the same to be paid by the company, which the [1][Central Government] is hereby authorised to do.

[3][Provided that the expenses of and incidental to an investigation held in pursuance of clause (iv) of section 138 shall be paid out of the assets of the company and shall be recoverable as an arrear of land-revenue]

[4][(4) The registrar shall keep the copy of the report sent to him with the records of the company in his custody.]

[5][**141A. Institution of prosecutions.**—(1) If from any report made under section 138 it appears to the [1][Central Government] that any person has been guilty of any offence in relation to the company for which he is criminally liable, the [1][Central Government] shall refer the matter to the Advocate General or the Public Prosecutor.

(2) If the officer to whom the matter is referred considers that the case is one in which a prosecution ought to be instituted, he shall cause proceedings to be instituted, and it shall be the duty of all officers and agents of the company, past and present (other than the accused in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give

(3) For the purposes of sub-section (2), the expression "agents" in relation to a company shall be deemed to include the bankers and legal advisers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(4) Any director, manager, or other officer of the company convicted as the result of a prosecution initiated under this section shall not without the leave of the Court be a director of or in any way whether directly or indirectly be concerned in or take part in the management of a company for a period of five years from the date of such conviction.]

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1 These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 These words were inserted by s. 78 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

3 This proviso was added, *ibid.*

4 This sub-section was added, *ibid.*

5 This section was inserted by s. 79, *ibid.*

142. Power of company to appoint inspectors.—(1) A company may by a special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the [1][Central Government], except that, instead of reporting to the [1][Central Government], they shall report in such manner and to such persons as the company in general meeting may direct.

(3) All persons who are or have been officers of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the [1][Central Government].

143. Report of inspectors to be evidence.—A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

144. Qualifications and appointment of auditors.—(1) No person shall be appointed or act as an auditor of any company other than a private company [2][not being the subsidiary company of a public company] unless he holds a certificate from the [3][Central Government] entitling him to act as an auditor of companies :

[4][Provided that a firm [5][whereof all the partners practising in India] hold such certificates may be appointed by its firm-name to be auditor of a company, and may act in its firm-name.]

[6][(2) The [3][Central Government] may, by notification in the [7][official Gazette] and after previous publication, make rules providing for the grant, renewal or cancellation of such certificates and prescribing conditions and restrictions for such grant, renewal or cancellation :

Provided that nothing contained in such rules shall preclude any person from being granted a certificate merely by reason that he does not practise as a public accountant.

(2A) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) provide for the maintenance of a Register of Accountants entitled to apply for such certificates ;

(b) prescribe the qualifications for enrolment on the Register and the fees therefor ;

(c) provide for the examination of candidates for enrolment, and prescribe the fees to be paid by examinees ;

(d) prescribe the circumstances in which the name of any person may be removed from or restored to the Register ;

(e) provide for the establishment, constitution and procedure of an Indian Accountancy Board, consisting of persons representing the interests principally

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1 These words were substituted for the words 'Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 These words were inserted by s. 80 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

3 These words were substituted for the words "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

4 This proviso was substituted by s 2 of the Indian Companies (Amendment) Act, 1930 (XIX of 1930).

5 These words were substituted for the words "whereof the partners all" by s. 2 of the Indian Companies (Supplementary Amendment) Act, 1932 (I of 1932).

6 These sub-sections were substituted for the original sub-section (2) by s. 2 of the Indian Companies (Amendment) Act, 1930 (XIX of 1930).

7 These words were substituted for the words "Gazette of India" by the Government of India (Adaptation of Indian Laws) Order, 1937.

affected or having special knowledge of accountancy in India, to advise [1][it] on all matters of administration relating to accountancy, and to assist [1][it] in maintaining the standards of qualification and conduct of persons enrolled on the Register; and

(f) provide for the establishment, constitution and procedure of local accountancy boards at such centres as the [2][Central Government] may select to advise [1][it] and the Indian Accountancy Board on any matter that may be referred to them.

(2B) The holder of a certificate granted under this section shall be entitled to be appointed and act as an auditor of companies throughout British India.]

(3) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(4) If an appointment of an auditor is not made at an annual general meeting, the [3][Central Government] may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(5) The following persons; that is to say,

(i) a director or officer of the company; and

(ii) a partner of such director or officer; and

(iii) in the case of a company other than a private company, [4][not being the subsidiary company of a public company] any person in the employment of such director or officer; [5][and

(iv) any person indebted to the company];

shall not be appointed auditors of the company [6][and if any person after being appointed auditor becomes indebted to the company his appointment shall thereupon be terminated].

(6) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company to the company not less than fourteen days before such annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to its members either by advertisement or in any other mode allowed by the articles not less than seven days before the annual general meeting:

Provided that, if after notice of the intention to nominate an auditor has been given to the company, an annual general meeting is called for a date fourteen days or less after the notice has been given, the requirements of this section as to time in respect of such a notice shall be deemed to have been satisfied, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this section, be sent or given at the same time as the notice of the annual general meeting.

(7) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the members of the company in general meeting, in which case such members at that meeting may appoint auditors.

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1 This word was substituted for the word "him" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 These words were substituted for the words "Governor General in Council", *ibid.*

3 These words were substituted for the words "Local Government", *ibid.*

4 These words were inserted by s. 80 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

5 This word and clause (iv) were inserted, *ibid.*

6 These words were added, *ibid.*

(8) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.

(9) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

145. 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, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the members of the company on the accounts examined by them, and on every balance-sheet [1][and profit and loss account] laid before the company in general meeting during their tenure of office, and the report shall state —

(a) whether or not they have obtained all the information and explanations they have required ; and

[2][(b) whether or not in their opinion the balance-sheet and the profit and loss account referred to in the report are drawn up in conformity with the law ; and]

(c) whether [1][or not] such balance-sheet exhibits a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company ; [3][and

(d) whether in their opinion books of account have been kept by the company as required by section 130.]

[4][(2A) Where any of the matters referred to in clauses (a), (b), (c) and (d) of sub-section (2) is answered in the negative or with a qualification, the report shall state the reason for such answer]

(3) In the case of a banking company, if the company has branch banks beyond the limits of India, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in British India.

[5][(4) The auditors of a company shall be entitled to receive notice of and to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and may make any statement or explanation they desire with respect to the accounts.]

[5][(5) If any auditors report is made which does not comply with the requirements of this section, every auditor who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to one hundred rupees.]

146. Rights of preference shareholders, etc, as to receipts and inspection of reports, etc.—(1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance-sheets [5][and profit and loss accounts] of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

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1 These words were inserted by s. 81 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 This clause was substituted, *ibid.*

3 This word and clause (d) were added, *ibid.*

4 This sub-section was inserted *ibid.*

5 These words were inserted by s. 82, *ibid.*

(2) This section shall not apply to a private company, nor to a company registered before the commencement of this Act.

[1][Provided that in the case of any public company whether registered before or after the commencement of this Act the trustees for holders of debentures shall have the right conferred by sub-section (1) on holders of preference shares and debentures of a company.]

Carrying on business with less than the legal minimum of members

147. Liability for carrying on business 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 private company, below two, or in the case of any other company, below seven, and it 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 two members or seven 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 sued for the same without joinder in the suit of any other member.

Service and Authentication of Documents

148. Service of documents on company.—A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company.

149. Service of documents on registrar.—A document may be served on the registrar by sending it to him by post, or delivering it to him, or by leaving it for him at his office.

150. Authentication of documents.—A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.

Tables, Forms and Rules as to prescribed matters

151. Application and alteration of tables and forms, and power to make rules as to prescribed matters.—(1) The forms in the Third Schedule or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(2) The [2][Central Government] may alter any of the tables and forms in the First Schedule, so that [3][it] does not increase the amount of fees payable to the registrar in the said Schedule mentioned, and may alter or add to the forms in the Third Schedule,

(3) [4][Any alteration or addition made under [5][sub-section (2)] shall be published in the official Gazette, and on such publication the table or form as so altered or the added form, as the case may be, shall have effect as if enacted in this Act], but no alteration made by the [2][Central Government] in Table A in the First Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that table

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1 This proviso was added by s. 82 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 These words were substituted for the words "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937,

3 This word was substituted for the word 'he", *ibid.*

4 These words were substituted and were deemed always to have been substituted for the words "Any such table or form, when altered, shall be published in the Official Gazette, and on such publication shall have effect as if enacted in this Act", by s. 3 of the Indian Companies (Amendment) Act, 1943 (XXX of 1943.)

5 This word, brackets and figure were substituted for the word, brackets and figure "sub-section (1)" by s. 3 and Sch. II of the Repealing and Amending Act, 1945 (VI of 1945).

(4) In addition to the powers hereinbefore conferred by this section, the [1][Central Government] may make rules providing for all or any matters which by this Act are to be prescribed by [2][its] authority.

(5) Every such rule shall be published in the [3][official Gazette], and on such publication shall have effect as if enacted in this Act.

Arbitration and Compromise

152. Power for companies to refer matters to arbitration.—(1) A company may by written agreement refer to arbitration, in accordance with the [4]* Arbitration Act [5][1940] (X of 1940), an existing or future difference between itself and any other company or person.

(2) Companies, parties to the arbitration, may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(3) The provisions of the [4]*Arbitration Act [5][1940], (X of 1940) [6]* * shall apply to all arbitrations between companies and persons in pursuance of this Act.

153. Power to compromise with creditors and members.—(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on all the members or class of members, as the case may be, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

[7][(3) An order made under sub-section (2) shall have no effect until a certified copy of the order has been filed with the registrar, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.]

[7][(4) If a company makes default in complying with sub-section (3) the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.]

[7][(5) 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 a company on such terms as it thinks fit and proper until the application is finally disposed of.]

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1 These words were substituted for the words "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 This word was substituted for the word "his" *ibid*

3 These words were substituted for the words "Gazette of India", *ibid*.

4 The word "Indian" was omitted by s. 3 and Sch. II of the Repealing and Amending Act, 1940 (XXXII of 1940).

5 This figure was substituted for the figure "1899" by s. 49 and Sch. IV of the Arbitration Act. 1940, (X of 1940), with effect from 1-7-1940.

6 The words "other than those restricting the application of the Act in respect of the subject matter of the arbitration" were omitted, *ibid*.

7 This sub-section was inserted by s. 83 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

[1][(6) In this section the expression "company" means any company liable to be wound up under this Act and the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods, and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.]

[2][(7) An appeal shall lie from any order made by the Court exercising original jurisdiction under this section to the authority authorised to hear appeals from the decisions of the Court.]

[3][**153A. Provisions for facilitating arrangements and compromises.**—(1) Where an application is made to the Court under section 153 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court 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 that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as a 'transferor company') is to be transferred to another company (in this section referred to as 'the transferee company'), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters :—

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company ;

(b) the allotting 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 ;

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

(d) the dissolution, without winding up, of any transferor company ;

(e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement ;

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

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, 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) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the registrar for registration within fourteen days after the completion of the order, and if default is made in complying with this sub-section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.

(4) In this section the expression 'property' includes property, rights and powers of every description, and the expression 'liabilities' includes duties.

(5) Notwithstanding the provisions of [4][sub-section (6)] of section 153, the

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1 This sub-section was substituted by s. 5 of the Indian Companies (Amendment) Act, 1942 (XVII of 1942).

2 This sub-section was added by s. 83 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

3 This section was inserted by s 84 *ibid.*

4 This word, brackets and figure were substituted for the word, brackets and figure "sub-section (4)" by s. 10 of the Indian Companies (Amendment) Act, 1939 (II of 1939.)

expression 'company' in this section does not include any company other than a company within the meaning of this Act.]

[1][153B. **Power 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, whether a company within the meaning of this Act or not (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 three-fourths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company :

Provided that, where any such scheme or contract has been so approved at any time before the [2]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), the Court may by order, on an aplication made to it by the transferee company within two months after the commencement of that Act, authorise notice to be given under this section at any time within fourteendays after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the Court may by the order direct instead of the terms provided by the scheme or contract.

(2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) 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 on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section the expression '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.]

Conversion of private company into public company

[3][154. **Conversion of private company into public company.**—(1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under the provisions of clause (13) of sub-section (1) of section 2, are required to be included in the articles of a company in order to constitute it a private company, the company, shall, as on the date of

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1 This section was inserted by s. 84 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

2 The Act came into force on the 15th January, 1937.

3 This section was substituted by s. 85 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, file with the registrar a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the form marked II in the Second Schedule.

(2) If default is made in complying with sub-section (1) of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding five hundred rupees.

(3) Where the articles of a company include the provisions aforesaid 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 under the provisions contained in this Act, and thereupon the provisions of this Act shall apply to the company as if it were not a private company:

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

PART V

WINDING UP

Preliminary

155. Mode of winding up.—(1) The winding up of a company may be either—

(i) by the Court; or

(ii) voluntary; or

(iii) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of these modes.

Contributories

156. Liability as contributories of present and past members.—

(1) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, 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, with the qualifications following (that is to say):—

(i) 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;

(ii) 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;

(iii) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(iv) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect to which he is liable as a present or past member;

(v) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(vi) 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;

(vii) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company ; but any such sum may be taken into account for the purpose of the final adjustments 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.

157. Liability of directors whose liability is unlimited.—In the winding up of a limited company any director whether past or present, whose liability is, in pursuance 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—

(i) a past director 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 ;

(ii) a past director 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 ;

(iii) subject to the articles a director shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

158. Meaning 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, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

159. Nature of liability of contributory.—[1][(1) The liability of a contributory shall create a debt payable at the time specified in the calls made on him by the liquidator.]

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

160. 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 and his heirs 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 or heirs make default in paying any money ordered to be paid by them, proceedings may be taken for administering the property of the deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereout of the money due.

[2][(3) For the purposes of this section the surviving coparceners of a contributory who is a member of a Hindu joint family governed by the Mitakshara School of Hindu Law shall be deemed to be his legal representatives and heirs.]

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1 This sub-section was substituted by s. 86 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 This sub-section was added by s. 87, *ibid.*

161. 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, then—

(1) his assignees 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

(2) 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.

Winding up by Court

162. Circumstances in which company may be wound up by Court.—A company may be wound up by the Court—

(i) if the company has by special resolution resolved that the company be wound up by the Court ;

(ii) if default is made in filing the statutory report or in holding the statutory meeting ;

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

(iv) if the number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven ;

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

(vi) if the Court is of opinion that it is just and equitable that the company should be wound up

163. Company when deemed unable to pay its debts.—[1][(1) A company shall be deemed to be unable to pay its debts—

(i) 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, [2][by causing the same to be delivered by registered post or otherwise] at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ; or

(ii) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part ; or

(iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

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

164. Winding up may be referred to District Court.—Where the High Court makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court ; and thereupon such District Court shall, for the purpose of winding up the company, be deemed

1 Section 163 was renumbered as sub-section (1) of that section by s. 88 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).
2 These words were substituted for the words "by leaving the same", *ibid.*
3 Sub-section (2) was added, *ibid.*

to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court.

165. Transfer or winding up from one District Court to another.—If during the progress of a winding up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court having jurisdiction to wind up companies, the High Court may transfer the same to such other Court, and thereupon the winding up shall proceed in such other District Court.

166. Provisions as to applications for winding up.—An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately [1][, or by the registrar];

Provided that—

(a) a contributory shall not be entitled to present a petition for winding up a company unless—

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) 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 before the commencement of the winding up, or have devolved on him through the death of a former holder;

[2][(aa) the registrar shall not be entitled to present a petition for winding up a company—

(i) except on the ground that from the financial condition of the company as disclosed in its balance-sheet or from the report of an inspector appointed under section 138 it appears that the company is unable to pay its debts, and

(ii) unless the previous sanction of the [3][Central Government] has been obtained to the presentation of the petition:

Provided that no such sanction shall be given unless the company has first been afforded an opportunity of being heard.]

(b) a petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held;

(c) the Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Court.

167. 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 made on the joint petition of a creditor and of a contributory.

168. Commencement of winding up by Court.—A 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.

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1 These words were inserted by s. 89 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936)

2 This clause was inserted by s. 89, *ibid.*

3 These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

169. Court may grant injunction.—The Court may, at any time after the presentation of the petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any suit or proceeding against the company, upon such terms as the Court thinks fit.

170. Powers of Court on hearing petition.—(1) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it deems just, but 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 of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

[1][(3) Where the Court makes an order for the winding up of a company it shall, except where a liquidator is appointed simultaneously, forthwith cause intimation thereof to be sent to the official receiver]

171. Suits stayed on winding up order.—When a winding up order has been made [2][or a provisional liquidator has been appointed] no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

[3][**171A. Vacancy in the office of liquidator.**—(1) For the purposes of this Act, so far as it relates to the winding up of companies by the Court, the term 'official receiver' means the official receiver attached to the Court, or, if there is no such official receiver, then such person as the [4][Central Government] may, by notification in the [5][Official Gazette], appoint for the purpose.

(2) On the making of a winding up order, the official receiver shall become the official liquidator of the company and shall continue to act as such until his further continuance is terminated by an order of the Court.

(3) The official receiver shall as such official liquidator forthwith take into his custody and control all the books, documents and the assets of the company.

(4) The official receiver shall be entitled to such remuneration as the Court shall fix.]

172. Copy of winding up order to be filed with registrar.—[6][(1) On the making of a winding up order it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the registrar a copy of the order within a month from the date of the making of the order]

(2) On the filing of a copy of a winding up order, the registrar shall make a minute thereof in his books relating to the Company, and shall notify in the [5][Official Gazette] that such an order has been made.

(3) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of the company is continued.

173. Power of Court to stay winding up.—The Court may at any time after an order for winding up, on the application of any creditor or contributory, and

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1 This sub-section was added by s 90 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 These words were inserted by s. 91, *ibid*.

3 This section was inserted by s. 92, *ibid*.

4 These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

5 These words were substituted for the words "local offical Gazette", *ibid*.

6 This sub-section was substituted by s. 93 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

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 preceedings, either altogether or for a limited time, on such terms and conditions as the Court think fit.

174. Court may have regard to wishes of creditors or contributories.—The Court may, as to or matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Official Liquidators

175. Appointment of official liquidator.—(1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a person or persons [1][other than the official receiver] to be called an official liquidator or official liquidators.

(2) The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up [2][but shall before making any such appointment give notice to the company unless for reasons to be recorded it thinks fit to dispense with notice.]

(3) If more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act by this Act required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons.

(4) The Court may determine whether any, and what, security is to be given by any official liquidator on his appointment

(5) The acts of an official liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment: Provided that nothing in this sub-section shall be deemed to give validity to acts done by an official liquidator after his appointment has been shown to be invalid

(6) A receiver shall not be appointed of assets in the hands of an official liquidator.

176. Resignations, removals, filling up vacancies and compensation.—(1) Any official liquidator may resign or be removed by the Court on due cause shown.

(2) Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court [3][and until the vacancy is so filled up the official receiver shall be and act as the official liquidator.]

(3) There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

177. Official liquidator.—The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name.

[4]177A. Statement of affairs to be made to the liquidator.—(1) Where the Court has made a winding up order or appointed an official liquidator provisionally, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the official liquidator a statement as to the affairs

1 These words were inserted by s. 94 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

2 These words were added, *ibid.*

3 These words were added by s. 95, *ibid.*

4 This section was inserted by s. 96 *ibid.*

of the company verified by an affidavit and containing the following particulars, namely :—

(a) the assets of the company, stating separately the cash balance in hand and at the bank, if any ;

(b) the debts and liabilities ;

(c) the names, residences and occupations of the creditors stating separately the amount of secured debts and unsecured debts, and in the case of secured debts particulars of the securities, their value and the dates when 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 therefrom.

(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 secretary, manager or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned as the official liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons—

(a) who are or have been directors or 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 as the official liquidator or the Court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, knowingly and wilfully makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code (XLV of 1860), and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.

(8) In this section the expresion "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][**177B. Statement by liquidator.**—(1) In a case where a winding up order is made, the official liquidator shall, as soon as practicable after receipt of the state-

1 This section was inserted by s. 96 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

ment to be submitted under section 177A, and not later than four, or with the leave of the Court, six months from the date of the order, or in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a priliminary report to the Court—

(a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, giving separately, under the heading of assets particulars of—

(i) cash and negotiable securities ;
(ii) debts due from contributories ;
(iii) debts due to and securities, if any, available to the company ;
(iv) moveable and immovable properties belonging to the company ;
(v) unpaid calls ; and

(b) if the company has failed, as to the causes of the failure ; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or to 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 formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matter which in his opinion it is desirable to bring to the notice of the Court]

178. Custody of company's property.—(1) The official liquidator [1][whether appointed provisionally or not] shall take into his custody, or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

[2][(2) All the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company.]

[3][**178A. Committee of Inspection in compulsory winding up**—(1) The official liquidator shall within a month from the date of the order for the winding up of a company convene a meeting of the creditors of the company (as ascertained from the books and documents of the company) for the purpose of determining whether or not a committee of inspection shall be appointed to act with the liquidator, and who are to be members of the committee, if appointed.

(2) The official liquidator shall within a week from the date of the creditors' meeting convene a meeting of the contributories to consider the decision of the creditors and to accept the same with or without modifications,

(3) If the contributories do not accept the decision of the creditors in its entirety, it shall be the duty of the official liquidator to apply to the Court for directions as to whether there shall be a committee of inspection and if so, what shall be the composition of the committee, and who shall be members thereof.

(4) A committee of inspection appointed under the section shall consist of not more than twelve members being creditors and contributories of the company or persons holding general or special powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.

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1 These words were inserted by s. 97 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 This sub-section was substituted, *ibid.*

3 This section was inserted by s. 98, *ibid.*

(5) The committee of inspection shall have the right to inspect the accounts of the official liquidator at all reasonable times.

(6) The committee shall meet at such times as they may from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(7) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(8) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(9) If a member of the committee becomes bankrupt, 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 thereupon become vacant.

(10) A member of the committee may be removed by an ordinary resolution at a meeting of creditors if he represents creditors, or of contributories if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(11) 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.

(12) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee]

179. Powers of official liquidator.—The official liquidator shall have power, with the sanction of the Court, to do the following things :—

(a) to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company ;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the same ;

(c) to sell the immoveable and moveable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels ;

(d) 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 ;

(e) 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 ;

(f) to draw, accept, make and indorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business ;

(g) to raise on the security of the assets of the company any money requisite ;

(h) 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.

(i) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

180. Discretion of official liquidator.—The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

181. Provision for legal assistance to official liquidator.—The official 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: Provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

182. Liquidator to keep books containing proceedings of meetings and to submit account of his receipts to Court.—[1][(1)] The official liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

[1][(2) Every official liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Court an account of his receipts and payments as such liquidator.]

[1][(3) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.]

[1][(4) The Court shall cause the account to be audited in such manner as it thinks fit and for the purpose of the audit the liquidator shall furnish the Court with such vouchers and information as the Court may require, and the Court may at any time [2]require the production of and inspect any books or accounts kept by the liquidator.]

[1][(5) When the account has been audited, one copy thereof shall be filed and kept by the Court, and the other copy shall be delivered to the registrar for filing, and each copy shall be open to the inspection of any creditor, or of any person interested.]

183. Exercise and control of liquidator's powers.—(1) Subject to the provisions of this Act the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting [2][or by the committee of inspection, and 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]

(2) The official liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(3) The official liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising in the winding up.

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1 Section 182 was re-numbered as sub-section (1) of that section and sub-sections (2) to (5) were added by s. 99 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

2 These words were added by s 100, ibid.

(4) Subject to the provisions of this Act, the official liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(5) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court, and the court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances.

Ordinary Powers of Court

184. Settlement of list of contributories and application of assets.—(1) As soon as may be after making a winding up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in the discharge of its liabilities.

(2) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

185. Power to require delivery of property.—The Court may, at any time after making a winding up order, require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the official liquidator any money, property or documents in his hands to which the company is *prima facie* entitled.

186. Power to order payment of debts by contributory.—(1) The court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Court in making such an order may, 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 may, in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance:

Provided that, in the case of any company, whether limited or unlimited, when all the creditors are 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.

187. 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, make calls on and order payment thereof by all or any of the contributories for the time being settled 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.

(2) In making the call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

188. Power to order payment into bank.—The Court may order any contributory, purchaser or other person from whom money is due to the company

to pay the same into [1]* * * * the account of the official liquidator [2][in any scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934] (II of 1934) instead of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.

189. Regulation of account with Court.—All moneys, bills, hundis, notes and other securities paid and delivered into [3][the Bank where the liquidator of the Company may have his account], in the event of a company being wound up by the Court, shall be subject in all respects to the orders of the Court.

190. Order on contributory conclusive evidence.—(1) An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due,

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings whatsoever.

191. Power to exclude creditors not proving in time.—The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved,

192. Adjustment of rights of contributories.—The Court shall adjust the rights of the contributories among themselves, and destribute any surplus among the persons entitled thereto.

193. Power to order costs.—The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

194. Dissolution of company.—(1) When the affairs of a company have been completely wound up the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall be reported within fifteen days of the making thereof by the official liquidator to the registrar, who shall make in his books a minute of the dissolution of the company.

(3) If the official liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which he is in default.

Extraordinary Powers of Court.

195. Power to summon persons suspected of having property of company.—(1) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

(2) The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The Court may require him to produce any documents in his custody or power relating to the company ; but, where he claims any lien on documents produced by him, the production shall be without prejudice to that lien, and

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1 The words "the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be, or any branch thereof, respectively, to" were omitted by s. 101 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

2 These words were inserted, *ibid.*

3 These words were substituted for the words "the Bank of Bengal, the Bank of Madras or the Bank of Bombay, or any branch thereof, respectively" by s. 102, *ibid*

the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a resonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

196. Power to order public examination of promoters, directors, etc.—(1) When an order has been made for winding up a company by the Court, and the official liquidator has applied 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 director or other officer of the company, in relation to the company since its formation, the Court may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, manager or other officer of the company shall attend before the Court on a day appointed by the Court 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 director, manager or other officer thereof.

(2) The official liquidator shall take part in the examination, and for that purpose may, if specially authorised by the Court in that behalf employ such legal assistance as may be sanctioned by the Court.

(3) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him

(6) A person ordered to be examined under this section may at his own cost employ any person entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him Provided that if he is in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit.

(7) 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 in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section, may if the Court so directs, and subject to any rules 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, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

197. Power to arrest absconding contributory.—The Court, at any time either before or after making a winding up order on proof of probable cause for believing that a contributory is about to quit British India or otherwise to abscond, or 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, may cause the contributory to be arrested and his books and papers and moveable property to be seized, and him and them to be safely kept until such time as the Court may order.

198. Saving of other sums.—Any powers by this Act conferred on the Court shall be in addition to, and not in restriction 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.

Enforcement of and Appeal from Orders

199. Power to enforce orders.—All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

200. Order made in any Court to be enforced by other Courts.—Any order made by a Court for or in the course of the winding up of a company shall be enforced in any place in British India other than that in which such Court is situate, by the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate at such other place, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

201. Mode of dealing with orders to be enforced by other Courts.—Where any order made by one Court is to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made; and thereupon the last-mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same.

202. Appeals from orders.—Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction.

Voluntary winding up

203. Circumstances in which company may be wound up voluntarily.—A company may be wound up voluntarily—

(1) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(2) if the company resolves by special resolution that the company be wound up voluntarily;

(3) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up;

[1][and the expression 'resolution for voluntarily winding up' when used hereafter in this Part means a resolution passed under clause (1), clause (2) or clause (3) of this section.]

204. Commencement of voluntary winding up.—A voluntary winding up shall be deemed to commence at the time of the passing of the resolution [2][for voluntarily winding up]

205. Effect of voluntary winding up on status of company.—When a company is wound up voluntarily, the company shall, from the commencement of

1 These words were added by s. 103 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 These words were substituted for the words, "authorising the winding up" by s. 104, *ibid.*

the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof ;

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

206. Notice of resolution to wind up voluntarily.—(1) Notice of any special resolution or extraordinary resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by advertisement in the [1][official Gazette], and also in some newspaper (if any) circulating in the district where the registered office of the company is situate.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty.

[2][**207. Declaration of solvency.**—(1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, [3][* 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 so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding three years, from the commencement of the winding up.

(2) Such declaration shall be supported by a report of the company's auditors on the company's affairs, and shall have no effect for the purposes of this Act unless it is delivered to the registrar for registration before the date mentioned in sub-section (1) of this section.

(3) 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 made and delivered as aforesaid is in this Act referred to as 'a creditors' voluntary winding up'.]

Members' voluntary winding up

[2][**208. Provisions applicable to a members' voluntary winding up.**—The provisions contained in section 208A to 208E, both inclusive, shall apply in relation to a members' voluntary winding up]

[2][**208A. Power of company to appoint and fix remuneration of liquidators.**—(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.]

[2][**208B. Power to fill vacancy in office of liquidator.**—(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

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1 These words were substituted for the words "local official Gazette" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 Sections 207 to 218 were substituted for the original sections 207 to 219 by s. 105 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

3 The word "to" was omitted by s. 2 and Sch. I of the Repealing and Amending Act, 1939 (XXXIV of 1939.)

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.]

[1][**208C. Power of liquidator to accept shares etc. as consideration for sale of property of company.**—(1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or 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 first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in 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 may 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 special resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner hereafter provided.

(4) If the liquidator elects to purchase the member's interest, the purchase money must 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 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 or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

(6) The provisions of the [2][Arbitration Act, 1940] (X of 1940), other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations in pursuance of this section.]

[1][**208D. Duty of liquidator to call general meeting at end of each year.**—(1) In the event the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or as soon thereafter as may be convenient within ninety days of the close of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the liquidation.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding one hundred rupees.]

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1 *See* **footnote 2 on pre-page.**

2 **These words and figures were substituted for the words and figures "Indian Arbitration Act, 1899" by s. 3 and Sch. II of the Repealing and Amending Act, 1940 (XXXII of 1940.)**

[1][**208E. Final meeting and dissolution.**—(1) As soon as the affairs of the company are fully wound up, the liquidator shall 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 thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement specifying the time, place and object thereof, and published one month at least before the meeting in the manner specified in sub-section (1) of section 206 for publication of a notice under that sub-section.

(3) Within one week after the meeting, the liquidator shall send to the registrar a copy of the account and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding fifty rupees for every day during which the default continues

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the said return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns mentioned in sub-section (3) shall forthwith register them and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved ;

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within twenty-one days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues]

Creditors' voluntary winding up

[1][**209. Provisions applicable to a creditors' voluntary winding up.**—The provisions contained in sections 209A to 209H, both inclusive, shall apply in relation to a creditors' voluntary winding up]

[1][**209A Meeting of creditors.**—(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised in the manner specified in sub-section (1) of section 206 for the publication of a notice under that sub-section.

(3) The 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 creditors to be held as aforesaid ; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

1 *See* footnote 2 on page 87, *supra*.

(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) of this section, 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 the directors of the company in complying with sub-section (3);
(c) by any director of the company in complying with sub-section (4);

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one thousand rupees and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.]

[1][**209B. Appointment of liquidator**.—The creditors and the company at their respective meetings mentioned in section 209A may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator :

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.]

[1][**209C. Appointment of committee of inspection.**—The creditors at the meeting to be held in pursuance of section 209A or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and 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 time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number

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, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.]

[1][**209D. Fixing of liquidators' remuneration and cesser of directors' powers.**—(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, and where the remuneration is not so fixed, it shall be determined by the Court.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.]

[1][**209E. Power to fill vacancy in office of liquidator.**—If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by or by the direction of, the Court, the creditors may fill the vacancy.]

[1][**209F. Application of section 208C to a creditors' voluntary winding up.**—The provisions of section 208C shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up with the

1 *See* footnote *2* on page 87, *supra*.

modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the Court or of the committee of inspection.]

[1][**209G. 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 summon a general meeting of the company and a meeting of creditors at the end of the first-year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the winding up.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding one hundred rupees]

[1][**209H. Final meeting and dissolution.**—(1) As soon as the affairs of the company are fully wound up, the liquidator shall 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 thereupon shall 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 specifying the time, place and object thereof and published one month at least before the meeting in the manner specified in sub-section (1) of section 206 for the publication of a notice under that sub-section

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar a copy of the account ; and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding fifty rupees for every day during which the default continues :

Provided that, if a quorum (which for the purposes of this section shall be two persons is not present at either such meeting, the liquidator shall, in lieu of such return, make a return that the meeting was duly summoned and that no quorum was present thereat and upon such a return being made the provisions of this sub-section as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and in respect of each such meeting either of the returns mentioned in sub-section (3) shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within ten days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails to do so he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues].

Members' or creditors' voluntary winding up

[1][**210. Provision applicable to every voluntary winding up.**—The provisions contained in sections 211 to 218, both inclusive, shall apply to every voluntary winding up whether a members' or a creditors' winding up.]

1 *See* footnote 2 on page 87, *supra*.

[1][**211. Distribution of property of company.**—Subject to the provisions of this Act as to preferential payments, the property 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.]

[1][**212 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 an extraordinary resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection, exercise any of the powers given by clauses (d), (e), (f) and (h) of section 179 to a liquidator in a winding up. The exercise by the liquidator of the powers given by this clause shall be subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers ·

(b) without the sanction referred to in clause (a) exercise any of the other powers by this Act given to the liquidator in a winding up by the Court.

(c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories ;

(d) exercise the power of the Court of making calls ;

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay, the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two]

[1][**213. Power of Court to appoint and remove liquidator in voluntary winding up.**—(1) If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.]

[1][**214. Notice by liquidator of his appointment.**—(1) The liquidator shall, within twenty-one days after his appointment, deliver to the registrar for registration a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continus.]

[1][**215. Arrangement when binding on 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 if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.]

[2][**216. Power to apply to Court to have questions determined of powers exercised.**—(1) The liquidator or any contributory or creditor may apply to the

1 See footnote 2 on page 87, *supra*.

Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The liquidator or any creditor or contributory may apply 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.

Such application 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 in any other Court, to the Court having jurisdiction to wind up the company.

(3) The Court, if satisfied 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]

[1][**217. Cost 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]

[1][**218. Saving for rights of creditors and contributories.**—The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.]

[1]**219.**

220. Power of Court to adopt proceedings of voluntary winding up.—Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

Winding up subject to supervision of Court

221. Power to order winding up subject to supervision.—When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

222. Effect of petition for winding up subject to supervision.—A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court.

223. Court may have regard to wishes of creditors and contributories.—The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

224. Power for Court to appoint or remove liquidators.—(1) Where an order is made for a winding up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator.

1 *See* footnote 2 on page 87, *supra*

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation.

225. Effect of supervision order.—(1) Where an order is made for a winding up subject to supervision, the liquidators may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

(2) Except as provided in sub-section (1), and save for the purposes of section 196, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

226. Appointment in certain cases of voluntary liquidators to office of official liquidators.—Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last-mentioned order or by any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidator in the winding up by the Court.

Supplemental Provisions

227 Avoidance of transfers, etc., after commencement of winding up.—(1) In the case of voluntary winding up every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up shall be void.

(2) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up shall, unless the Court otherwise orders, be void.

228. Debts of all descriptions to be proved—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, 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 for some other reason do not bear a certain value.

229. Application of insolvency rules in winding up of insolvent companies.—In the winding up of a insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent; and 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 by virtue of this section.

230. Preferential payments.—(1) In a winding up there shall be paid in priority to all other debts—

(a) all revenue, taxes, cesses and rates, whether payable to the Crown or to a local authority, due from the company at the date hereinafter mentioned and having become due and payable within the twelve months next before that date ;

(b) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant ; [1]*

(c) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piecework, in respect of services rendered to the company within the two months next before the said date ;

[2][(d) compensation payable under the Workmen's Compensation Act, 1923 (VIII of 1923), in respect of the death or disablement of any officer or employee of the company ;]

[2][(e) 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]

[2][(f) the expenses of any investigation held in pursuance of clause (iv) of section 138 of this Act].

(2) 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 proportion ; 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.

(3) 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

(4) 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.

(5) The date hereinbefore in this section referred to is—

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order ; and

(b) in any other case, the date of the commencement of the winding up.

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1 The word "and" was omitted by s. 106 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 These clauses were added, *ibid.*

[1][**230A. Disclaimer of property.**—(1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, or shares or stock in companies, of unprofitable contracts or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he had endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property :

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons 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 further period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim, and in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on 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 persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose :

Provided that, where the property disclaimed is of a lease-hold nature, the Court shall not make a vesting order in favour of any person claiming under

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1 This section was inserted by s. 107 *ibid.*

the company whether as under lessee or as mortgagee except upon the terms of making that person—

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up ; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date ;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or underlessee declining to accept a vesting order upon such terms, shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's convenants in the lease, freed and discharged from all estates, incumbrances 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 injury, and may accordingly prove the amount as a debt in the winding up]

231. Fraudulent preference —(1) Any transfer, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of insolvency in the case of an individual

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

232. Avoidance of certain attachments, executions, etc.—(1) Where any company is being wound up by or subject to the supervision of the Court, any attachments, distress or execution put in force without leave of the Court against the estate or effects [1][or any sale held without leave of the Court of any of the properties] of the company after the commencement of the winding up shall be void.

(2) Nothing in this section applies to proceedings by [2][the Crown].

233. Effect of floating charge.—Where a company is being wound up a floating charge on the undertaking or property of the company created within three months of 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.

234. *General scheme of liquidation may be sanctioned* —(1) The liquidator may, with the sanction of the Court when the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of

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1 These words were inserted by s 108 of the India Companies (Amendment) Act, 1936 (XXII of 1936.)

2 These words were substituted for the words "the Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

an extraordinary resolution of the company in the case of a voluntary winding up, do the following things or any of them ;

(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, whereby the company may be rendered liable ;

(iii) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent subsisting or supposed 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 the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers.

235. Power of Court to assess damages against delinquent directors, etc.—(1) Where, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator, or of any creditor or contributory [1][made within three years from the date of the first appointment of a liquidator in the winding up or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer,] examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible

[2]* * * * * *

236. Penalty for falsification of books.—If any director, manager, officer or contributory of any company being wound up destroys, mutilates, alters or falsifies or fraudulently secretes any books, papers or securities, or makes, or is privy to the making of any false or fraudulent entry in any register book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

[3][**237. Prosecution of delinquent directors.**—(1) If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the registrar.

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1 These words were inserted by s. 109 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

2 Sub-section (3) was omitted, *ibid.*

3 This section was substituted by s. 110.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, 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 documents, being information or documents in the possession or under the control of the liquidator relating to the matter in question, as he 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 [1][Central Government] for further inquiry, and the [1][Central Government] shall thereupon investigate the matter and may, if they think it expedient, apply to the Court for an order conferring on any person designated by the [1][Central Government] for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.

(4) If on any report to the registrar under sub-section (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the Court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present director, manager or other 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, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report has 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 place the papers before the Advocate General or the public prosecutor and if advised to do so institute proceedings, [2]* * * *

Provided that no prosecution shall be undertaken without first giving the accused person an opportunity of making a statement in writing to the registrar and of being heard thereon

[2]* * * * *

[3][(7) Notwithstanding anything contained in the Indian Evidence Act, 1872 (I of 1872) 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, and 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, whether that person is or is not an officer of the company]

[3][(8)] If any person fails or neglects to give assistance in manner required by [4][sub-section (7)], the Court may, on the application of the registrar, direct that person to comply with the requirements of the said sub-section, and where any such application is made with respect to a liquidator, the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having

1 These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 Certain words were omitted by s. 11 of the Indian Companies (Amenment) Act, 1938 (11 of 1938).

3 This sub-section was inserted and original sub-section (7) renumbered (8), *ibid.*

4 This word, brackets and figure were substituted for the words, brackets and figures "sub-section (6)," *ibid.*

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.]

238. Penalty for false evidence.—If any person upon any examination upon oath authorised under this Act, or 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, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

[1][**238A. Penal provisions.**—(1) If any person, being a past or present director, managing agent, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the Court or voluntarily, or is subsequently ordered to be wound up by the Court or 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, real and personal, 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 way of the business of the company ; or

(b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up , or

(c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up , or

(d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of one hundred rupees or upwards or conceals any debt due to or from the company ; or

(e) within twelve months next before the commencement of the winding up or of any time thereafter fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards ; or

(f) makes any material omission in any statement relating to the affairs of the company ; or

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof ; or

(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 ; or,

(i) within 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 effecting or relating to the property or affairs of the company ; or

(j) within 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 books or paper affecting or relating to the property or affairs of the company ; or

(k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company ; or

(l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement

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1 This section was inserted by . III of the Indian Companies (Amendment) Act, 1936 X XII of 1936.)

of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses ; or

(m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company, on credit which the company does not subsequently pay for ; or

(n) within 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 ; or

(o) within twelve months next before the commencement of the winding up or at any 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 way 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 the offences mentioned respectively in clauses (m), (n) and (o) of this sub-section, with imprisonment for a term not exceeding five years, and, in the case of any other offence, with imprisonment for a term not exceeding two years

Provided that it shall be a good defence to a charge under any of clauses (b) (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of clauses (a), (h), (i) and (j), if he proves that he had no intent to conceal the 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 not exceeding three years]

239. Meetings to ascertain wishes of creditors or contributories.—(1) Where by this Act the Court is authorised in relation to winding up to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories regard shall be had to the number of votes conferred on each contributory by the articles.

240. Documents of company to be evidence.—Where any company is being wound up, all documents 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.

241. Inspection of documents.—After an order for a winding up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its documents as the Court thinks just, and any documents in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

242. Disposal of documents of company.—(1) When a company has been

wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say) :—

(a) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs ;

(b) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs.

(2) After three years from the dissolution of the company, no responsibility shall rest on the company or the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

243. Power of Court to declare dissolution of company void.—(1) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within twenty-one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

244. Information as to pending liquidations—(1) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall, [1][once in each year and at intervals of not more than twelve months], until the winding up is concluded, [2][file in Court or with the registrar, as the case may be], a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) 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 extract therefrom ; but any person untruthfully so stating himself to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code (XLV of 1860), and shall be punishable accordingly on the application of the liquidator

(3) If a liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding five hundred rupees for each day during which the default continues

[3][(4) When the statement is filed in Court a copy shall simultaneously be filed with the registrar and shall be kept by him along with the other records of the company.]

[4][**244A. Payments of liquidator into bank.**—(1) Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as may be prescribed, pay the money received by him into a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (II of 1934) :

Provided that if the Court is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason it is for the advantage of the creditors or contributories that the liquidator should have

1 These words were substituted for the words "at such intervals as may be prescribed" by s. 112 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

2 These words were substituted for the words "file with the registrar", *ibid.*

3 This sub-section was added, *ibid.*

4 This section was inserted by s. 113, *ibid.*

an account with any other bank, the Court may authorise the liquidator to make his payments into or out of such other bank as the Court may select and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the Court may in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum and shall be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up shall open a special banking account and pay all sums received by him as liquidator into such account.]

[1][**244B. Unclaimed dividends and undistributed assets to be paid to Companies Liquidation Account.**—(1) Where any company is being wound up, if the liquidator has in his hands or under his control any money of the company representing unclaimed dividends payable to any creditor or undestributed assets refundable to any contributory which have remained unclaimed or undistributed for six months after the date on which they became payable or refundable, the liquidator shall forthwith pay the said money into the Reserve Bank of India to the credit of the Central Government in an account to be called the Companies Liquidation Account, and the liquidator shall, on the dissolution of the company, similarly pay into the said account any money representing unclaimed dividends or undistributed assets in his hands at the date of dissolution

(2) The liquidator shall, when making any payment referred to in sub-section (1), 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.

(3) The receipt of the Reserve Bank of India for any money paid to it under sub-section (1) shall be an effectual discharge of the liquidator in respect theteof.

(4) Where the company is being wound up by the Court, the liquidator shall make the payments referred to in sub-section (1) by transfer from the special banking account referred to in sub-section (3) of section 244A and where the company is wound up voluntarily, or subject to the supervision of the Court, the liquidator shall, when filing a statement in pursuance of sub-section (1) of section 244, indicate the sum of money which is payable to the Reserve Bank of India under sub-section (1) 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.

(5) Any person claiming to be entitled to any money paid into the Companies Liquidation Account in pursuance of this section may apply to the Court for an order for payment thereof, and the Court, if satisfied that the person claiming is entitled may make an order for the payment to that person of the sum due :

Provided that before making such order the Court shall cause a notice to be served on such officer as the Central Government may appoint in this behalf calling on the officer to show cause within one month from the date of the service of the notice why the order should not be made.

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1 This section was inserted by s. 2 of the Indian Companies (Amendment) Act, 1940 (XXXVI of 1940) (with effect from 5th April 1941)

(6) 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 any claim preferred under sub-section (5) to any money so transferred shall be allowable as if such transfer had not been made, the order for payment on such claim being treated as an order for refund of revenue.

(7) Any liquidator retaining any money which should have been paid by him into the Companies Liquidation Account under this section shall pay interest on the amount retained at the rate of twenty per cent. per annum and shall also be liable to pay any expenses occasioned by reason of his default, and, where the winding up is by or under the supervision of the Court, he shall also be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court.

(8) Nothing in this section shall apply in relation to companies with objects confined to a single Province which are not trading corporations.]

245. Court of 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 in British India or elsewhere within the dominions of His Majesty, before any Court, Judge or person lawfully authorised to take and receive affidavits, or in any part of India other than British India before any Court authorised or continued by [1][the Central Government or the Crown Representative], or in any place outside His Majesty's dominions before any of His Majesty's Consuls or Vice-Consuls.

(2) All Courts, Judges, Justices, Commissioners, and person, acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part

Rules.

246. Power of High Court to make rules.—(1) The High Court may, from time to time, make rules consistent with this Act and with the Code of Civil Procedure, 1908 (V of 1908), concerning the mode of proceeding to be had for winding up a company in such Court and in the Courts subordinate thereto, [2][and for voluntary winding up (both members and creditors) for the holding of meetings of creditors and members in connection with proceedings under section 153 of this Act,] and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-divisions of the shares of a company [2][and generally for all applications to be made to the Court under the provisions of this Act] [3][and shall make rules providing for all matters relating to the winding up of companies which, by this Act, are to be prescribed].

(2) Without prejudice to the generality of the foregoing power, the High 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 matters following to be exercised or performed by the official liquidator, and subject to the control of the Court, that is to say, the powers and duties of the Court in respect of—

(a) holding and conducting meetings to ascertain the wishes of creditors and contributories:

(b) settling list of contributories and rectifying the register of members where required, and collecting and applying the assets;

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1 **These words were substituted for the words "the Governor General in Council" by the Government of India Adaptation of (Indian Laws) Order, 1937.**

2 **These words were inserted by s. 114 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).**

3 **These words were inserted by s. 2 and Schedule I of the Repealing and Amending Act, (XI of 1915.)**

(c) requiring delivery of property or documents to the liquidator;
(d) making calls;
(e) fixing a time within which debts and claims must be proved:

Provided that the official liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without the special leave of the Court.

Removal of defunct Companies from Register

247. Registrar may 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 expiration 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 [1][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 [1][official Gazette], and send to the company by 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 are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the [1][official Gazette] and send to the company a like notice as is provided in the last preceding sub-section.

(5) At the expiration of the time mentioned in the notice 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 [1][official Gazette] and on the publication in the [1][official Gazette] of this notice, the company shall be dissolved: Provided that the liability (if any) of every director and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on the application of the company or member or creditor, 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 thereupon the company shall be deemed to have continued in existence as if its name has not been struck off and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, manager or other officer of the company, or, if there is no director, manager or other

1 **These words were substituted for the words "local official Gazette" by the Government of India (Adaptation of Indian Laws) Order, 1937.**

officer of the company whose name and address are known to the registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

PART VI

REGISTRATION OFFICE AND FEES

248. Registration Offices.—(1) For the purposes of the registration of companies under this Act, there shall be offices at such places as the [1][Central Government] thinks fit, and no company shall be registered except at an office within the province in which, by the memorandum, the registered office of the company is declared to be established.

(2) The [1][Central Government] may appoint such registrars and assistant registrars as it thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties.

(3) The salaries of the persons appointed under this section shall be fixed by the [1][Central Government]

(4) The [1][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) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by the [1][Central Government], not exceeding one rupee for each inspection ; and any person may 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 for the certificate, certified copy or extract, of such fees as the [1][Central Government] may appoint, not exceeding three rupees for a certificate of incorporation, and not exceeding six annas for every hundred words or fractional part thereof required to be copied.

(6) Whenever any act is by this Act directed to be done to or by the registrar it shall, until the [1][Central Government] otherwise directs, be done to or by the existing registrar of joint-stock companies or in his absence to or by such person as the [1][Central Government] may for the time being authorise, but, in the event of the [1][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 to be registered as the [1][Central Government] may appoint

249. Fees.—(1) There shall be paid to the registrar in respect of the several matters mentioned in Table B in the first Schedule the several fees therein specified ; or such smaller fees as the [2][Central Government] may direct.

(2) All fees paid to the registrar in pursuance of this Act shall be accounted for to the Crown.

[3][**249A. Enforcing submission of returns and documents to registrar.**—(1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the Court may, on an application made to the Court 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.

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1 These words were substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 These words were substituted for the words "Governor General in Council" *ibid.*

3 This section was inserted by s. 115 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.]

PART VII.

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS

250. Application of Act to companies formed under former Companies Acts.—In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and, in the case of a company, other than a limited company, as if the company had been formed and registered under this Act as an unlimited company;

Provided that—

(1) nothing in Table A in the First Schedule shall apply to a company formed and registered under Act XIX of 1857 and Act VII of 1860 or either of them, or under the Indian Companies Act, 1866 (X of 1866), or the Indian Companies Act, 1882 (VI of 1882),

(2) 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 Act No. XIX of 1857 and Act No VII of 1860, or either of them, or under the Indian Companies Act, 1866 (X of 1866) or the Indian Companies Act, 1882 (VI of 1882), as the case may be.

251. Application of Act to companies registered but not formed under former Companies Acts.—This Act shall apply to every company registered but not formed under Act No XIX of 1857 and Act No VII of 1860 or either of them, or under the Indian Companies Act, 1866 (X of 1866), or the Indian Companies Act, 1882 (VI of 1882), in the same manner as it is hereinafter in 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 said Acts or any of them.

252. Mode of transferring—A company registered under Act XIX of 1857 and Act VII of 1860 or either of them may cause its shares to be transferred in the manner hitherto in use, or in such other manner as the company may direct.

PART VIII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

253. Companies capable of being registered.—(1) With the exceptions and subject to the provisions mentioned and contained in this section,—

(i) any company consisting of seven or more members, which was in existence on the first day of May, eighteen hundred and eighty-two, including any company registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, and

(ii) any company formed after the date aforesaid whether before or after the commencement of this Act, in pursuance of any Act of Parliament or [1][Indian

1 **These words were substituted for the words "Act of the Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.**

law] other than this Act, or of Letters Patent, 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 that it has taken place with a view to the company being wound up :

(2) Provided as follows :—

(a) a company having the liability of its members limited by Act of Parliament or [1][Indian law] or by Letter Patent, and not being a joint-stock company as hereinafter defined, shall not register in pursuance of this section ;

(b) a company having the liability of its members limited by Act of Parliament or [1][Indian law] or by Letters Patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee ;

(c) a company that is not a joint-stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares ;

(d) 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 by proxy (in cases where proxies are allowed by the articles) at a general meeting summoned for the purpose ;

(e) where a company not having the liability of its members limited by Act of Parliament or [1][Indian law] or by Letters Patent 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 by proxy at the meeting ;

(f) 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 afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs 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

(3) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the articles

(4) A company registered under the Indian Companies Act, 1882 (VI of 1882), shall not be registered in pursuance of this section.

254. Definition of "joint stock company".—For the purposes of this Part as far as relates to 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 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 ; and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

255. Requirements for registration by 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 (that is to say) :—

(1) 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 ;

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1 These words were substituted for the words "Act of the Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

(2) a copy of any Act of Parliament, [1][Indian law], Royal Charter, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company ; and

(3) if the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say) :—

(a) 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 ;

(b) the number of shares taken and the amount paid on each share ;

(c) the name of the company, with the addition of the word "Limited" as the last word thereof ; and

(d) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

256 Requirements for registration by other than 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—

(1) a list showing the names, addresses and occupations of the directors of the company ; and

(2) a copy of any Act of Parliament, [1][Indian law], Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company , and

(3) 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.

257. Authentication of statement of existing companies —The list 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.

258. Registrar may 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 hereinbefore defined.

259. On registration of banking company with limited liability, notice to be given to customers.—(1) Where a banking company, which was in existence on the first day of May eighteen hundred and eighty-two, proposes to register as a limited company, 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 company omits to give the notice required by this section, 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.

260. Exemption of certain companies from payment of fees.—No fees shall be charged in respect of the registration in pursuance of this Part 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 Act of Parliament or [1][Indian law] or by Letters Patent.

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1 These words were substituted for the words "Act of the Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

261. Addition of "Limited" to name.—When a company registers in pursuance of this Part with limited liability, the word "Limited" shall form and be registered as part of its name.

262. 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 Table B in the First Schedule, 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 incorporated, and shall have perpetual succession and a common seal.

263. Vesting of property on registration—All property, moveable and immovable, and including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

264. Saving of existing liabilities—The registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of, the company before registration.

265. Continuation of existing suits—All suits and other legal proceedings which at the time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects 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 and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

266. Effect of registration under Act.—When a company is registered in pursuance of this Part—

(i) all provisions contained in any Act of Parliament, [1][Indian law], deed of settlement, contract of co-partnery, Letters Patent, 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 incidence 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;

(ii) 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 (that is to say):—

(a) the regulations in Table A in the First Schedule shall not apply unless 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 [1][Indian law] relating to the company.

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1 **These words were substituted for the words "Act of the Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.**

(d) subject to the provisions of this section, the company shall not have power, without the sanction of the [1][Central Government], to alter any provision contained in any Letters Patent relating to the company ;

(e) the company shall not have power to alter any provision contained in a 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 cost and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid ; and 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 and heirs of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply ;

(iii) the provisions of this Act with respect to—

(a) the registration of an unlimited company as limited ;

(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, [2][Indian law], Royal Charter, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company ,

(iv) nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent or other 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 ;

(v) nothing in this Act shall derogate from any lawful power of altering its constitution or regulations which may, by virtue of any Act of Parliament, [2][Indian law], deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, be vested in the company,

267. 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 this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall, so far as applicable, apply to an 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 of articles ; and

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1 These words were substituted for the words "Governor General in Council", by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 These words were substituted for the words "Act of the Governor General in Council" *ibid.*

(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 contract of co-partnery or other instrument constituting or regulating the company, not being an Act of Parliament, an [1][Indian law], a Royal Charter or Letters patent.

268. Power of Court 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 a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

269. Suits stayed on winding up order.—Where an order has been made for winding up a company registered in pursuance of this Part, no suit or other legal proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose

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PART IX.

WINDING UP OF UNREGISTERED COMPANIES

270. Meaning of "unregistered company".—For the purposes of this Part, the expression "unregistered company" shall not include a railway company incorporated by Act of Parliament or by an [1][Indian law] nor a company registered under the Indian Companies Act, 1866 (X of 1866), or under any Act repealed thereby, or under the Indian Companies Act, 1882 (VI of 1882), or under this Act, but save as aforesaid, shall include any partnership, association or company consisting of more than seven members

271. 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 following exeptions and additions :—

(i) an unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding up, be deemed to be registered in the province where its principal place of business is situate or, if it has a principal place of business situate in more than one province, then in each province where it has a principal place of business ; and the principal place of business situate in that province 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 ;

(ii) no unregistered company shall be wound up under this Act voluntarily or subject to supervision ;

(iii) the circumstances in which an unregistered company may be wound up are as follows (that is to say) :—

(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 ;

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1 **These words were substituted for the words "Act of the Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.**

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

(c) if the Court is of opinion that it is just and equitable that the company should be wound up ;

(iv) 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, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor ;

(b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable 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 obtained in any Court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied ; and

(d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts

(2) 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 any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act

[1][(3) Where a company incorporated outside British India which has been carrying on business in British India ceases to carry on business in British India it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the company under which it was incorporated.]

272 Contributories in winding up of unregistered companies.—

(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 any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of any contributory dying or being adjudged insolvent, the provisions of this Act with respect to the legal representatives and heirs of

1 This sub-section was added by s. 116 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

deceased contributories, and to the assignees of insolvent contributories shall apply.

273. 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.

274. Suits stayed on winding up order.—Where an order has been made for winding up an unregistered company, no suit or other legal proceedings shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

275. Directions as to property in certain cases.—If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order, or by any subsequent order, direct that all or any part of the property, moveable or immoveable, including all interests and rights in, to and out of property, moveable and immovable, and including obligations and actionable claims as may belong to the company or to trustees on its behalf, is to vest in the official liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly ; and the official liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any suit or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

276. Provisions of this Part cumulative.—The provisions of this Part with respect to unregistered companies shall be in addition to, and not in restriction of, any provisions hereinbefore in this Act contained with respect to winding up companies by the Court, and the Court or official liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act ; but 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

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PART X

COMPANIES ESTABLISHED OUTSIDE BRITISH INDIA

277. Requirements as to companies established outside British India.—

(1) Every company incorporated outside British India, which at the commencement of this Act has a place of business in British India, and every such company which after the commencement of this Act establishes such a place of business within British India, shall, within six months from the commencement of this Act or within one month from the establishment of such place of business, as the case may be, file with the registrar in the province in which such place of business is situated,—

(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 written 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 managers (if any) of the company ;

(d) the names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company ;

[1][(e) the full address of that office of the company in British India which is to be deemed the principal place of business in British India of the company ;] and, in the event of any alteration being made in any such instrument [2][or in any such address] or in the directors or managers or in the names or addresses of any such persons as aforesaid, the company shall, within the prescribed time, file with the registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served, if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar of the province in which the company has its principal place of business—

(i) in a case where by the law, for the time being in force, of the country in which the company is incorporated such company is required to file with the public authority an annual balance-sheet,—[3][three copies of that balance-sheet] [4][and if the balance-sheet does not contain all the information provided for in the form marked H in the Third Schedule, such supplementary statements [5][in triplicate] as shall furnish such information,] ; or

(ii) in a case where no such provision is made by the law, for the time being in force, of the country in which the company is incorporated—such a statement [5][in triplicate] in the form of a balance-sheet as such company would, if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act

[6]* * * * * *

(4) Every company to which this section applies and which uses the word "Limited" as part of its name, shall—

(a) in any prospectus inviting subscriptions for its shares or debentures in British India, state the country in which the company is incorporated ; and

(b) conspicuously exhibit on every place where it carries on business in British India the name of the company and the country in which the company is incorporated in letters easily legible in English characters and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place ; and

(c) have the name of the company and of the country in which the company is incorporated mentioned in legible English characters in all bill heads and letter paper, and in all notices, advertisements and other official publications of the company.

[7][(5) Every company to which this section applies shall if the liability of the members of the company is limited cause notice of that fact to be stated in legible characters in every prospectus inviting subscriptions for its shares, and in all bill-heads and letter paper notices, advertisements and other official publications of the company in British India, and to be affixed on every place where it carries on business.]

[7][(6)] If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent

1 This clause was inserted by s 12 of the Indian Companies (Amendment) Act, 1938 (II of 1938).

2 These words were substituted for the words "or in such address", *ibid*

3 These words were substituted for the words "a copy of that balance-sheet", *ibid*

4 These words were inserted by s 117 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

5 These words were inserted by s. 12 of the Indian Companies (Amendment) Act, 1938 (II of 1938).

6 The proviso was omitted by s 117 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

7 This sub-section was inserted and the original sub-sections (5), (6) and (7) were re-numbered (6), (7) and (8) by s. 117 of the of the Indian Companies (Amendment) Act, 1936 (XXII of 1936),

of the company, shall be liable to a fine not exceeding five hundred rupees or, in the case of a continuing offence, fifty rupees for every day during which the default continues.

[1][(7)] For the purposes of this section—

(a) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation ;

(b) the expression "place of business" includes a share transfer or share registration office ;

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

(d) the expression "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

[1][(8) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five rupees or such smaller fee as may be prescribed.

[2][**277A. Restriction on sale and offer for sale of share.**—(1) It shall not be lawful for any person—

(a) to issue, circulate or distribute in British India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside British India whether the company has or has not established, or when formed will or will not establish, a place of business in British India, unless—

(i) before the issue, circulation or distribution of the prospectus in British 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 ;

(ii) the prospectus states on the face of it that the copy has been so delivered ;

(iii) the prospectus is dated ; and

(iv) the prospectus otherwise complies with this Part , or

(b) to issue to any person in British India a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section 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, 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.

(3) Where any document by which any shares in or debentures of a company incorporated outside British 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 98A to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

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1 *See* footnote 7 on p. 115, *supra*,

2 This section was inserted by s. 118 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be liable to a fine not exceeding five thousand rupees

(6) In this section and in section 277B, the expressions 'prospectus,' 'shares' and 'debentures' have the same meanings as when used in relation to a company incorporated under this Act]

[1][**277B. Requirements as to prospectus.**—(1) In order to comply with this Part a prospectus, in addition to complying with the provisions of sub-clauses (ii) and (iii) of clause (a) of sub-section (1) of section 277A, must—

(a) contain particulars with respect to the following matters :—

(i) the objects of the company ;

(ii) the instrument constituting or defining the constitution of the company ;

(iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected ,

(iv) an address in British India where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof in the English language certified in the prescribed manner, can be inspected ;

(v) the date on which and the country in which the company was incorporated ;

(vi) whether the company has established a place of business in British India and, if so, the address of its principal office in British India

Provided that the provisions of sub-clauses (i), (ii) and (iii) of this clause 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 ;

(b) subject to the provisions of this section, state the matters specified in sub-section (1A) of section 93 and set out the reports specified in that section :

Provided that—

(i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed, and

(ii) in section 93 of this Act a reference to the articles of the company shall be deemed to be a reference to the constitution of the company

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement 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) In the event of non-compliance with or contravention of any of the requirements of this section, 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 was not cognisant thereof ; or

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1 **This section was inserted by s, 118 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)**

(b) he proves that the noncompliance 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 were 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 specified in clause (n) of sub-section (1) of section 93, 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.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.]

[1][**277C. Restriction on canvasing for sale of shares.**—(1) It shall not be lawful for any person to go from house to house offering shares of a company incorporated outside India for subscription or purchase to the public or any member of the public.

(2) In this sub-section the expression 'house' shall not include an office used for business purposes.

(3) Any person acting in contravention of this section shall be liable to a fine not exceeding rupees one hundred]

[1][**277D. Registration of charges.**—[2][(1)] The provisions of sections 109 to 117, both inclusive, and 120 to 125, both inclusive, shall extend to charges on properties in British India which are created and to charges on property in British India which is acquired after the commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), by a company incorporated outside British India which has an established place of business in British India]

[3][*Provided that references in the said sections to the registrar shall be deemed* to be references to the registrar of the province in which the principal place of business in British India of such company is situated, and references to the registered office of the company shall be deemed to be references to the principal place of business in British India of the company

Provided further that, where a charge is created outside British India or the completion of the acquisition of property takes place outside British India, sub-clause (i) of the proviso to sub-section (1) of section 109 and the proviso to sub-section (1) of section 109A shall apply as if the property wherever situated were situated outside British India.

(2) This section shall be deemed not to have come into force until the commencement of the Indian Companies (Amendment) Act, 1938 (II of 1938).

Provided that where the provisions of section 109 and sections 117 to 120 have not been complied with in respect of any charge or mortgage created since the 15th day of January, 1937, as required by this Act, those provisions shall be complied with within four weeks from the commencement of the Indian Companies (Amendment) Act, 1938 (II of 1938)].

[1][**277E. Notice of appointment of receiver.**—The provisions of sections 118 and 119 shall *mutatis mutandis* apply to the case of all companies incorporated outside British India but having an established place of business in British India and the provisions of section 130 shall apply to such companies to the extent of requiring them to keep at their principal place of business in

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1 This section was inserted by s. 118 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936)

2 Section 277-D was re-numbered as sub-section (1) of that section and the provisos and sub-section (2) were inserted by s. 13 of the Indian Companies (Amendment) Act, 1938 (II of 1938).

3 This Act came into force on the 15th January, 1937.

British India the books of account required by that section with respect to money received and expended, sales and purchases made, and assets and liabilities in relation to its business in British India.]

[1][Provided that references in the said section to the registrar shall be deemed to be references to the registrar of the province in which the principal place of business in British India of such company is situated, and references to the registered office of the company shall be deemed to be references to the principal place of business in British India of the company.]

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[2][PART XA]

BANKING COMPANIES

[3][**277F. Definition of banking company.**—A 'banking company' means a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one or more of the following forms of business, namely —

(1) the borrowing, raising or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not, the granting and issuing of letters of credit, travellers cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities, on behalf of constituents or others; the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise; the collecting and transmitting of money and securities

(2) acting as agents for Governments or local authorities or for any other person or persons; the carrying on of agency business of any description other than the business of a managing agent [of a company not being a banking company] including the power to act as attorneys and to give discharges and receipts;

(3) contracting for public and private loans and negotiating and issuing the same;

(4) the promoting, effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, Municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(5) carrying on and transacting every kind of guarantee and indemnity business;

(6) promoting or financing or assisting in promoting, or financing any business undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise;

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1 This proviso was added by s. 14 of the Indian Companies (Amendment) Act, 1938 (11 of 1938).

2 Part XA consisting of the sections 277-F to 277-N was inserted by s. 119 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

3 These words were inserted by s. 15 of the Indian Companies (Amendment) Act, 1938 (11 of 1938).

(7) acquisition by purchase, lease, exchange, hire or otherwise of any property immoveable or moveable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liability ;

(8) managing, selling and realising all property moveable and immoveable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims ;

(9) acquiring and holding and generally dealing with any property and any right, title or interest in any property moveable or immoveable which may form part of the security for any loans or advance or which may be connected with any such security ;

(10) undertaking and executing trusts ;

(11) undertaking the administration of estates as executor, trustee or otherwise ;

(12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company ;

(13) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons ; granting pensions and allowances and making payments towards insurance ; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object ;

(14) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company ,

(15) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company ;

(16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section ;

(17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.]

[1][Provided that any company which uses as part of the name under which it carries on business the word "bank", "banker" or "banking" shall be deemed to be a banking company notwithstanding that the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, is not, or is not shown to be, the principal business of the company.]

[2][**277G. Limitation of activities of banking company.**—(1) No company formed after the [3]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), for the purpose of carrying on business as a banking company or which uses as part of the name under which it proposes to carry on business the word 'bank', 'banker', or 'banking' shall be registered under this Act, unless the memorandum limits the objects of the company to the carrying on of the business of accepting deposits of money on current account or otherwise subject to withdrawal by cheque, draft or otherwise along with some or all of the forms of business specified in section 277F.

(2) No banking company whether incorporated in or outside British India shall after the expiry of two years from the commencement of the said Act carry on any form of business other than those specified in section 277F

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1 This proviso was added by s. 2 of the Indian Companies (Second Amendment) Act 1942 (XXI of 1942) (with effect from 1st November 1943,)

2 *See* footnote 2 on page 119 *supra.*

3 The Act came into force on the 15th January, 1937.

Provided that the [1][Central Government], may, by notification in the [2][Official Gazette], specify in addition to the business set forth in clauses (1) to (17) of section 277F other forms of business which it may be lawful under this section for a banking company to engage in.]

[3][**277H. Banking company not to employ managing agent.**—No banking company shall after the expiry of two years from the [4]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), employ or be managed by a managing agent other than a banking company for the management of the company.]

[5][**277HH. Prohibition of employment of managing agents and restrictions on certain forms of employment.**—No banking company, whether incorporated in or outside British India, which carries on business in British India, shall, after the expiry of two years from the [6]commencement of the Indian Companies (Amendment) Act, 1944 (IV of 1944), employ or be managed by a managing agent, or any person whose remuneration or part of whose remuneration takes the form of commission or a share in the profits of the company, or any person having a contract with the company for its management for a period exceeding five years at any one time

Provided that the period of five years shall for the purposes of this section, be computed from the date on which this section comes into force :

Provided further that any such contract may be renewed or extended for a further period not exceeding five years at a time if and so often as the directors think fit.

[7][**277I. Restriction on commencement of business and condition for carrying on business by banking company.**—(1) Notwithstanding anything contained in section 103, no banking company incorporated under this Act on or after the 15th day of January, 1937, shall commence business unless shares have been allotted to an amount sufficient to yield a sum of at least fifty thousand rupees as working capital, and unless a declaration duly verified by an affidavit signed by the directors and the manager that such a sum has been received by way of paid up capital has been filed with the registrar

(2) No banking company, whether incorporated in or outside British India, if incorporated on or after the 15th day of January, 1937, shall, after the expiry of two years from the [6]commencement of the Indian Companies (Amendment) Act, 1944 (IV of 1944), carry on business in British India unless it satisfies the following conditions, namely —

(a) that the subscribed capital of the company is not less than half the authorised capital, and the paid up capital is not less than half the subscribed capital, and

(b) that the capital of the company consists of ordinary shares only, or ordinary shares and such preference shares as may have been issued before the [6]commencement of the Indian Companies (Amendment) Act, 1944 (IV of 1944), only, and

(c) that the voting rights of all shareholders are strictly proportionate to the contribution made by the share holder, whether a preference shareholder or an ordinary shareholder, to the paid up capital of the company.]

[3][**277J. Prohibition of charge on unpaid capital.**—No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.]

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1 These words were substituted for the words "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2 These words were substituted for the words "Gazette of India", *ibid.*

3 *See* footnote 2 on page 119, *supra*

4 The Act came into force on the 15th January, 1937.

5 This section was inserted by s. 2 of the Indian Companies (Amendment) Act, 1944 (IV of 1944) (with effect from 1-7-1944)

6 The Act came into force on the 1st July 1944

7 This section was substituted by s. 3 of the Indian Companies (Amendment) Act, 1944 (IV of 1944) (with effect from 1-7-1944)

[1][**277K. Reserve fund.**—(1) Every banking company shall, after the [2]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), maintain a reserve fund.

(2) Every banking company shall out of the declared profits of each year and before any dividend is declared transfer a sum equivalent to not less than twenty per cent of such profits to the reserve fund until the amount of the said fund is equal to the paid up capital.

(3) A banking company shall invest the amount standing to the credit of its reserved fund in Government securities or in securities mentioned or referred to in section 20 of the Indian Trusts Act, 1882 (II of 1882), or keep deposited in a special account to be opened by the company for the purpose in a scheduled bank as defined in clause (e) of section (2) of the Reserve Bank of India Act, 1934 (II of 1934) :

Provided that the provision of the sub-section shall not apply to a banking company incorporated before the [2]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), till after the expiry of two years from the commencement of the said Act]

[1][**277L Cash reserve**.—(1) Every banking company shall maintain by way of cash reserve in cash a sum equivalent to at least one and a half per cent of the time liabilities and five per cent of the demand liabilities of such company and shall file with the registrar before the tenth day of every month [3][three copies of] a statement of the amount so held on the Friday of each week of the preceding month with particulars of the time and demand liabilities of each such day.

(2) For the purpose of sub-section (1) 'demand liabilities' means liabilities which must be met on demand, and 'time liabilities' means liabilities which are not demand liabilities

(3) Nothing in this section or in section 277K shall apply to a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (II of 1934)

(4) If default is made in complying with the requirements of section 277G, section 277H, [4][section 277HH, section 277-I], section 277J, section 277K, or section 277M or with the requirements of this section as to the maintenance of a cash reserve, every director or other officer of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues, and if default is made in complying with the requirements of this section as to the filing of the statement referred to in sub-section (1), to a fine not exceeding one hundred rupees for every day during which the default continues]

[1][**277M. Restriction on nature of subsidiary companies.**—[5][(1) [6][A banking company shall not form any subsidiary company except a subsidiary company] formed for the purpose of undertaking and executing trusts, undertaking the administration of estates as executor, trustee or otherwise and such other purposes set forth in section 277F as are incidental to the business of accepting deposits of money on current account or otherwise]

[6][(2) Save as provided in sub-section (1), a banking company shall not hold shares in any company whether as pledgee, mortgagee or absolute owner of an amount exceeding forty per cent. of the issued share capital of that company ·

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1 *See* footnote 2 on page 119 *supra*

2 The Act came into force on the 15th January, 1937.

3 These words were inserted by s. 16 of the Indian Companies (Amendment) Act, 1938 (II of 1938).

4 These words, figures and letters were inserted by s. 4 of the Indian Companies (Amendment) Act 1944 (IV of 1944) (with effect from1-7-1944)

5 Section 277-M was re-numbered as sub-section (1) of that section and sub-section (2) was inserted by s 17 of the Indian Companies (Amendment) Act, 1938 (II of 1938).

6 These words were substituted for the words "A banking company shall not form or hold shares, in any subsidiary company except a subsidiary company of its own", *ibid.*

Provided that nothing in this sub-section shall apply to shares held by a banking company before the commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)]

[1][**277N. Power of Court to stay proceedings.**—(1) The Court may on the application of a banking company which is temporarily unable to meet its obligations make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper and may from time to time extend the period.

(2) No such application shall be maintainable unless accompanied by a report of the registrar;

Provided, however, the Court may, for sufficient reasons, grant interim relief, even if the application is not accompanied by such report

(3) The registrar shall for the purposes of his report be entitled at the cost of the company to investigate the financial condition of the company and for such purpose to have the books and documents of the company examined by an accoutant holding a certificate issued under section 144.]

PART XI

SUPPLEMENTAL

Legal proceedings, offences, etc

278. Cognizance of offences.—(1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

(2) If any offence which by this Act is declared to be punishable by fine only is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held.

(3) Notwithstanding anything in the Code of Criminal Procedure, 1898, (V of 1898), every offence against this Act shall, for the purposes of the said Code, be deemed to be non-cognizable.

279. Application of fines.—The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

280. Power to require limited company to give security for costs.—Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Court having jurisdiction in the matter may, if it appears that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

[2][**281. Power of Court to grant relief in certain cases.**—(1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the Court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty 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 for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

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1 *See* footnote 2 on page 119, *supra*.

2 This section was substituted by s. 120 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936),

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are the following :—

(a) directors of a company ;

(b) managers and managing agents of a company ;

(c) officers of a company ;

(d) persons employed by a company as auditors, whether they are or are not officers of the company]

282. Penalty for false statement.—Whoever in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

[1][**282A. Penalty for wrongful withholding of property.**—Any director, managing agent, manager or other officer or employee of a company who wrongfully obtains possession of any property of a Company, or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or directed in the articles and athorised by this Act, shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine not exceeding one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied or in default to suffer imprisonment for a period not exceeding two years]

[1][**282B. Penalty for misapplication of securities by employers.**—

(1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company in a special account to be opened by the company for the purpose in a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (II of 1934), and no portion thereof shall be utilised by the company except for the purposes agreed to in the contract of service.

(2) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or accruing by way of interest or otherwise to such fund after the [2]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), [3][shall be either deposited in a Post Office Savings Bank account or invested] in securities mentioned or referred to in clauses (a) to (e) of section 20 of the Indian Trusts Act, 1882 (II of 1882), and all moneys belonging to such fund at the commencement of the said Act [4][which are not so deposited or invested shall be so deposited or] invested in such securities by annual instalments not exceeding ten in number and not less in amount in any year than one-tenth of the whole amount of such moneys

[5][Provided that where one-tenth part of the whole amount of the moneys belonging to such fund exceeds the maximum amount which may be deposited

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1 This section was inserted by s. 121 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 The Act came into force on the 15th January, 1937

3 These words were substituted for the words "shall be invested, and shall be invested only" by s. 3 of the Indian Companies (Amendment) Act, 1941 (XXVI of 1941).

4 These words were substituted for the words "which are not so invested shall be", *ibid.*

5 This proviso was added by s. 2 of the Indian Companies (Amendment) Act, 1946 (XIII of 1946).

in a Post Office Savings Bank account under the rules regulating such deposits for the time being in force, the amount of such excess may be kept or deposited in a special account to be opened for the purpose in a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (II of 1934).]

(3) Notwithstanding anything to the contrary in the rules of any fund to which sub-section (2) applies or in any contract between a company and its employees, no employees 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 (2) interest at a rate exceeding the rate of interest yielded by such investment.

(4) An employee shall be entitled on request made in this behalf to the company to see the bank's receipt for any money or security such as is referred to in sub-section (1) and sub-section (2).

(5) Any director, managing agent, manager or other officer of the company who knowingly contravenes or permits or authorises the contravention of the provisions of this section shall be liable on conviction to a fine not exceeding five hundred rupees]

[1][(6) Nothing in sub-section (2) 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 recognized provident fund within the meaning or clause (a) of section 58A of the Indian Income-tax Act, 1922 (XI of 1922), or, 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)]

283. Penalty for improper use of word "Limited".—If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding fifty rupees for every day upon which that name or title has been used.

[2][**284. Saving of pending proceedings for winding up.**—The provisions with respect to winding up contained in this Act as amended by the Indian Companies (Amendment) Act, 1936 (XXII of 1936), shall not apply to any company of which the winding up has commenced before the [3]commencement of the Indian Companies (Amendment) Act, 1936 (XXII of 1936), but every such company shall be wound up in the same manner and with the same incidents as if the Indian Companies (Amendment) Act, 1936 (XXII of 1936), had not been passed.]

285. Saving of document.—Every instrument of transfer or other document made before the commencement of this Act in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not been passed, and for the purposes of that instrument or document the repealed enactment shall be deemed to remain in full force.

286. Former registration offices and registers continued—(1) The offices existing at the commencement of this Act for registration of joint-stock companies shall be continued as if they had been established under this Act.

(2) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

* * * * * *

287. Savings for Indian Life Assurance Companies Act, 1912, and Provident Insurance Societies Act, 1912.—Nothing in this Act shall affect the

1 This sub-section was added by s. 2 of the Indian Companies (Amendment) Act, 1945 (IV of 1945)

2 This section was substituted by s. 18 of the Indian Companies (Amendment) Act, 1938 (II of 1938).

3 The Act came into force on the 15th January, 1937.

4 Sub-section (3) was omitted by the Government of India (Adaptation of Indian Laws) order, 1937.

provisions of the Indian Life Assurance Companies Act, 1912 (VI of 1912) or of the Provident Insurance Societies Act, 1912 (V of 1912).

288. Construction of "registrar of joint-stock companies" in Act XXI of 1860.—In sections 1 and 18 of Act No. XXI of 1860 (*for the registration of Literary, Scientific and Charitable Societies*), the words "registrar of joint-stock companies" shall be construed to mean the registrar under this Act.

289. Act not to apply to Banks of Bengal, Madras or Bombay.—Save as provided in sections 188 and 189, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay.

[1][**289A. Application of Act to non-trading companies with purely Provincial objects.**—The powers conferred by this Act on the Central Government shall, in relation to companies with objects confined to a single Province which are not trading corporations, be powers of the Provincial Government]

290. Repeal of Acts and Savings.—(1) The enactments mentioned in the Fourth Schedule are hereby repealed to the extent specified in the fourth column thereof:

Provided that the repeal shall not affect—

(a) the incorporation of any company registered under any enactment hereby repealed; nor

(b) Table B[2] in the Schedule annexed to Act No. XIX of 1857, or any part thereof, so far as the same applies to any company existing at the commencement of this Act; nor

(c) Table A[3] in the First Schedule annexed to the Indian Companies Act, 1882 (VI of 1882), or any part thereof, so far as the same applies to any company existing at the commencement of this Act

(2) All fees directed, resolutions passed and other things duly done under any enactment hereby rapealed shall be deemed to have been directed, passed or done under this Act.

(3) The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (X of 1897), with regard to the effect of repeals

SCHEDULES

THE FIRST SCHEDULE

(See Section 2, 17, 18, 79, 266)

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

Preliminary

1. In these regulations, unless the context otherwise requires, expressions defined in the Indian Companies Act, 1913 (VII of 1913), or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 103 of the Indian Companies Act, 1913 (VII of 1913), if, and so far as, those restrictions are binding upon the company.

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1 **This section was inserted, by the Government of India (Adaptation of Indian Laws) Order, 1937.**

2 *See* **Appendix I to this Act, p. 153,** *infra.*

3 *See* **Appendix II to this Act, p. 160,** *infra.*

Shares

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine [1][and any preference share may with the sanction of a special resolution be issued on the terms that it is or at the option of the company is liable to be redeemed.]

4. 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 [1][subject to the provisions of section 66A of the Indian Companies Act, 1913 (VII of 1913)], 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 an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class,

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares duly comply with such of the provisions of sections 101 and 104 of the Indian Companies Act, 1913 (VII of 1913), as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon: Provided that, in respect of a 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

7. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. [1][Except to the extent allowed by section 54A of the Indian Companies Act, 1913] (VII of 1913), no part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

Lien

9. The company shall have a lien 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 the company shall also have a lien on all shares (other than 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; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. 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 director thinks fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part

1 These words were inserted by s. 122 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

of 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 by reason of his death or insolvency to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he 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.

Calls on Shares

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payments) pay to the company at the time or times so specified the amount called on his shares.

13. The joint-holders of a share shall be jointly or severally liable to pay all calls in respect thereof.

14. 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 upon the sum at the rate of five per cent per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest 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 amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think 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 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 without the sanction of the company in general meeting six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and transmission of shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve:

I, A. B. of in consideration of the sum of rupees paid to me by C. D. of (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share [or shares] numbered in the undertaking called the Company, Limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution hereof, and I, the said transferee do hereby agree to take the said shares [or shares] subject to the conditions aforesaid. As witness our hands the day of .

Witness to the signatures of, etc

20. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(a) a fee not exceeding two rupees is paid to the company in respect thereof; and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer

[1][If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee and the transferor notice of the refusal.]

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent person before the death or insolvency

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

Forfeiture of shares

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such 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.

25. The notice shall name a further day (not earlier than the expiration of fourteen days, from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

26. 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 directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

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1 These words were added by s, 122 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, 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, but his liability shall cease if and when the company received payment in full of the nominal amount of the shares.

29. A duly verified declaration in writing that the declarant is a director 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, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and 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

30. 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 amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of shares into stock

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock and may with the like sanction re-convert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same or any part thereof in the same manner and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum, shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stocks shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividend, 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) shall be conferred by any such aliquot part of stock as would not, if existng in shares, have conferred that privilege or advantage.

34. 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 "share-holder" therein shall include "stock" and "stock-holder".

Share warrants

35. The company may issue share-warrants, and accordingly the directors may in their 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 directors may from time to time require as to the identity of the person signing the request, 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 directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends, or other moneys on the shares included in the warrant.

36 A share-warrant shall entitle the bearer to the shares included in it and the shares shall be transferred by the delivery of the share-warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. 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 expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share-warrant. The company shall, on two days' written notice, return the deposited share-warrant to the depositor.

39. 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; but the bearer of a share-warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may, from time to time, make rules as to the terms on which (if they 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

41. The directors may, with the sanction of [1][the company in general meeting], increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons, entitled to an offer of new shares] cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares be shall subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

44. The company may, by [2][ordinary resolution],—

(a) consolidate and divide its share capital into shares of larger amount than its existing shares;

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1 **These words were substituted for the words "an extraordinary resolution of the company" by s. 122 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).**

2 **These words were substituted for the words "special resolution",** *ibid.*

(b) by sub-division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (d) of sub-section (1) of section 50 of the Indian companies Act, 1913 (VII of 1913) ;

(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 ;

[1]* * * * * *

[1][44A. The company may, by special resolution, reduce its share capital in any manner and with, and subject to any incident authorised and consent required by law.]

General Meetings

45. The statutory general meeting of the company shall be held within the period required by section 77 of the Indian Companies Act, 1913 (VII of 1913).

46. A general meeting shall be held [2][within eighteen months from the date of its incorporation and thereafter once at least in every year] at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting, being so held a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings ; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, call an extraordinary general meeting, and extraordinary general meetings shall also be called on such requisition, or in default, may be called by such requisitionists as provided by section 78 of the Indian Companies Act, 1913 (VII of 1913). If at any time there are not within British India sufficient directors capable of acting 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 meetings may be called by the directors.

Proceedings at General Meeting

49. [3][Subject to the provisions of sub-section (2) of section 81 of the Indian Companies Act, 1913 (VII of 1913), relating to special resolutions], fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under [the Indian Companies Act, 1913 (VII of 1913), or] the regulations of the company, entitled to receive such notices from the company ; but [4][the accidental omission to give notice to or the non-receipt of notice] by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other

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1 **Clause (d) of regulation 44 was omitted and reguation 44A was inserted,** *ibid.*

2 **These words were substituted for the words "once in every year",** *ibid.*

3 **These words were inserted by s. 122 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).**

4 **These words were substituted for the words "non-receipt of the notice"** *ibid.*

officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. 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; save as herein otherwise provided, [1][two members in the case of a private company and five members in the case of any other company] personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, and, 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.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. 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, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. 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.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded [2][in accordance with the provisions of clause (c) of sub-section (1) of section 79 of the Indian Companies Act, 1913 (VII of 1913)], and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. 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.

59. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members

60. On a show of hands every member present in person shall have one vote. [3][On a poll every member shall have one vote in respect of each share or each hundred rupees of stock held by him.]

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1 These words were substituted for the words "three members", *ibid.*

2 These words and figures were substituted for the words "by at least three members" by s. 19 of the Indian Companies (Amendment) Act, 1938 (II of 1938).

3 These words were substituted for the words "On a poll every member shall have one vote for each share of which he is the holder" by s. 122 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

61. 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; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. 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.

63. 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.

64. On a poll votes may be given either personally or by proxy: Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Indian Companies Act, 1913 (VII of 1913), is in force.

65 The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless [1][he is a member of the company]

66. 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 seventy two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve.—

Company, Limited.

"I of in the district of being a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be], general meeting of the company to be held on the day of and at any adjournment thereof."

Signed this day of

Directors

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 85 of the Indian Companies Act, 1913 (VII of 1913).

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1 **These words were substituted for the words "either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation", *ibid.***

Powers and duties of Directors

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Indian Companies Act, 1913 (VII of 1913), or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulations made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration [whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another] as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors, but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the Indian Companies Act, 1913 (VI of 1913) or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it, and to keeping a register of the directors, and to sending to the registrar an annual list of members, and a summary of particulars relating thereto and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions and a copy of the registrar of directors and notifications of any changes therein.

75. The director shall cause minutes to be made in books provided for the purpose—

(a) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and, of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal

76. 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 in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors.

77. The office of director shall be vacated if the director—

[1][(a) fails to obtain within the time specified in sub-section (1) of section [2][85] of the Indian Companies Act 1913 (VII of 1913), or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment; or]

[1][(b) is found to be of unsound mind by a Court of competent jurisdiction; or]

[1][(c) is adjudged insolvent; or]

[1][(d) fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made; or]

[1][(e) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker; or]

[1][(f) absents himself from three consecutive meetings of the directors or from all meetings of the directors for a continuous period of three months, whichever is longer, without leave of absence from the board of directors; or]

[1][(g) accepts a loan from the company; or]

[3][(h)] is concerned or participates in the profits of any contract with the company; or

[3][(i)] is punished with imprisonment for a term exceeding six months

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for the company of which he is director, but a director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.

Rotation of Directors.

78. At the first ordinary meeting of the company, the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year, one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves), be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up the meeting shall stand adjourned till the same day in the next week at the same time and place, and; if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors or such of them as have not had their places filled up shall be deemed to have been re-elected at the adjourned meeting.

83. [4][Subject to the provisions of sections 83A and 83B of the Indian Companies Act, 1913 (VII of 1913), the Company may from time to time in general meeting

1 These clauses were substituted for the original clauses (a) to (d) by s. 122 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

2 This figure was substituted for the figure "84" by s. 19 of the Indian Companies (Amendment) Act, 1938 (II of 1938).

3 The original clauses (e) and (f) were re-lettered (h) and (i) by s. 122 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).

4 These words were inserted by s. 122 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring on the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

86. The Company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead, the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit Questions arising at any meeting shall be decided by a majority of votes In case of an equality of votes, the chairman shall have a second or casting vote A director may, and the secretary on the requisition of a director shall at any time summon a meeting of directors.

88 The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose

90 The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but 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 same, the directors present may choose one of their number to be chairman of the meeting

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so [1][formed] shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings: 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 same, the members present may choose one of their number to be chairman of the meeting

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting 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.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified,

1 This word was substituted for the word "found" by the repealing and Amending Act, 1914 (X of 1914), Sch. I.

be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve

95. The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividends shall be paid otherwise than out of profits [1][of the year or any other undistributed profits].

98. 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 on the shares, 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 No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied 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 directors may from time to time think fit.

100. If several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividend payable on the share

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

[2][103. The directors shall cause to be kept proper books of account with respect to—

(a) all some of money received and expended by the company and the matters in respect of which the receipts and expenditure take place ·

(b) all sales and purchases of goods by the company :

(c) the assets and liabilities of the company]

[2][104. The books of account shall be kept at the registered office of the company or at such other place as the directors shall think fit and shall be open to inspection by the directors during business hours]

105. The directors 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, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the directors or by the company in general meeting.

[3][106. The directors shall as required by sections 131 and 131A of the Indian Companies Act, 1913 (VII of 1913), cause to be prepared and to be laid before the company in general meeting such profits and loss accounts, [3][income and expenditure accounts], balance-sheets, and reports as are referred to in those section].

107. The profit and loss account shall [1][in addition to the matters referred to in sub-section (3) of section 132 of the Indian Companies Act, 1913 (VII of 1913)],

1 **These words were added by s. 122 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936).**

2 **This regulation was substituted,** *ibid.*

3 **These words were inserted by s. 19 of the Indian Companies (Amendment) Act, 1938 (II of 1938).**

show, arranged under the most convenient heads, the amount of gross income, [1][(diminished in the case of a banking company by the amount of any provision made to the satisfaction of the auditors for bad and doubtful debts)] distinguishing the several sources from which it has been derived, and the amount of gross expenditure distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure, which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

108. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to a reserve fund

109. A copy of the balance-sheet and report shall, [2][fourteen] days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder

110 The directors shall in all respects comply with the provisions of sections 130 to 135 of the Indian Companies Act, 1913 (VII of 1913), or any statutory modification thereof for the time being in force

Audit

111. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Indian Companies Act, 1913 (VII of 1913), or any statutory modification thereof for the time being in force.

Notices

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

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post

113. If a member has no registered address in British India, and has not supplied to the company an address within British India for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

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

115. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent or by any like description, at the

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1 **These brackets and words were inserted and were deemed always to have been inserted by s. 4 of the Indian Companies (Amendment) Act, 1943 (XXX of 1943).**

2 **This word was substituted for the word "seven" by s. 19 of the Indian Companies (Amendment) Act, 1938 (II of 1938).**

address (if any) in British 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 the same might have been given if the death or insolvency had not occurred.

116. Notice of every general meeting shall be given in some manner hereinbefore authorised to (a) every member of the company (including bearers of share-warrants) except those members who (having no registered address within British India) have not supplied to the company an address within British India for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or insolvency of a member, who but for his death or insolvency would be entitled to receive, notice of the meeting [1] * * *

TABLE B

(See sections 249 and 262)

TABLE OF FEES TO BE PAID TO THE REGISTRAR

I.—By a company having a share capital

		Rs	A	P
1.	For registration of a company whose nominal share capital does not exceed Rs 20,000 a fee of . .	40	0	0
2.	For registration of a company whose nominal share capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say)—			
	For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees	20	0	0
	For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 50,000 rupees up to 10,00,000 rupees . .	5	0	0
	For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 10,00,000 rupees .	1	0	0
3	For registration of any increase of share capital made after the first registration of the company, the same fees per 10,000 rupees, or part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration :			
	Provided that no company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration.			
4.	For a registration of any existing company, except such companies as are by his Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			

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1 The words "No other persons shall be entitled to receive notices of general meetings" were omitted, *ibid.*

		Rs.	A.	P.
5.	For filing any document by this Act required or authorised to be filed, other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up . . .	5	0	0
6.	For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of .	5	0	0

II —By a company not having a share capital

1.	For registration of a company whose number of members, as stated in the articles of association, does not exceed 20 .	40	0	0
2.	For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 . . .	100	0	0
3.	For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs 100 with an additional Rs 5 for every 50 members, or less number than 50 members, after the first 100.			
4	For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of .	400	0	0
5	For registration of any increase on the number of members made after the registration of the company, the same fees as would have been payable [1][in respect of such increase] if such increase had been stated in the articles of association at the time of registration [2]			
	Provided that no one company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the Company.			
6.	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.			
7.	For filing any document by this Act required or authorised to be filed, other than the memorandum or the abstract required to be filed with the registrar, by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up . . .	5	0	0
8.	For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of .	5	0	0

1 These words were inserted by Notification No. 1-D, dated 3rd November 1917, see *Gazette of India*, 1917, Pt. I, p. 1787.

2 The figure "5" was omitted, *ibid.*

[1][THE SECOND SCHEDULE.

(See sections 98 and 154)

FORM I.

The Indian Companies Act, 1913

STATEMENT IN LIEU OF PROSPECTUS

filed by

. ...Limited.

Pursuant to section 98 of the Indian Companies Act, 1913 (VII of 1913).

Presented for filing by

The nominal share capital of the company,	Rs .....
Divided into	Shares of Rs... ...each, ,, Rs... each. ,, Rs each,
Amount (if any) of above capital which consists of redeemable perference shares.	Shares of Rs . each
The date on or before which these shares are, or are liable, to be redeemed	
Names, descriptions and addresses of directors or proposed directors and managers or proposed managers and any provision in the articles, or in any contract, as to appointment of and remuneration payable to directors or managers	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. ——shares of Rs .... fully paid. 2. ——shares upon which Rs . ... per share credited as paid. 3 Debenture Rs ... ... 4. Consideration.
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company. Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill.	Total purchase price Rs... ... Cash . . . . Rs.. ... . Shares . . . . Rs..... Debentures . . . Rs.. . ... 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	Amount paid. Amount payable,
Rate of the commission...	Rate per cent.

1 This Schedule was substituted by s. 123 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936.)

The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses	Rs ....
Amount paid or intended to be paid to any promoter.	Name of promoter . ... Amount Rs ....
Consideration for the payment.	Consideration :—
Dates of, and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the company or contracts, other than contracts appointing or fixing the remuneration of a managing director or managing agent, entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof 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 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.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the [1][accounts] of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.	

(Signatures of the persons above-named as Directors or proposed Directors or of their agents authorised in writing.)

Date

FORM II

1 This word was substituted for the word "amounts" by s, 20 of the Indian Companies (Amendment) Act, 1938 (II of 1938)

FORM II

The Indian Companies Act, 1913 (VII of 1913)

STATEMENT IN LIEU OF PROSPECTUS

filed by

....Limited,

Pursuant to sub-section (1) of section 154 of the Indian Companies Act, 1913 (VII of 1913.)

Presented for filing by

The nominal share capital of the Company.	Rs
Divided into	Shares of Rs ...each. Shares of Rs.. .. . each. Shares of Rs each.
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of Rs.. .. .. each.
The date on or before which these shares are, or are liable, to be redeemed.	
Names descriptions and addresses of Directors or proposed Directors and Managers or proposed Managers, and any provision in the Articles, or in any contract. as to appointment of and remuneration payable to Directors or Managers.	
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 issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement	1. Shares of Rs fully paid. 2 Shares upon which Rs .. .. per share credited as paid. 3. Debenture Rs. 4 Consideration
Names and addresses of vendors of property (1) purchased or acquired by the Company within the two years preceding the date of this Statement or (2) agreed or proposed to be purchased or acquired by the Company.	
Amount (in cash, shares or debentures) payable to each separate vendor	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill.	Total purchase price . Rs .. Cash . . . Rs .. Shares . . . Rs ..... Debentures . . Rs .. ... 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 Amount payable. Rate per cent.
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Unless more than two years have elapsed since the date on which the Company was entitled to commence business :	
Estimated amount of preliminary expenses . . Amount paid or intended to be paid to any promoter . Consideration for the payment	Rs. Name of promoter. Amount Rs. Consideration.

Date of, and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the Company or contracts, other than contracts appointing or fixing the remuneration of a Managing Director or Managing Agent, entered into more than two years before the delivery of this statement.)	
Times and place at which the contracts or copies thereof 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 in the promotion of or in the property purchased or acquired by the Company within the two years preceding the date of this statement or 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 the formation of the Company.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirements shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on	
(Signatures of the persons above named as Directors or proposed Directors or of their agents authorised in writing.)	

Dated the *day of*

THE THIRD SCHEDULE.

FORM A

(See section 6 and 151)

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st.—The name of the company is "The Eastern Steam Packet Company, Limited"

2nd.—The registered office of the company will be situate in the province of Bombay.

3rd.—The objects for which the company is established are "the conveyance of passengers, and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental ro conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—The share capital of the company is two hundred thousand rupees, divided into one thousand shares of two hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and descriptions of subscribers	Number of shares taken by each subscribers.
1. A. B. of , merchant	200
2. C. D. ,, , ,,	25
3 E. F. ,, , ,,	30
4 G. H ,, , ,	40
5. I J. ,, , ,	15
6. K. L. ,, , ,,	5
7. M N. ,, ,,	10
TOTAL SHARES TAKEN	325

Dated the *day of* *19* .

Witness to the above signatures

X Y, of

FORM B

(See sections 7 and 151)

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 Calcutta.

3rd.—The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—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 afterwards, 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 and subscribed are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

Dated the *day of*

Witness to the above signatures.
X. Y. of

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

Number of Members

1. The company for the purpose of registration is declared to consist of five hundred members.

2 The directors hereinafter mentioned may, whenever the business or the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings

4. The first general meeting shall be held at such time not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary

7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, call an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to call a general meeting: if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members may themselves call a meeting.

Proceedings at General Meetings.

10. Fourteen days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner

(if any) as may be prescribed by the company in general meeting ; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say) .—if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five if they exceed ten, there shall be added to the above quorum one for every five additional members with this limitation, that no quorum shall in any case exceed ten.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if called on the requisition of the members, shall be dissolved , in any other case it shall stand adjourned to the same day in the following week at the same time and place , and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of Members

19. Every member shall have one vote and no more

20. If any member is a lunatic or idiot, he may vote by his committee or other legal guardian.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid

22. On a poll votes may be given either personally or by proxy Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Indian Companies Act 1913 (VII of 1913), is in force A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal

23. (1) No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

(2) The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form :—

Company, Limited

I, , of , being a Member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the day of and at any adjournment thereof.

Signed this day of

Directors.

25. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall, for all the purposes of the Indian Companies Act, 1913 (VII of 1913), be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Indian Companies Act, 1913 (VII of 1913), or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting ; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made

Elections of Directors.

28. The directors shall be elected annually by the company in general meeting

Business of Company.

(Here insert *rules as to mode in which business of insurance is to be conducted.*)

Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Indian Companies Act, 1913 (VII of 1913), or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders", and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing prepaying and posting a letter containing the notice and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of
"2. C. D of
"3. E F of
"4. G H of
"5. I J. of
"6. K L. of
"7. M., N. of

Dated the day of 19

Witness to the above signatures.

X. Y. of

FORM C

(See sections 7 and 151)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL.

Memorandum of Association.

1*st*.—The name of the company is "The Snowy Range Hotel Company, Limited".

2*nd*. The registered office of the company will be situate in the province of Bengal.

3*rd*.—The objects for which the company is established are "the facilitating travelling in the Snowy Range, by providing hotels and conveyances by sea and by land for the accommodation of travellers and the doing all such other things as are incidental or conducive to the attainment of the above object".

4*th*.—The liability of the members is limited

5*th*.—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, 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 amongst themselves, such amount as may be required, not exceeding fifty rupees.

6*th*.—The share capital of the company shall consist of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of shares taken by each subscriber.
"1. A. B. of	200
"2. C. D. of	25
"3. E. F. of	30
"4. G. H. of	40
"5. I. J. of	15
"6. K. L. of	5
"7. M.N. of	10
Total shares taken	325

Dated the ***day of*** **19**

Witness to the above signatures.

X. Y. of

Articles of Association to accompany preceding Memorandum of Association.

1. The share capital of the company is five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A of the Indian Companies Act, 1913 (VII of 1913), shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and descriptions of Subscribers.

"1. A. B. of.....merchant.
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I J. of
"6. K. L. of
"7. M. N. of

Dated *day of* **19**

Witness to the above signatures.
X. Y., of

FORM D

(*See sections* 8 *and* 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL.

Memorandum of Association

1*st*.—The name of the company is "The Patent Stereotype Company."

2*nd*.—The registered office of the company will be situate in the province of Bombay.

3rd.—The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates of which method P. Q., of Bombay, is the sole patence"

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of shares taken by each subscriber.
"1. A. B of	3
"2. C. D. of	2
"3. E F. of	1
"4. G. H. of	2
"5. I. J. of	2
"6. K. L. of	1
"7. M. N. of	1
Total shares taken	12

Dated the *day of* ***19*** .

Witness to the above signatures
X. Y., of

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

2. All the articles of Table A of the Indian Companies Act, 1913 (VII of 1913), shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Descriptions of Subscribers

"1. A. B. of merchant.
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M N. of

Dated the day of 19 .

Witness to the above signatures.
X. Y., of

FORM E

AS REQUIRED BY PART II OF THE ACT (See section 32)

Summary of Share Capital and Shares of the Company, Limited, made up to the day of 19 (being the day of the first ordinary general meeting in 19)

Nominal share capital Rs. divided into* shares of Rs each. / shares of Rs. each.

Total number of shares taken up* to the day of 19 which number must agree with the total shown in the list as held by the existing members .	
Number of share issued subject to payment wholly in cash .	
Number of shares issued as fully paid up otherwise than in cash .	
Number of shares issued as partly paid up to the extent of per share otherwise than in cash .	
† There has been called up on each—of shares .	Rs.
There has been called up on each—of shares . .	Rs.
There has been called up on each—of shares .	Rs
‡ Total amount of calls received, including payments on application and allotment . . .	Rs.
Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash	Rs.
Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share . .	Rs.
Total amount of calls unpaid . . .	Rs.
Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary . . .	Rs.
Total amount (if any) paid on §shares forfeited . .	Rs.
Total amount of shares and stock for which share warrants are outstanding	Rs
Total amount of share-warrants issued and surrendered respectively since date of last summary . . .	Rs.
Number of shares or amount of stock comprised in each share-warrant	Rs.
Total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act . . .	Rs.

*** When there are shares of different kinds or amounts (e.g. Preference and Ordinary of Rs. 200 or Rs. 100) state the numbers and nominal values separately.**

† Where various amounts have been called or there are shares of different kinds, state them separately.

‡ Include what has been received on forfeited as well as on existing shares.

§ State the aggregate number of shares forfeited.

List of Persons holding shares in the Company, Limited, on the day of 19 , and of persons who have held shares therein at any time since the date of the last return, showing their names and addresses and an account of the shares so held.

Folio in register ledger containing particulars.	Names, Addresses and Occupations.				Account of Shares.						Remarks.
	Name in full.	Father's Name	Address	Occupation or caste.	*Number of shares held by existing Members at date of return.	§Particulars of Shares transferred since the date of the last Return by persons who are still Members.		§Particulars of Shares transferred since the date of the last Return by persons who have ceased to be Members.		
						Number †	Date of Registration of Transfer	Number †	Date of Registration of Transfer.	

Names and addresses of the persons who are the Directors of the , Limited, on the day of 19 .

Name	Addresses

Names and addresses of the persons who are the managers of the , Limited, on the day of 19 .

Names	Addresses

NOTE.—Banking companies must add a list of all their places of business.

I, , do hereby certify that the above list and summary truly and correctly states the facts as they stood on day of 19 .

(Signature) . . . . . .

(State whether director, manager or secretary)

*State the aggregate number of shares forfeited (if any).

†The aggregate number of shares held, and not the distinctive numbers must be stated and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up

‡When the shares are of different classes, these columns may be sub-divided so that the number of each class held or transferred may be shown separately.

§The date of registration of each transfer should be given as well as the number of shares transferred on each date The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the remarks column immediately opposite the particulars of each transfer.

FORM F.

(See section 132.)

. . Limited

Balance Sheet as at . . . . 19 .

CAPITAL AND LIABILITIES		PROPERTY AND ASSETS.	
CAPITAL-		FIXED CAPITAL EXPENDITURE -	
Authorised Capital - shares of Rs. . each		(Distinguishing as far as possible between expenditure upon goodwill land buildings, lease holds railway sidings, plant machinery furniture development of property, patents trade marks and designs, interest paid out of Capital during construction etc. and stating in every case the original cost and the additions thereto and deductions therefrom during the year and the total Depreciation written off under each head. Where sums have been written off on a reduction of capital or a revaluation of assets every balance sheet after the first balance sheet subsequent to the reduction or revaluation shall show the reduced figures with the date of and the amount of the reduction made.)	
[Distinguishing between the various classes of Capital]			
Issued Capital . . shares of Rs each			
[ ] Shares issued as fully paid up pursuant to any contract without payments being received in cash shares of Rs each			
[ ] Shares issued for payments in cash . shares of Rs . each			
Subscribed Capital shares of Rs. . each		PRELIMINARY EXPENSES	
Amount called up at Rs. per share		COMMISSION OR BROKERAGE	
Less-Calls unpaid-		(Commission or Brokerage paid for underwriting or placing or subscribing shares or debentures until written off.)	
[i] due from Managing Agents		DISCOUNT ALLOWED on the issue of shares or so much as has not been written off at the date of the balance-sheet	
[ii] due from others		STORES AND SPARE PARTS	
Add-Forfeited shares [amount paid up]		LOOSE TOOLS	
Note - Where circumstances permit issued and subscribed capital and amount called up may be shown as one item, e.g.		LIVE-STOCK AND VEHICLES	
Issued and Subscribed Capital . . . shares of Rs each Rs paid up		STOCK IN TRADE	
RESERVES		(Stating mode of valuation, *e.g.* cost or market value).	
DEBENTURES stating the nature of security		BILLS OF EXCHANGE	
Any Sinking Fund		[1][BOOK DEBTS (other than bad and doubtful Debts of a Banking Company for which provision has been made to the satisfaction of the auditors.)]	
Any other Fund Created out of Net Profits, including any development fund			
Any Pension or Insurance Fund			
[1] **Provision for Bad and Doubtful Debts (in the case of Companies other than Banking Companies)**			

[1] This Form was substituted by s. 124 of the Indian Companies (Amendment) Act 1936 (XXII of 1936).

[2] This sub-head was substituted and was deemed always to have been substituted by s. 5 of the Indian Companies (Amendment) Act 1943 (XXX of 1943).

CAPITAL AND LIABILITIES

LOANS-

[a] Secured
- [i] loans on mortgages or fixed assets
- [ii] loans on debentures
- [iii] loans from banks- stating the nature of security
- [iv] liabilities to subsidiary companies
- [v] other secured loans, stating the nature of security
- [vi] interest accrued on mortgages debentures or other secured loans

[b] Unsecured-
- [i] loans from banks
- [ii] fixed deposits
- [iii] short term loans
- [iv] advances by directors or managers and managing agents
- [v] interest accruing but not due and interest accrued and due
- [vi] liabilities to subsidiary companies

UNCLAIMED DIVIDENDS

LIABILITIES.-
- For Goods supplied
- For Expenses
- For Acceptances
- For Other Finance

ADVANCE PAYMENTS AND UNEXPIRED DISCOUNTS

[For the portion for which value has still to be given e g in the case of the following classes of companies-
Newspaper, Fire Insurance, Theatre, Club, Banking Steamship Companies etc.

PROFIT AND LOSS

CONTINGENT LIABILITIES.-
- Claims against the company not acknowledged as debts
- Money for which the company is contingently liable
- [Showing separately the amount of any guarantees given by the company on behalf of directors or officers of the company]
- Arrears of Cumulative Preference Dividends

PROPERTY AND ASSETS

(Distinguishing between those considered good and in respect of which the company is fully secured and those considered good for which the company holds no security other than the debtor's personal security and distinguishing between debts considered good and debts considered doubtful or bad Debts due by directors or other officers of the Company or any of them either severally or jointly with any other persons to be separately stated)

ADVANCES

(Recoverable in cash or in kind or for value to be received e g. Rates Taxes Insurance, etc , showing separately
- [ ] loans given to subsidiary companies
- [ii] loans including temporary advances made at any time during the year to directors or managers of the company

INVESTMENTS

(Showing nature of investments and mode of valuation e g Cost or Market value and distinguishing-
- [ ] investments in Government or trust securities
- [ ] investments in shares debentures or bonds [showing separately shares fully paid up and partly paid up]
- [ ] investments in shares, debentures or bonds of subsidiary companies
- [ ] immovable properties

INTEREST ACCRUED ON INVESTMENTS

CASH AND OTHER BALANCES

Amount in hand

Balances with Agents and Bankers [in detail showing whether on deposit or current account, etc]

Profit and Loss

The information required to be given under any of the items or sub items in this Form if not included in the Balance-sheet itself shall be furnished in a separate Schedule or Schedules to be attached to and to form part of the Balance Sheet.

FORM G

(See section 136)

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND 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 of June) were—

Debts owing to sundry persons by the company :

Under decree, Rs
On mortgages or bonds Rs
On notes, bills or hundis Rs
On other contracts Rs
On estimated liabilities Rs

The assets of the company on that day were

Government securities [stating their], Rs
Bills of exchange, hundis and promissory notes, Rs
Cash at the Bankers, Rs
Other securities, Rs

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[1][FORM H

[2][See section 277]

INFORMATION TO BE SUPPLIED IN OR IN ADDITION TO THE INFORMATION CONTAINED IN THE BALANCE-SHEET OF A COMPANY REFERRED TO IN PART X,

Liabilities

1. Summary of Authorised Share Capital and Issued Share Capital.

2. Redeemable Preference Shares, stating date on or before which the shares are or are liable to be redeemed.

3. Debentures stating the nature of the Security

4. Redeemed debentures which the Company has power to re-issue

5. Loans (a) secured, stating the nature of the security (b) unsecured.

6. Loans from Banks :—

(a) Secured, stating the nature of the security.
(b) Unsecured.

7. Profit and Loss Account, showing (unless disclosed in a separate account) :—

Balance as per previous Balance-Sheet.
Appropriation thereof.
Profit since last Balance-Sheet.

8. Where a company is a holding company a statement showing how and to what extent the losses, if any, of the subsidiary companies have been provided for either in the accounts of the subsidiary companies or of the holding company or of both.

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*If the company has no capital divided into shares, the portion of the statement relating to capital and share must be omitted

1 This form was inserted by s. 124 of the Indian Companies (Amendment) Act, 1936 (XXII of 1936)

2 These paragraphs were inserted by Notification No. 23 (25)-Tr. (G.I.)/39, dated 1st February 1941, *See Gazette of India*, 1941, Pt. I, p, 162.

If it is not possible to obtain such information a statement to that effect giving the reasons therefor.

Note.—So far as a holding company has any subsidiary company or companies operating in British India it shall disclose the particulars required under section 132A in respect of such subsidiary company or Companies]

8. Contingent Liabilities.

9. Arrears of Cumulative Preference Dividend

Assets.

1. Fixed Assets, with sufficient particulars to disclose their general nature, and stating how their values are arrived at

2. Preliminary expenses, so far as not written off

3. Any expenses incurred in connection with any issue of Share Capital or Debentures, so far as not written off

4. If it is shown as a separate item in or is otherwise ascertainable from the books of the Company, or from any contract for the sale or purchase of any property to be acquired by the Company, or from any documents in the possession of the Company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property the amount of the goodwill and of any patents and trade marks as so shown or ascertained

5 Interest paid on Capital, so far as not written off, showing the Share Capital on which and the rate at which interest has been paid out of Capital during the period to which the accounts relate

6. Discount allowed on shares issued, so far as not written off.

7 Commission paid or allowed in respect of any shares or debentures, so far as not written off

8 Loans outstanding to enable employees or trustees on their behalf to purchase shares in the Company

9 Particulars showing —

(a) the amount of any loans which during the period to which the accounts relate have been made either by the Company or by any other person under a guarantee from or on a security provided by the Company to any director or officer of the Company, including any such loans which were repaid during the said period ,

and

(b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof ;

and

(c) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentage, or other emoluments, paid to or receivable by them by or from the Company or by or from any subsidiary Company

Note (1)—There shall not be required to be shown —

(a) in the case of a company the ordinary business of which includes the lending of money loans made by the Company in the ordinary course of its business ,

or

(b) loans made by the Company to any employee of the Company if the loan does not exceed twenty thousand rupees and is certified by directors of the Company to have been made in accordance with any practice adopted or about to be adopted by the Company with respect to loans to its employees.

Note (2).—The foregoing shall not apply in relation to a Managing Director of the Company, and in the case of any other director who holds any salaried employment or office in the Company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees.

* * * * * * *

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1 The brackets and words "(Where a company is a holding company then the balance Sheet shall disclose the particulars required by section 132A)" were omitted by Notification No. 23(25) Tr. (C. L.)/39, dated 1st January 1941, *see Gazette of India*, 1941, Pt. 1. p. 162.

THE FOURTH SCHEDULE.

(See section 290).

ENACTMENTS REPEALED

1 Year	2 No.	3 Subject or short title.	4 Extent of repeal.
1882 . .	VI	The Indian Companies Act, 1882.	So much as has not been repealed.
1887	VI	The Indian Companies Act (1882) Amendment Act, 1887.	The whole
1891	XII	The Amending Act 1891	So much of the Second Schedule as relates to the Indian Companies Act, 1882
1895	XII	The Indian Companies (Memorandum of Association) Act, 1895	The whole
1899	IX	The Indian Arbitration Act 1899	The second proviso to section 3 relating to the Indian Companies Act, 1882
1900 . .	IV	The Indian Companies (Branch Registers) Act, 1900	The whole
1910 . .	IV	The Indian Companies (Amendment) Act, 1910	The whole

APPENDIX I

[1][*Table B in schedule to Act XIX of 1857*).

REGULATIONS FOR MANAGEMENT OF THE COMPANY.

Shares

1. No person shall be deemed to have accepted any share in the Company unless he has testified his acceptance thereof by writing under his hand in such form as the Company from time to time directs.

2. The Company may from time to time make such calls upon the shareholders, in respect of all moneys unpaid on their shares, as they think fit, provided that twenty-one days' notice at least is given of each call; and each share-holder shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the Company.

3. A call shall be deemed to have been made at the time when the resolution authorizing such call was passed.

1 *See* s. 290 (1) (*b*) of the Indian Companies Act, 1913 (VII of 1913).
The Table is reproduced here as an Appendix for convenience of reference.

4. If before or on the day appointed for payment, any share-holder does not pay the amount of any call to which he is liable, then such share-holder shall be liable to pay interest for the same at the rate of 5 per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

5. The Company may, if they think fit, receive, from any of the share-holders willing to advance the same, all or any part of the moneys due upon their respective shares beyond the sums actually called for, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the share-holder paying such sum in advance and the Company agree upon.

6. If several persons are registered as joint-holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share

7. The Company may decline to register any transfer of shares made by a share-holder who is indebted to them

8 Every share-holder shall, on payment of such sum not exceeding eight annas as the Company may prescribe, be entitled to a certificate, under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

9. If such certificate is worn out or lost, it may be renewed on payment of such sum, not exceeding eight annas, as the Company may prescribe.

10. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year

Transmission of Shares

11 The executors or administrators or representatives of a deceased share-holder shall be the only persons recognized by the Company as having any title to his share

12. Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any share-holder, or in consequence of the marriage of any female share-holder or in any way other than by transfer, may be registered as a share-holder upon such evidence being produced as may from time to time be required by the Company.

13 Any person who has become entitled to a share in any way other than by transfer may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share.

14 The person so becoming entitled shall testify such election by executing to his nominee a transfer of such share

15. The instrument of transfer shall be presented to the Company accompanied with such evidence as they may require to prove the title of the transferor, and thereupon the Company shall register the transferee as a share-holder.

Forfeiture of Shares

16. If any shareholder fails to pay any call due on the appointed day, the Company may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with any interest that may have accrued by reason of such non-payment.

17. The notice shall name a further date, and a place or places, being a place or places, at which calls of the Company are usually made payable, on and at which such call is to be paid; it shall also state that, in the event of non-payment at the time and place appointed, the shares in respect of which such call was made will be liable to be forfeited

18. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect.

19. Any share so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company thinks fit.

20 Any shareholder whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

Increase in Capital

21. The Company may, with the sanction of the Company previously given in general meeting, increase its capital

22. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls or otherwise, as if it had been part of the original capital.

General Meetings

23. The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the Company, and at such place as the directors may determine

24. Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting, and if no other time or place is prescribed, a general meeting shall be held on the [1][first Monday in February] in every year, at such place as may be determined by the directors

25 The above mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary

26. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the shares of the Company, convene an extraordinary general meeting

27. Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company

28 Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting, if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

29. Seven days' notice at the least, specifying the place, the time, the hour of meeting, and the purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner (if any) as may be prescribed by the Company.

30 Any shareholder may, on giving not less than three days' previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.

31. The notice required of a shareholder shall be given by leaving a copy of the resolution at the registered office of the Company.

32. No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of such business; and such quorum shall be ascertained as follows (that is to say); if the shareholders belonging to the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the

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1 The bracketted portion read originally as follows. "... .. day of,....."

above quorum one for every five additional shareholders up to fifty, and one for every ten additional shareholders after fifty, with this limitation, that it shall not be necessary for any quorum in any case to exceed forty.

33. If within one hour from the time appointed for the meeting the required number of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved; in any other case it shall stand adjourned to the following day at the same time and place; and if at such adjourned meeting the required number of shareholders is not present, it shall be adjourned *sine die*.

34. The chairman (if any) of the Board of Directors shall preside as chairman at every meeting of the Company.

35. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the shareholders present shall choose some one of their number to be chairman of such meeting.

36. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

37. At any general meeting, unless a poll is demanded by at least five shareholders, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

38. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Shareholders.

39. Every shareholder shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares.

40. If any shareholder is a lunatic or idiot, he may vote by his committee; and if any shareholder is a minor, he may vote by his guardian, or any one of his guardians if more than one.

41. If more persons than one are jointly entitled to a share or shares, the person whose name stands first in the register of shareholders as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

42. No shareholder shall be entitled to vote at any meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three calendar months, unless such shares shall have been acquired or shall have come by bequest, or by marriage, or by succession to an intestate's estate, or by any deed of settlement after the death of any person who shall have been entitled for life to the dividends of such shares.

43. Votes may be given either personally or by proxies; a proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under their common seal.

44. No person shall be appointed a proxy who is not a shareholder, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of one month from the date of its execution.

Directors.

45. The number of the directors, and the names of the first directors shall be determined by the subscribers of the memorandum of association.

46. Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be directors.

Powers of Directors.

47. The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not by this Act or by the articles of association (if any) declared to be exercisable by the Company in general meeting, subject nevertheless to any regulations of the articles of association, to the provisions of this Act, and to such regulations, not being inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting, but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Disqualification of Directors.

48. The office of director shall be vacated—

if he holds any other office or place of profit under the Company ;

if he becomes bankrupt or insolvent ;

if he is concerned in or participates in the profits of any contract with the Company ;

if he participates in the profits of any work done for the Company

But the above rules shall be subject to the following exceptions —that no director shall vacate his office by reason of his being a shareholder in any incorporated Company which has entered into contracts with or done any work for the Company of which he is director ; nevertheless he shall not vote in respect of such contract or work ; and, if he does so vote, his vote shall not be counted, and he shall incur a penalty, not exceeding five hundred rupees

Rotation of Directors.

49 At the first ordinary meeting after the incorporation of the Company the whole of the directors shall retire from office ; and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third shall retire from office.

50. The one-third or other nearest number to retire during the first and second years ensuing the incorporation of the Company shall, unless the directors agree among themselves, be determined by ballot ; in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

51. A retiring director shall be re eligible.

52. The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated office by electing a like number of persons.

53. If at any meeting at which an election of directors ought to take place no such election is made, the meeting shall stand adjourned till the next day, at the same time and place, and if at such adjourned meeting no election takes place, the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year.

54. The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office

55. Any casual vacancy occurring in the Board of Directors may be filled up by the directors ; but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

Proceedings of Directors.

56. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit, and determine the quorum necessary for the transaction of business ; questions arising at any meeting shall be decided by a majority of votes : in case of an equality of votes, the chairman, in addition to his original vote, shall have a casting vote ; a director may at any time summon a meeting of the directors.

57. The directors may elect a chairman of their meetings and determine the period for which he is to hold office ; but if no such chairman is elected or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting

58. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit ; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

59. A committee may elect a chairman of their meetings ; if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

60. A committee may meet and adjourn as they think proper ; questions at any meeting shall be determined by a majority of votes of the members present ; and in case of an equal division of votes, the chairman shall have a casting vote.

61. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

62. The director shall cause minutes to be made in books provided for the purpose—

(1) of all appointments of officers made by the directors ;

(2) of the name of directors present at each meeting of directors and committees of directors :

(3) of all orders made by the directors and committees of directors ; and

(4) of all resolutions and proceedings of meetings of the Company, and of the directors and committees of directors.

And any such minute as aforesaid if signed by any person purporting to be the chairman of any meeting of directors, or committee of directors, shall be receivable in evidence without any further proof

63. The Company, in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and appoint another qualified person in his stead ; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Dividends

64. The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

65. The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends or for repairing or maintaining the works connected with the business of the Company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the Company, may select.

66. The directors may deduct from the dividends payable to any shareholder all such sums of money as may be due from him to the Company on account of calls or otherwise.

67. Notice of any dividend that may have been declared shall be given to each shareholder or sent by post or otherwise to his registered place of abode: and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the Company

68. No dividend shall bear interest as against the Company.

Accounts

69. Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year made up to a date not more than three months before such meeting

70. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries and other like matters, every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

71. A balance sheet shall be made out in every year, and laid before the general meeting of the Company; and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

72. A printed copy of such balance-sheet shall, seven days previously to such meeting, be delivered at or sent by post to the registered address of every shareholder.

Audit

73. The accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors to be elected by the Company in general meeting.

74. If not more than one auditor is appointed, all the provisions herein contained relating to auditors shall apply to him.

75. The auditors need not be shareholders in the Company; no person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.

76. The election of auditors shall be made by the Company at their ordinary meeting, or, if there are more than one, at their first ordinary meeting in each year.

77. The remuneration of the auditors shall be fixed by the Company at the time of their election,

78. Any auditor shall be re-eligible on his quitting office.

79. If any casual vacancy occurs in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

80. If no election of auditors is made in manner aforesaid, the Local Government may, on the application of one-fifth in number of the shareholders of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

81. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

82. Every auditor shall have a list delivered to him of all books kept by the Company, and he shall at all reasonable times have access to the books and accounts of the Company; he may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the Company.

83. The auditors shall make a report to the shareholders upon the balance-sheet and accounts; and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs; and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices

84. Notice requiring to be served by the company upon the shareholders may be served either personally, or by leaving the same, or sending them through the post in a letter addressed to the shareholders, at their registered places of abode.

85. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors such of share.

FORM OF BALANCE-SHEET REFERRED TO IN TABLE B.

Dr. *Balance-Sheet* of the* *Company made up to* 19 . **Cr**

Capital and Liabilities			R a p.	R a.p.	Property and Assets			R a p	R.a.p.
		SHOWING—					SHOWING—		
I.—Capital.	1	The total amount received from shareholders showing also— (*a*) The number of shares (*b*) The amount paid per share (*c*) If any arrears of calls, the nature of the arrear, and the names of the defaulters Any arrear due from any director or officer of the Company to be separately stated (*d*) The particulars of any forfeited Shares.			II. Property held by the Company	4	Immoveable property distinguishing (*a*) Land (describing tenure) (*b*) Buildings		
						5	Moveable property, distinguishing — (*c*) Stock-in-trade (*d*) Plant (The cost to be stated with deduction for deterioration in value as charged to the Reserve Fund or Profit and Loss)		
		SHOWING—					SHOWING—		
II.—Debts and liabilities of the Company.	2	The amount of loans on mortgage or debenture bonds.			IV.- Debts owing to the Company.	6	Debts considered good for which the Company hold bills or other securities.		
	3	The amount of debts owing by the Company distinguishing — (*a*) Debts for which acceptances have been given. (*b*) Debts to tradesmen for supplies of stock-in-trade or other articles. (*c*) Debts of law expenses. (*d*) Debts for interest on debentures or other loans (*e*) Unclaimed dividends (*f*) Debts not enumerated above				7	Debts considered good for which the Company hold no security		
						8	Debts considered doubtful and bad (Any Debt due from a director or other officer of the Company to be separately stated.)		
							SHOWING—		
					V.—Cash & Investment.	9	The nature of investment and rate of interest.		
						10	The amount of cash, where lodged, and if bearing interest		
VI.-Reserve Fund.		SHOWING— The amount set aside from profits to meet contingencies							
VII.—Profit and Loss		SHOWING— The disposable balance for payment of dividend etc.							
Contingent Liabilities.		Claims against the Company not acknowledged as debts Moneys for which the Company is contingently liable							

* See clause 71 and 72 of the foregoing Table B.

APPENDIX II.

[1](*Table A in the First Schedule to Act VI of 1882*)

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

Shares

(1) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2) Every member shall, on payment of eight annas or such less sum as the Company in general meeting may prescribe, be entitled to a certificate under the common seal of the company specifying the share or shares held by him, and the amount paid up thereon.

(3) If such certificate in worn out or lost, it may be renewed on payment of eight annas or such less sum as the Company in general meeting may prescribe.

Calls on Shares

(4) The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors

(5) A call shall be deemed to have been made, at the time when the resolution of the directors authorising such call was passed.

(6) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five percent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7) The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for, and, upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares

(8) The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

(9) Shares in the Company shall be transferred in the following form :—

I, A. B. of in consideration of the sum of rupees paid to me by C. D. of do hereby transfer to the said C. D. the share (or shares) numbered standing in my name in the books of the Company, to hold unto the said C. D. his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof; and I, the said C. D. do hereby agree to take the said share (or shares) subject to the same conditions. As witness our hands the day of

(10) The Company may decline to register any transfer of shares made by a member who is indebted to them.

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1 See section 290 (1) (c) of the Indian Companies Act, 1913 (VII of 1913).

The Table is reproduced here as an Appendix for convenience of reference.

(11) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares

(12) The executors or administrators of a deceased member shall be the only persons recognised by the Company as having any title to his share.

(13) Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evi 'ence being produced as may, from time to time, be required by the Company.

(14) Any person who has become entitled to a share in consequence of the death, bankruptcy or insolvency of any member or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

(15) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share

(16) The instrument of transfer shall be presented to the Company, together with such evidence as the directors may require to prove the title of the transferee, and thereupon the Company shall register the transferee as a member

Forfeiture of Shares

(17) If any member fails to pay any call on the day appointed for payment thereof the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call together with interest and any expenses that may have accrued by reason of such non-payment.

(18) The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid It shall also name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(19) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20) Any share so forfeited shall be deemed to be the property of the Company and may be disposed of in such manner as the Company in general meeting thinks fit.

(21) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

(22) A solemn declaration in writing, made before a Magistrate, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share and such declaration and the receipt of the Company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock

(23) The directors may, with the sanction of the Company, previously given in general meeting, convert any paid up shares into stock.

(24) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the Company may be transferred, or as near thereto or circumstances admit.

(25) The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock ; and such interests shall, in proportion to the amount thereof, confer on the holders thereof, respectively, the same privileges and advantages for the purpose of voting at meetings of the Company and for other purposes as would have been conferred by shares of equal amount in the capital of the Company ; but so that none of such privileges or advantages, except the participation in the dividends and profits of the Company, shall be conferred by any such aliquot part of the consolidated stock as could not, if existing in shares have conferred such privileges or advantages.

Increase in Capital

(26) The directors may, with the sanction of a special resolution of the Company previously given in general meeting, increase its capital by the issue of new shares ; such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the Company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting, a time within which the offer, if not accepted, will be deemed to be declined ; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company

(28) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions, with reference to the payment of calls and the forfeiture of shares on non-payment of calls, or otherwise as if it had been part of the original capital.

General Meetings

(29) The first general meeting shall be held at such time, not being more than six months after the registration of the Company, and at such place as the directors may determine.

(30) Subsequent general meetings shall be held, once at the least in every year, at such time and place as may be prescribed by the Company in general meeting ; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31) The above-mentioned general meetings shall be called ordinary meetings ; all other general meetings shall be called extraordinary.

(32) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the members of the Company, convene an extraordinary general meeting.

(33) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(34) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meeting

(35) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting ; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting

(36) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(37) No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business Such quorum shall be ascertained as follows, that is to say :—If the persons who have taken shares in the Company at the time of the meeting do not exceed ten in number, the quorum shall be five ; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed twenty.

(38) If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved In any other case, it shall stand adjourned to the same day in the next week, at the same time and place ; and if, at such adjourned meeting, a quorum is not present, it shall be adjourned *sine die*

(39) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company.

(40) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43) If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

Votes of Members

(44) Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45) If any member is a lunatic or idiot, he may vote by his committee or other legal curator; and, if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

(46) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(47) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer, at any meeting held after the expiration of three months from the registration of the Company, unless he has been possesed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(48) Votes may be given either personally or by proxy.

(49) The instrument appointing a proxy shall be in writing, under the hand of his appointor, or if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the Company.

(50) The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument purposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51) Any instrument appointing a proxy shall be in the following form:—

Company, Limited.

I, of , being a member of the Company, Limited, and entitled to vote or votes, hereby appoint , of , as my proxy to vote for me and on my behalf at the [ordinary or extraordinary *as the case may be*] general meeting of the Company to be held on the day of and at any adjournment thereof (*or at* any meeting of the Company that may be held in the year).

As witness my hand, this day of Signed by the said in the presence of

Directors.

(52) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(53) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

(54) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting.

Powers of Directors

(55) The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company and may exercise all such powers of the company as are not by the foregoing Act, or by these articles, required to be exercised by the Company in general meeting, subject

nevertheless to any regulations of these articles, to the provisions of the foregoing Act and to such regulations, being not inconsistent with the aforesaid regulations, or provisions as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56) The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors

(57) The office of director shall be vacated—

if he, or any partner of his, or the firm of which he is a member, holds any other office or place of profit under the Company;

if he becomes bankrupt or insolvent;

if he is punished under any of the penal provisions of the foregoing Act;

if he is concerned in or participates in the profits of any contract with the Company.

But the above rules shall be subject to the following exceptions:—that no director shall vacate his office by reason of his being a member of any Company which has entered into contracts with, or done any work for, the Company of which he is director; nevertheless, he shall not vote in respect of such contract or work, and, if he does so vote, his vote shall not be counted.

Rotation of Directors

(58) At the first ordinary meeting after the registration of the Company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the Company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year, the one-third or other nearest number who have been longest in office shall retire.

(60) A retiring director shall be re-eligible.

(61) The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62) If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place, and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office untill the ordinary meeting in the next year, and so on from time to time until their places are filled up.

(63) The Company may from time to time, in general meeting, increase or reduce the number of directors and may also determine in what rotation such increased or reduced number is to go out of office

(64) Any casual vacancy occuring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65) The Company in general meeting may by a special resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall hold

office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors

(66) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

(67) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but, if so such chairman is elected or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committees so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

(69) A committee may elect a chairman of its meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting 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.

(71) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends

(72) The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73) No dividend shall be payable except out of the profits arising from the business of the Company.

(74) The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise.

(76) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the Company.

(77) No dividend shall bear interest as against the Company.

Accounts

(78) The directors shall cause true accounts to be kept—

of the stock in trade of the Company ;

of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place ; and

of the credits and liabilities of the Company.

The books of account shall be kept at the registered office of the Company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Company in general meetings, shall be open to the inspection of the members during the hours of business.

(79) Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

(80) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year

(81) A balance-sheet shall be made out in every year and laid before the Company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82) A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit

(83) Once at the least in every year the accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

(84) The first auditor shall be appointed by the directors ; subsequent auditors shall be appointed by the Company in general meeting.

(85) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86) The auditors may be members of the company, but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the Company, and no director or other officer of the Company is eligible during his continuance in office.

(87) The election of auditors shall be made by the Company at their ordinary meeting in each year.

(88) The remuneration of the first auditors shall be fixed by the directors ; that of subsequent auditors shall be fixed by the Company in general meeting.

(89) Any Auditor shall be re-eligible on his quitting office.

(90) If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91) If no election of auditors is made in manner aforesaid the Local Government may, on the application of not less than five members of the Company, appoint an auditor for the current year and fix the remuneration to be paid to him by the Company for his services.

(92) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

(93) Every auditor shall have a list delivered to him of all books kept by the Company, and shall at all reasonable times have access to the books and accounts of the Company. He may at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, to relation to such accounts, examine the directors or any other officer of the Company.

(94) The auditors shall make a report to the members upon the balance-sheet and accounts, and in such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory. Such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices

(95) A notice may be served by the Company upon any member either personally or by sending it through the post in a letter addressed to such member at his registered place of abode.

(96) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

(97) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

FORM OF BALANCE-SHEET REFERRED TO IN TABLE A.

Dr. *Balance-Sheet* of the* *Company made up to* *19 .* *Cr.*

Capital and Liabilities			Rs	As.	Property and Assets			Rs.	As.
		SHOWING—					SHOWING—		
I—Capital	1	The number of shares			III-Property held by the Company	7	Immoveable property—distinguishing—		
	2	The amount paid per share					(*a*) Freehold land		
	3	If any arrears of calls, the nature of the arrear and the names of the defaulters					(*b*) Freehold buildings		
	4	The particulars of any forfeited shares					(*c*) Leasehold		
		SHOWING—				8	Moveable property—distinguishing—		
II—Debts and liabilities of the Company	5	The amount of loans or mortgages or debenture bonds					(*d*) Stock-in-trade		
	6	The amount of debts owing by the Company—distinguishing—					(*e*) Plant		
		(*a*) Debts for which acceptances have been given					The cost to be stated with deductions for deterioration in value as charged to the reserve fund or profit and loss		
		(*b*) Debts to tradesmen for supplies of stock-in-trade or other articles,					SHOWING—		
		(*c*) Debts for law expenses			IV—Debts owing to the Company	9	Debts considered good for which the Company hold bills or other securities.		
		(*d*) Debts for interest on debentures or other loans				10	Debts considered good for which the Company hold no security.		
		(*e*) Unclaimed dividends				11	Debts considered doubtful and bad		
		(*f*) Debts not enumerated above					Any debt due from a director or other officer of the company to be separately stated		
		SHOWING—					SHOWING—		
VI—Reserve Fund.		The amount set aside from profits to meet contingencies.			V—Cash and Investments	12	The nature of investment and rate of interest		
		SHOWING—				13	The amount of cash, where lodged and if bearing interest		
VII—Profit and Loss.		The disposable balance for payment of dividends, etc,							
Contingent Liabilities		Claims against the Company not acknowledged as debts.							
		Moneys for which the Company is contingently liable.							

*See clause 81 and 82 of the foregoing Table.

Department of Commerce Notification No. 23 (12) B.Tr. (C.L.) 37, dated the 22nd February 1941.

In exercise of the powers conferred by section 151 of the Indian Companies Act 1913 (VII of 1913), the Central Government is pleased to make the follcwing rules namely :—

THE INDIAN COMPANIES RULES, 1941.

1. ***Short title extent commencement and repeal***—(1) These rules may be called the Indian Companies Rules, 1941.

2. They extend to the whole of British India, including Berar, and every reference therein to British India shall be construed as including a reference to Berar.

3. They shall come into force on the 1st day of April 1941.

4. The Indian Companies Rules, 1914, are hereby cancelled :

Provided that the cancellation shall not affect the validity of anything done under or in pursuance of the said Rules, and in particular, shall not be deemed to require the re-making of any instrument in the appropriate form prescribed by these

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For the Text of Act XXIX of 1947 (Capital Issue Continuation of Control Act) and the form of application thereunder see *Appendix B. P. 331* **under forms 8 & 8A.**

instrument or deed filed with the Registrar for registration under section 109, section 109A or section 110 of the Act shall be verified :—

(i) where the mortgage or charge comprises solely property situate outside British India, by a certificate under the seal of the Company or under the hand of some person interested therein otherwise than on behalf of the Company, that it is a true copy :

(ii) in other cases, by an affidavit of a responsible officer of the Company that it is a true copy or by a certificate of a public officer under section 76 of the Indian Evidence Act, 1872 (I of 1872).

5. ***Manner of giving notice under section 153B.***—The notice required by section 153B of the Act to be given by the transferee company shall be given to the dissenting shareholder either personally, or by sending it by registered post to his address registered in the books of the transferor company, or (if he has no address within British India so registered) to the address, if any, within British India, supplied by him to the transferor company for the giving of notice to him,

If the dissenting shareholder has no registered address in British India and has not supplied to the transfer or company an address within British India for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

6. ***Certification of documents under section 277 of the Act*** —A copy of a document required to be certified under sub-section (1) of section 277 of the Act shall—

(i) in the case of a Company incorporated in a country outside His Majesty's dominions, be

(a) duly certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by any of the British officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vict., c. 10), or in any Act amending the same, or

(b) by a Notary of such country, the certificate of the Notary being authenticated by any of the British official as aforesaid, or

(c) by some officer of the Company before a person having authority to administer an oath as provided by Section 3 of the said Oaths Act, the status of the person, administering the oath being authenticated by any of the British officials as aforesaid ; and

(ii) in the case of a Company incorporated in any part of His Majesty's dominions, be duly certified as a true copy

(a) by an official of the Government to whose custody the original is committed, or

(b) by a Notary Public of such place, or

(c) on oath by an officer of the Company before a person having authority to administer an oath in such place.

7. ***Certification of translation under section 277 or Section 277B.***—Translations of documents required to be filed with the Registrar under section 277 or section 277B of the Act shall be certified as correct translations,—

(i) where such translation is made outside of British India

(a) by an official having custody of the original, or

(b) by a Notary Public of the country or place where the Company is incorporated ·

Provided that where the Company is incorporated in a country outside His Majesty's dominions, the signature or seal of the person so certifying shall be authenticated by any of the British officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vict, c. 10), or in any Act amending the same ·

(ii) where such translation is made in British India—

(a) by an advocate, attorney or pleader entitled to appear before the High Court, or

(b) by an affidavit of some person having in the opinion of the Registrar, a competent knowledge of the language of the original and of English.

8. ***Power of Central Government to relax rules 6 and 7.***—The Central Government may in any particular case if it thinks fit and upon such conditions as it may impose, permit copies or translations not certified in accordance with rules 6 and 7 to be filed with the Registrar.

9. ***Time for filing alterations of particulars under section 277.***—Notice of any alteration which is required by sub-section (1) of section 277 of the Act to be filed with the Registrar shall be filed within one month of the date on which the notice could in due course of post, and if despatched with due diligence, have been received by the Registrar from the place where the Company is incorporated.

10. ***Translations of documents other than those under section 277.***—If any portion of any document required to be filed under any provision of the Act other than section 277 is not in the English language, a translation thereof, certified by a responsible officer of the Company to be correct, shall be furnished along with each copy deposited with the Registrar :

Provided that the Registrar may exempt any Company from the operation of this rule in respect of such documents as he may think fit.

11. ***Forms.***—The forms set forth in the Schedule hereto annexed or forms as near thereto as circumstances admit shall be used in all matters to which these forms relate.

12. ***Payment of fees.***—All fees payable under the Act shall be paid in cash.

THE SCHEDULE.

FORM I.

Declaration on registration of Company.

THE INDIAN COMPANIES ACT, 1913.

[See Section 24]

Filing Fee Rs. 3.

Name of company . . . . . .

Declaration of compliance with the requirements of the Indian Companies Act, 1913, made pursuant to section 24(2) on behalf of a company proposed to be registered as the . . . . . .

Presented for filing by . . . . . .

I . . . . . .of. . . . . .

do solemnly and sincerely declare that I am an Advocate*/Attorney/a Pleader entitled to appear before a High Court who is engaged in the formation of the company/a person named in the Articles as a Director/Manager/Secretary of the . . . . . and that all the requirements of the Indian Companies Act, 1913, in respect of matters precedent to the registration of the said company and incidental thereto have been complied with, save only the payment of the fees and sums payable on registration. And I make this solemn declaration conscientiously believing the same to be true.

Note.—The declaration need not be either—

(a) signed before a Magistrate or an officer competent to administer oaths, or

(b) stamped as an Affidavit.

*Strike out the portion which does not apply.

No. of Company. Filing Fee Rs. 3.

FORM II.

Notice of the situation of the office where a British Register is kept or of any change in, or discontinuance of, any such office.

THE INDIAN COMPANIES ACT, 1913.

[See Section 41.]

Name of company . . . . . .

Presented for filing by. . . . . .

To the Registrar of Joint Stock Companies, ...

. . . . . Limited, hereby gives you notice in accordance with section 41 of the Indian Companies Act, 1913, and by the authority of (a) a special resolution of the company, duly passed on the . . . . day of . . . /clause . . . . of the company's articles of association that a branch register is now kept at (a) . . . . . /in lieu of . . . . . /kept at . . . . . /is discontinued.

Signature

Designation

(State whether Director or Manager or Secretary)

Dated this . . . day of . . . . . 19 . . .

(a) Strike out the portion which does not apply.

No. of Company. Filing Fee Rs. 3.

FORM III

Notice of consolidation, division, sub-division, or conversion into stock of shares, specifying the shares so consolidated, divided, sub-divided, or converted into stock, or of the re-conversion into shares of stock, specifying the stock so re-converted, or of the cancellation of shares (otherwise than in connection with a reduction of share capital under section 55 of the Indian companies Act, 1913).

THE INDIAN COMPANIES ACT, 1913.

[See Sections 50/51].

Name of the company . . . . . ,

Presented for filing by . . . . . .

To the Registrar of Joint Stock Companies, ...

. . . . . Limited,

hereby give you notice in accordance with section 50/51 of the Indian Companies Act, 1913, that:—

*(I) . . shares of Rs . . . . . each (. . . . .) have been consolidated and divided into . . . . . shares of Rs. . . . . each (of larger amount than the shares consolidated) (. . . . .) (Section 50 and 51)

*(II) . . . . . shares of Rs . . . . . each (. . . . .) on which Rs. . . . . per share is paid up/ have been sub-divided into . . . . . shares of Rs. . . . . (of smaller amount than the shares sub-divided) (. . . . .) on which Rs. . . . . per share is paid up (which must be proportionate to the reduced nominal value of each share). (Section 50).

*(III) . . . . . Fully paid shares of Rs. . . . . , each, numbered . . . . . to . . . . . , have been converted into stock.

*(IV) Rs. . . . of stock has been re-converted into . . . . . fully paid shares of Rs . . . . , each, numbered . . . . . to . . . . . (Sections 50 and 51).

*(V) . . . . . shares of Rs. . . . . each, being unissued capital, have been cancelled, and the amount of the authorised capital has been correspondingly diminished (Section 50).

Signature

Designation

(State whether Director or Manager or Secretary.)

Dated this day ... ... day of ... ... 19 ... ...

*A separate notice for each item is to be given. Strike out the items which do not apply.

No. of Company.

FORM IV.

Notice of increase in share capital.

THE INDIAN COMPANIES ACT, 1913,

[See Section 53.]

Filing Fee ... ... Difference between Fee payable on Capital as increased and Fee already paid.

Name of company .. ..
Presented for filing by ... ...
To the Registrar of Joint Stock Companies, ...
... ... Limited, hereby gives you notice pursuant to section 53 of the Indian Companies Act, 1913 that by (a) ... ... resolution of the company dated the .. .. day of ... . 19 .. the share capital of the company has been increased by the addition thereto of the sum of Rs. ... ... beyond the registered capital of Rs. ... ...

The additional capital is divided as follows :—

Number of Shares	Class of Share.	Nominal Amount of each Share.

The conditions (*e.g.* voting rights, dividends, etc.) subject to which the new shares have been or are to be issued are as follows :—

(If any of the new shares are preference shares state whether they are redeemable or not).

Signature

Designation

(State whether Director or Manager or Secretary.)

Dated the ... ... day of ... ... 19 ... ...

(a) "ordinary" "extraordinary" or "special".

No. of Company.

FORM V.

Notice of increase in number of members.

THE INDIAN COMPANIES ACT, 1913

(See Section 53).

Filing Fee .. .. Difference between Fee payable on the Number as increased and Fee already paid.

Name of company... ... ...

Presented for filing by ... ...

Notice of increase in the number of members of... ... ...

To the Registrar of Joint Stock Companies, ...

... ...Limited gives you notice, pursuant to section 53 of the Indian Companies Act, 1913, that by (*a*) ... ...resolution of the company dated the ... ... day of ... ... 19 ... ., the number of members in the company has been increased by the addition thereto of .. ... members beyond the present registered number of ... ...

Signature

Designation

(State whether Director or Manager or Secretary.)

Dated the ... ... day of ... .. 19 ... ...

No. of Company. Filing Fee Rs. 3.

FORM VI.

Notice of situation of registered office or of any change therein.

THE INDIAN COMPANIES ACT, 1913.

[See Section 72].

Name of company ... ...

Presented for filing by ... ...

To the Registrar of Joint Stock Companies, ...

... ... Limited hereby gives you notice, in accordance with section 72 of the Indian Companies Act, 1913, that the registered office of the company (*a*) is situated at ... ... /was removed from ... ... to ... . on the... ... . 19 ... ...

Signature

Designation

(State whether Director or Manager or Secretary).

Dated the ... ... day of ... ... 19 ... ...

(*a*) "ordinary" "extraordinary" or "special".

N.B —This notice must be filed with the registrar within 28 days of incorporation or of the change, as the case may be.

(*a*) Strike out the portion which does not apply.

FORM VII.

Statutory Report.

THE INDIAN COMPANIES ACT, 1913.

[See Section 77]

Filing Fee Rs. 3.

Name of Company ... ...

Statutory Report of the... ... ...Limited certified and filed pursuant to section 77(5).

Date and place of the statutory meeting... ... ...

Presented for filing by... ... ...

The Directors report to the members as follows :—

1. Shares allotted up to .. . .day of. . ...last (*i.e.* a date within 7 days of the Report) and cash received up to the aforesaid date were :—

Particulars.		Number of Shares.	Nominal Value of each Share.	Cash Received.
(*a*) Allotted subject to payment therefor in Cash.	Preference*			
	Ordinary .			
	Deferred .			
(*b*) Alloted as fully paid up otherwise than in cash, the consideration for which they have been so allotted being :—	Preference*			*Nil*
	Ordinary .			
	Deferred .			
(*c*) Allotted as partly paid up to the extent of Rs. per share, the consideration for which they have been so alloted being :—	Preference*			
	Ordinary .			
	Deferred .			
(*d*) Allotted at a discount of Rs. per Share	Preference*			
	Ordinary .			
	Deferred .			
	Total .			

*Redeemable Preference Shares are to be specified in all cases.

2. The receipts and payments of the Company up to the aforesaid date are as follows :—

Receipts.	Rs.	Payments.	Rs.
Shares—		Preliminary Expenses ...	
Preference ...		Commission on Sale of Shares...	
Ordinary ...		Discount on Shares ...	
Deferred		Capital Expenditure—	
Share Deposits ..		Land ...	
Debentures ...		Buildings ...	
Loans		Plants ...	
Deposits		Machinery ..	
Other Sources (to be specified)		Dead Stock ...	
		Etc ...	
		Other items (to be specified) ...	
		Balances— ...	
		In hand ...	
		At Banks ..	
Total		Total ...	

3. Preliminary Expenses as estimated in the Prospectus* or Statement in lieu of Prospectus Rs .. . .

Preliminary Expenses incurred up to the aforesaid date :—

Law charges
Printing
Registration
Advertisement
Commission on sale of Shares
Discount on Shares
Other initial Expenses

Total Rs.

*Strike out the portion which does not apply.

4. Names, addresses and descriptions of the Directors, Auditors (if any) Managing Agents and Managers (if any) and Secretary of the Company and the changes, if any, which have occured since the date of the incorporation.

Directors.

Name	Address	Description	Particulars of changes if any**

Auditors.

Name	Address	Description	Particulars of changes if any**

** These particulars must include dates of changes.

Managing Agent and Managers.

Name	Address	Description	Particulars of changes if any**

Secretary.

Name	Address	Description	Particulars of changes if any**

5. Particulars of any contract the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

6. The extent to which under-writing contract if any, have been carried out.

**These particulars must include dates of changes.

7. The arrears, if any, due on calls from directors, managing agents and managers.

8. The particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, managing agent or, manager or if the managing agent is a a firm, to any partner thereof, or, if the managing agent is a private company, to any director thereof.

Dated this... ... ...day of... ... ...19... ...

We hereby certify this report *

(Alternatively)

I hereby certify this report

Two or more Directors.

Chairman of the Directors

(If authorised by the Board of Directors)

We hereby certify that so much of the report as relates to the shares allotted by the Company and to the cash received in respect of such shares and to the receipts and payments of the Company is correct,

Auditors.

Dated this... ... .. day of. ... . 19. . .

Note—1. Receipts and payments account given in para (2) of the Statutory Report with reference to section 77 (3) (c) of the Indian Companies Act should be prepared up to a date within 7 days of the date of the report and the figures and particulars required under all the other items of the Statutory Report should also be given as on the same date *i.e*, the date upto which the receipts and payments account is prepared.

(2) This form should contain the actual signatures of the persons who have signed the report, *viz*, the Directors or the Chairman and the Auditor.

*To be certified by not less than two Directors or if the Company has less than two Directors, by the sole Director, and forwarded at least twentyone days before the statutory meeting to every member and debenture holder of the Company and to be filed with the Registrar forthwith after it is forwarded *vide* Section 77, sub-sections (2), (3) and (5), and section 146.

**These particular must include dates of changes.

FORM VIII.

Special Resolution/Extraordinary Resolution*
of the

... ...Company, Limited.

THE INDIAN COMPANIES ACT, 1913.

[See Section 82 (1).].

Filing Fee Rs. 3.

Date of despatch of notice specifying the intention to propose the resolution as Special Resolution/Extraordinary Resolution.*

Passed... . ...19. . ...

Name of Company ... .

Presented for filing by. . . . .

To the Registrar of Joint Stock Companies,... ... ...

At a general meeting of the members of the said company, duly convened and held at... .. . .in the town of. . .. on the. ... ... day of. . ...19 . .. , the following special resolution/extraordinary resolution .. . . .was duly passed.

Resolved... . . .. that .. . .

... ...

... ...

... ...

Signature... ... ...

Designation ... ...

(State whether Director, Manager, Secretary or other Officer of the Company).

Dated this .. ..day of .. ..19... ...

Note —To be printed or typewritten and duly certified under the signature of an officer of the company and filed with the Registrar within 15 days from the passing of the resolution.

*Strike out the portion which does not apply. A separate notice is to be given for a special resolution and for an extraordinary resolution.

FORM IX.

Consent of Director to Act.

THE INDIAN COMPANIES ACT, 1913.

[See Section 84.]

Filing Fee Rs. 3.

Name of Company ... ...

Consent to act as Director/Directors of the ... .
to be signed and filed pursuant to section 84 (1) (i)...

Presented for filing by... ... ...
To the Registrar of Joint Stock Companies. ... ...

I/We, the undersigned, hereby testify my/our consent to act as Director/Directors of the ... ...pursuant to section 84 (1) (*i*) of the Indian Companies Act, 1913

Signature	Address	Description

Dated this.. ... .. day of... . . .. 19 .

Notes.—(1) If a Director signs by "his agent authorised in writing", the authority must be produced and a copy attached.

(2) Section 84 (3) of the Indian Companies Act, 1913, provides that—

"This section shall not apply to a private company or a company which was a private company before becoming a public company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business".

FORM X.

List of persons consenting to be Directors.

THE INDIAN COMPANIES ACT, 1913.

[See Section 84.]

Filing fee Rs. 3.

Name of Company ... ...

List of the persons who have consented to be Directors of the _____ to be filed with the Registrar pursuant to section 84 (2).

Presented for filing by... ... .

To the Registrar of Joint Stock Companies, ...

I/We, the undersigned, hereby give you notice, pursuant to section 84 (2) of the Indian Companies Act, 1913, that the following persons have consented to be Directors of the ... ...

Name	Address	Description

Signature, address and description of applicant for registration.

Dated this . ... day of . . .. .. 19 . ...

Note.—Section 84(3) of the Indian Companies Act, 1913, provides that—

"This section shall not apply to a private company or a company which was a private company before becoming a public company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business"

FORM XI.

Agreement to take qualification shares in proposed company.

THE INDIAN COMPANIES ACT, 1913.

(See Section 84.)

Filing Fee Rs. 3.

Contract by directors to take and pay for qualification shares in... ... ...Limited to be signed and filed pursuant to section 84(1) (*ii*) of the Indian Companies Act, 1913.

Presented for filing by ... ...

We, the undersigned, having consented to act as directors of the ... ...Limited do each hereby agree to take from the said company and pay for the... .. .. .. shares of .. .. each, being the number of shares prescribed as the qualification for the office of Director of the said company

Signature	Address	Description

Dated ... .

Witness to the above signature .. ..

Address . ...

FORM XII,

Particulars of Directors, Managers and Managing Agents and of any changes therein.

THE INDIAN COMPANIES ACT, 1913.

(See Section 87)

Filing Fee Rs. 3.

Name of the Company ... ...

Presented for filing by ... ...

The present Christian Name or names and surname (*a*)(*d*)	Any former Christian Name or names or surname.	Nationality.	Nationality of origin (if other than the present Nationality)	Usual residential address.	Other business occupation and Directorships if any, if none state so (*b*)	Date of appointment or change.	Changes (*c*)

Signature.

Designation

[State whether Director, Manager or Managing Agent (s)]

Dated the. . . .. day of . ... 194 .

(*a*) In the case of a corporation its corporate name and registered or principal office should be shown.

(*b*) The individuals' primary business, occupation and particulars of all other directorships held by him must be entered.

(*c*) Particulars of change among Directors, Managers or Managing Directors should be sent to the Registrar. A note of the changes since the last list should be made in this column, *e. g.* by placing against a new Director's name the words "in place of..... ....." and by writing against any former director's name change caused by death/resignation/retirement/removal/rotation/disqualification.

(*d*) In the case of a firm the full name, address and nationality of each partner and the date on which each became a partner.

FORM XIII.

Declaration before commencing business in case of Company issuing a Prospectus.

THE INDIAN COMPANIES ACT, 1913.

[See Section 103].

Filing fee Rs. 3.

Name of company ... ...

Declaration that the conditions of section 103 of Act have been complied with.

Presented for filing by . . ..

I... ... ... .of... ... ...being the Secretary/a Director of the ... ...do solemnly and sincerely declare :—

That the amount of the share capital of the company offered to the public for subscription is Rs. ... ...

That the amount stated in the prospectus as the minimum amount which in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matter specified in sub-section (2) of section 101 of the Indian Companies Act, 1913, is Rs . ...

That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of Rs .. . .

That 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

I declare that the foregoing statements are true to my knowledge and belief.

Signature... . . ..

Date... ... ...

Notes.—(1) The declaration need not be—

(a) signed before a Magistrate or an officer competent to administer oaths ; or

(b) stamped as an affidavit.

(2) Section 103 (6) of the Indian Companies Act, 1913 provides that—

"Nothing in this section shall apply to a private company, or to a company registered before the commencement of this Act which does not issue a prospectus inviting the public to subscribe for its shares or, in so far as its provision relate to shares, to a company limited by guarantee and not having a share capital."

(3) For further restrictions on commencement of business by Banking Companies, *vide* section 277-I of the Indian Companies Act.

FORM XIV.

Declaration before commencing business in case of Company filing statement in lieu of prospectus.

THE INDIAN COMPANIES ACT, 1913.

[See Section 103]

Filing fee Rs, 3.

Name of company ... ...

Declaration that the conditions of section 103 of the Act have been complied with.

Presented for filing by.. .. ..

I ... ... of . ...being the *Secretary/a Director of... ... .do solemnly and sincerely declare :—

That the amount of the share capital of the company subject to the payment of the whole amount thereof in cash is Rs .. . ..

That the company being one which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the Registrar a statement in lieu of prospectus .

That the amount fixed by the Memorandum or Articles and named in the statement as the minimum subscription upon which the Directors may proceed to allotment is Rs. ... ...

That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of Rs,... ... ...

That 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.

I declare that the foregoing statements are true to my knowledge and belief.

Signature .. ..

Dated this ... . day of... . ...19 . .

---

*Strike out the portion which does not apply.

Notes.—(1) The declaration need not be—

(*a*) signed before a Magistrate or an officer competent to administer oaths ;

(*b*) Stamped as an affidavit

(2) For further restrictions on commencement on business by Banking Companies, *vide* Section 277-I of the Indian Companies Act.

FORM XV.

Return of Allotments.

THE INDIAN COMPANIES ACT, 1913.

[See Section 104]

Filing Fee (See Note 2).

Name of company . . ..

Return of allotments of the ... . made on the following date/dates* ... ...filed with the registrar pursuant to section 104 (1).

Presented for filing by ... ...

1 **Shares allotted payable in cash

No	Nominal Amount	Due and Payable—Called Up *per Share* including Application and Allotment).	Paid Up (excluding Premiums on Shares and Calls in Advance).	
			Per Share	Total
1	2	3	4	5

2. **Shares allotted for a consideration other than Cash :—

Number . . ..

Nominal Amount . . ..Rs.

Amount to be treated as paid up on each share... ...Rs.

The consideration for which such shares have been allotted is as follows :—

Property and Assets acquired... ... ...Rs.

(Description)

Goodwill of ... ...Rs.

Services (give nature of services) ... ..Rs.

Other Items (to be specified). . ... . .Rs.

*Insert date or dates of the allotments.

3. †Number of shares issued at a discount (*Vide* Section 105-A) ... ...
Nominal amount of the shares so issued ... ...
Amount of discount per share ... ...
Paid up per share ... ...
Names, addresses and description of the allottees.

Date of Allotment.	Name in full	Address.	Description.	Number of shares allotted.		
				Preference.	Ordinary.	Other kinds.

Dated this... ... .. day of.. . 19 .

Signature. . ...
Designation ... ...
(State whether Director, Manager, Managing Agent or Secretary).

†Distinguish between preference, ordinary, or other description of shares, specifying Redeemable Preference Shares if any, in all cases.

Note 1—In making a return of allotments under section 104 (1) of the Indian Companies Act, 1913, it is to be noted that :—

When a return includes several allotments made on different dates, the actual dates of all such allotments should be entered at the top of the front page, and the registration of the return should be effected within the month of the first date.

Note 2.—The filing fee is payable according to the following Scale—*Vide* Government of India, Department of Commerce Notification No. 426-T (2), dated the 11th September 1926 —

	Rs.	As.	P.
Where the paid-up value of the shares allotted does not exceed Rs. 25	0	4	0
Where the paid up value of the shares allotted exceeds Rs. 25, but does not exceed Rs. 50	0	8	0
When the paid up value of the shares allotted exceeds Rs. 50, but does not exceed Rs 75, ...	0	12	0
Where the paid-up value of the shares allotted exceeds Rs. 75, but does not exceed Rs. 100	1	0	0
Where the paid-up value of the shares allotted exceeds Rs. 100	3	0	0

FORM XVI.

Particulars of Oral Contracts.

THE INDIAN COMPANIES ACT, 1913.

[Pursuant to Section 104 (2).]

Filing fee Rs. 3.

Name of company ... ...

The particulars must be stamped with the same stamp duty as would have been payable if the contract had been reduced to writing.

Presented for filing by ... ...

Particulars of contract relating to shares allotted as fully or partly paid up otherwise than in cash by. . . ..Limited.

(1) The number of shares allotted as fully or partly up otherwise than in cash	
(2) The nominal amount of each share	Rs.
(3) The amount to be considered as paid up on each such share otherwise than in cash.	Rs.
(4) If the consideration for the allotments of such shares is services, or any consideration other than that mentioned below in part 5, state the nature of such consideration, and the number of shares so allotted.	No. of shares ... ... Details of consideration...

(5) If the allotment is made in satisfaction or part satisfaction of the purchase price of property, give a brief description of such property, and full particulars of the manner in which the purchase price is to be satisfied.

(1) Brief description of property.

(2) Purchase Price ... ... Rs.

(*i*) Total amount considered as paid on.....shares allotted otherwise than in cash. ... . Rs.

(*ii*) Debentures issued ... ... Rs.

(*iii*) Cash ... ... Rs.

(*iv*) Amount of debt released or liabilities assumed by the purchaser (including mortgages on property acquired) ... ... Rs.

Total purchase price ... Rs.

(6) Give full particulars, in the form of the following table, of the property which is the subject of the sale, showing in detail how the total purchase price is apportioned between the respective heads :—

	Rs.	As.	P.
Legal Estates in Freehold Propeity and Fixed Plant and Machinery and other fixtures thereon (*a*) ...			
Legal Estates in Leasehold Property (*a*)			
Fixed Plant and Machinery on Leasehold Property (including Tenants' Trade and other Fixtures) ...			
Equitable Interests in Freehold or Leasehold Property (*a*)			
Loose Plant and Machinery, Stock-in-Trade. and other Chattels (*b*)			
Goodwill and Benefit of Contracts			
Patents, Designs, Trade Marks, Licences, Copyrights etc.			
Book and other Debts			
Cash in Hand and at Bank on Current Account, Bills, Notes, etc.			
Cash on Deposit at Bank or elsewhere			
Shares, Debentures and other investments			
Other Items (to be specified)			
	Rs.		

Signature ... .

Designation ... ...

(State whether Director or Manager or Secretary).

Dated the. . ...day of... ... ...19... . .

(*a*) Where such properties are sold subject to mortgage, the gross value should be shown.

(*b*) No plant and machinery which was not in an actual state of severance on the date of the Sale should be included under this head.

FORM XVII.

Statement as to commission where shares not offered to the public.

THE INDIAN COMPANIES ACT, 1913.

[See Section 105.]

Filing fee Rs. 3.

Name of company... ... ...

Presented for filing by ... ...

Statement of the amount or rate per cent., of the commission payable in respect of shares and of the number of shares which persons have agreed for a commission to subscribe absolutely, or conditionally.

Name of company	
Articles of association authorising commission	Article No.
Particulars of the amount paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company, or	Paid Rs. Payable Rs.
Rate of such commission	Rate per cent.
Date of Circular or notice (if any), not being a prospectus, inviting subscriptions for the shares and disclosing the amount or rate of the commission	Date
Number of shares which persons have agreed for a commission to subscribe absolutely	No.
Number of shares which persons have agreed for a commission to subscribe conditionally	No.

Signature of all the Directors or of their agents authorised in writing.

Dated this... ...day of... ... ...19... ...

FORM XVIII.

Particulars of mortgages or charges.

THE INDIAN COMPANIES ACT, 1913.

[See Sections 109 and 277-D.]

Filing fee Rs. 3

Name of Company ... .

Particulars to be filed with the registrar pursuant to section 109 of a mortgage or charge created by the... ... .and being—

(*a*) A mortgage or charge for the purpose of securing any issue of debentures; or

(*b*) A mortgage or charge on uncalled share capital of the company: or

(*c*) A mortgage or charge on any immoveable property wherever situate, or any interest therein; or

(*d*) A mortgage or charge on any book debts of the company; or

(*e*) A mortgage or a charge, not being a pledge on any moveable property of the company except stock-in-trade; or

(*f*) A floating charge on the undertaking or property of the company; (Strike out the sub-heads (*a*), (*b*), (*c*), (*d*), (*e*) or (*f*) which do not apply)

Presented for filing by .. . .

Particulars of mortgage or charge created by the.. .. ..

(1) Date of the instrument creating or evidencing the mortgage or charge and description thereof (*a*).	
(2) Amount secured by the mortgage (*b*).	
(3) Short particulars of the property mortgaged or charged.	
(4) Gist of the terms or conditions or extent or operation relating to any mortgage or charge.	
(5) Names (with addresses and descriptions) of the mortgagees or persons entitled to the charge.	
(6) Amount or rate per cent of the commission, allowance or discount (if any).	

Signature ... ...

Designation... ... ...

[State whether Director, Manager or Secretary or person authorised to accept service of process under Section 277 (1) (*d*).]

Dated this... ... ...day of... ... ...19.....

(*a*) A description of the instrument, *e.g.*, "Trust Deed," "Mortgage," "Debenture," etc., as the case may be, should be given.

(*b*) A definite figure is to be given.

FORM XIX

Particulars of Modification of Mortgage or Charge.

THE INDIAN COMPANIES ACT, 1913.

[See Sections 116 (3) and 277D.]

Filing Fee Rs. 3,

Name of company... ... ...

Presented for filing by ... ...

Particulars.	According to original Instrument.	According to Modifying Instrument.*
1	2	3
1. Date and description of Instrument.		
2. Amount secured by the mortgage or charge.		
3. Brief particulars of property mortgaged.		
4. Gist of terms or conditions, or extent or operation of the mortgage or charge.		

Signature ... ...

Designation ... ...

[State whether Director, Manager or Secretary or person authorised to accept service of process under Section 277(1) (d)]

Dated... ... ...

*In this column, particulars have to be given only when there is a variation from column 2.

Note.—Section 116 (3) of the Indian Companies Act, 1913, provides that :—

Whenever the terms or conditions or extent or operation of any mortgage or charge registered under this section are modified, it shall be the duty of the company to send to the Registrar the particulars of such modification, and the provisions of this section as to registration of a mortgage or charge shall apply to such modification of the mortgage or charge as aforesaid.

FORM XX

Particulars of a mortgage or charge subject to which property has been acquired on or after the 15th January 1937.

THE INDIAN COMPANIES ACT, 1913,
[See Sections 109A and 277D,]

Filing fee Rs. 3.

Name of company ... ...

Presented by... ... ...

Particulars of a mortgage or charge subject to which property has been acquired on or after the 15th January 1937 by ... ...a company registered in British India/a company incorporated outside and having a place of business in British India.*

(1) Date and description of the instrument creating or evidencing the mortgage or charge (*a*).
(2) Date of the acquisition of the property.
(3) Amount owing on security of the mortgage or charge.
(4) Short particulars of the property mortgaged or charged.
(5) Gist of the terms or conditions or extent or operation relating to any mortgage or charge.
(6) Names, addresses and destriptions of the mortgagees or persons entitled to the charge.

(In the case of a company incorporated in British India)—

Signature ... ...

Designation ... ...

(State whether Director, Manager or Secretary.)

Dated this... ... ...day of... ... ...19.....

(In the case of a company established outside British India)—

Signature of any one or more of the persons ... ...
authorised under Section 277(1)(*d*) of the ... ...
Indian Companies Act, 1913, or of some ... ...
other person authorised by the company ... ...

Dated this... ... ...day of... ... ...19.....

*Strike off the portion which does not apply

(*a*) A description of the instrument *e.g.*, "Trust Deed," "Mortgage," "Debenture," etc,, as the case may be, should be given.

Note.—A copy of the instrument, certified as prescribed in rule 4 of the Indian Companies Rules, 1941, must be delivered with these particulars.

FORM

Form of Register of mort-

THE INDIAN COM-

(See Sections 109,

Register of Mortgages and charges and of

Date of registration.	Serial number of document on file.	Date of creation of each mortgage or charge and description thereof; or date of acquisition of property if acquired subject to mortgage or charge.	General description or short particulars of the property mortgaged or charged	Gist of the terms or conditions or extent or operation relating to any mortgage or charge	Names addresses and description of the mortgagees or person entitled to the charge or Trustees for the Debentures	Amount secured by the mortgage or charge. (Other than debentures).	Particulars relating to the issues of debentures of a series.				
							Total amount secured by a series of debentures	Date and amounts of each issue of the series.		Dates of the resolutions authorising the issue of the series	Date of the covering deed.
								Date.	Amount.		
1	2	3	4	5	6	7	8	9		10	11
							Rs.		Rs		

XXI.

gages and charges.

PANIES ACT, 1913.

109A, 112 and 121.)

Memoranda of satisfaction of the _____

Amount or rate per cent. of the commission, allowance or discount.	Date of registration of modification.	Date and brief description of instrument of modifications	Brief particulars of nature and extent of modification.	Receiver		Memorandum of satisfaction.	Date of satisfaction.
				Name, address and date of appointment.	Date of ceasing to act.		
12	13	14	15	16		17	18

FORM XXII.

Registration of Series of debentures.

THE INDIAN COMPANIES ACT, 1913.

[See Section 110 and 277-D.]

Filing fee Rs. 3.

Name of company ... ...

Particulars to be filed with the Registrar pursuant to section 110 relating to a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of the said series are entitled *pari passu* created by the... ... ...

Presented for filing by ... ...

(1) Total amount secured by the whole series	
(2) Amount of the present issue of the series	
(3) Dates of resolutions authorising the issue of the series.	
(4) Dates of the covering deed (if any) by which the security is created or defined ; or if there is no such deed, the date of the first execution of any debenture of the series (*a*)	
(5) General description of the property charged.	
(6) Gist of the terms or conditions or extent or operation relating to any mortgage or charge.	
(7) Names and addresses of the trustees (if any) for the debenture-holders.	
(8) Amount or rate per cent. of the commission, allowance or discount (if any).	

Signature ... ...
Designation ... ...

[State whether Director, Manager or Secretary or person authorised to accept service of process under Section 277 (1)(*d*).]

Dated this... ... ...day of... ... ...19.....

(a) A description of the instrument, *e.g.*, "Trust Deed," "Mortgage," "Debenture," etc., as the case may be, should be given.

Note.—The deed, if any, or a copy thereof verified in accordance with Rule 4 of the Indian Companies Rules, 1941, containing the charge must be filed with these particulars with the Registrar within twenty-one days after the execution of such deed or, if there is no such deed, one of the debentures must be so delivered within twenty-one days after the execution of any debentures of the series.

FORM XXIII

Registration when more than one issue of the same series.

THE INDIAN COMPANIES ACT, 1913.

[See Sections 110 and 277-D.]

Filing fee Rs. 3.

Name of company... ... ...

Statement of particulars as required by section 110 when more than one issue is made of debentures in a series.

Presented for filing by ... ...

Particulars of an issue of debentures made by ... ...

To be entered on the register pursuant to the proviso to section 110 of the Indian Companies Act, 1913.

(1) Date of present issue	
(2) Amount of present issue	
(3) Gist of the terms or conditions or extent or operation relating to any mortgage or charge.	
(4) Particulars as to the amount or rate per cent of the commission, allowance, or discount (if any). (*a*)	
(5) Total amount covered by the whole series.	
(6) Total amount of issue, including the present issue.	

Signature ... ...

Designation ... ...

[State whether Director, Manager or Secretary or person authorised to accept service of process under Section 277 (1) (*d*).]

Dated this... ... ...day of... ... ...19.....

(*a*) The rate of interest payable under the terms of the Debentures should not be entered.

Note.—Section 110 of the Indian Companies Act 1913, and the proviso thereunder provide :—

(1) For registration of particulars of the entire series (for which purpose Form No. XXII must be used), and

(2) When there is more than one issue of debentures of the series, for registration of the amount and date of each issue after the first (for which purpose this Form No. XXIII must be used).

FORM XXIV.

Chronological Index of Charges entered in the Register.

THE INDIAN COMPANIES ACT, 1913.

(See Section 113)

Serial number of charge in this index.	Date of Registration.	Name of company.	Number of company.	Amount of mortgage or charge	Date of trust deed.	Debentures.		Other mortgages, etc	By whom registered.	Names and addresses of mortgagees or trustees for debenture holders or other persons entitled to the charge.	Remarks.
						First issue.	Further issue				
1	2	3	4	5	6	7	8	9	10	11	12
				Rs.							

FORM XXV.

Notice of appointment of a Receiver.

THE INDIAN COMPANIES ACT, 1913.

(See Section 118.)

Filing fee Rs. 3.

Notice pursuant to section 118 as to the appointment of a receiver.

The .. .. . . Company ... ...

Presented for filing by ... .

To the Registrar of Joint Stock Companies' ... ...

I, ... of . . . .he eby give notice that :—

*(1) I have obtained an order of thet... ... ... dated ... . for the appointment of Mr. . ... of . ... as receiver of the property of this company.

*(2) On the... day of. ... .I appointed Mr. ... ... of... .. ...as receiver of the property of this company under the powers contained in an instrumentt dated .. ..

Signature .. ..

Dated the... ... ...day of .. ... . .19 ....

Notes.—This notice must be filed within 15 days of the order or of the appointment under the instrument The penalty for default is a fine not exceeding Rs. 50 for every day during which the default continues.

*Of these two paragraphs strike out that which does not apply.

†Insert name of Court making the order.

‡Describe fully the instrument under which appointment is made.

FORM XXVI.

Abstract of Receiver's Accounts.

THE INDIAN COMPANIES ACT, 1913.

(See Section 119.)

(No filing fee payable.)

Name of company... ... ...

Presented for filing by ... ...

Name and address of Receiver ... .

Date and description of instrument under which Receiver is appointed { ... .
. . ..

Date of taking possession ... ...

Period covered by the abstract... ... { From ... .
To... ... ...

ABSTRACT

Receipts.		Payments	
	RS A P		RS, A P.
Brought forward . .		Brought forward	
Carried forward .		Carried forward . .	

(Signature of Receiver)

Dated this... ...day of... ... 19 ....

Note.—The receipts and payments must severally be added up at the foot of each sheet, and the totals carried forward from one abstract to another without any intermediate balance, so that the gross totals shall represent the total amounts received and paid by the Receiver since the date of appointment.

FORM XXVII.

Notice to be given by a Receiver on ceasing to act as such.

THE INDIAN COMPANIES ACT, 1913.

(See Section 119)

Filing fee Rs, 3.

Name of company... ... ...

Presented for filing by . . ..

To the Registrar of Joint Companies . . ..

I, the undersigned... ... . .of... . ...hereby give you notice that I ceased to act as receiver of the ... .Company, Limited, on the... ... ...day of... ... .

Signature .. ..

Dated the... ...day of... ... ...19.....

Note.—This notice must be filed by the Receiver on his ceasing to act as such. The penalty for defaults is a fine not exceeding two hundred rupees.

FORM XXVIII

Memorandum of satisfaction of mortgage or charge.

THE INDIAN COMPANIES ACT, 1913.

(See Sections 121 and 227-D)

Filing fee Rs. 3.

Name of company... ... ...

Presented for filing by ... .

The... ... ...(name of company) hereby gives notice that the registered charge, being mortgage/charge/hypothecation/debenture/series of debentures, authorised by resolution, dated the . . ...for Rs... ... ...of which particulars were registered with the Registrar of Companies on the ... ... day of... ...19....., was satisfied on the... ...day of. . ...19.....

2. The name(s) and address(es) of the mortgagee(s)/trustee(s) for the debenture-holders are... ... ...

(In the case of a Company incorporated in British India.) } Signature ... ...
Designation ... ...
(State whether Director, Manager or Secretary.)

Dated this... ...day of... ...19.....

(In the case of a company established outside British India.)

Signature of any one or more of the persons authorised under section 277(1)(*d*) of the Indian Companies Act, 1913, or of some other person authorised by the Company. } ... ...
... ...

Dated this... ...day of... ... ...19.....

FORM XXIX.

Notice to dissenting Shareholders.

THE INDIAN COMPANIES ACT, 1913.

(See Section 153-B.)

re(*a*)... ... ...Limited.

Notice by (*b*)... ... ...Limited.

To (*c*) ... ...

Whereas on the... ...day of... ... ..., 19..... (*b*) made an offer to all the holders of (*d*).....shares in (*a*) (state shortly the nature of the offer.) and whereas up to the... ... .day of... .. ...19.....being a date within four months of the date of making thereof such offer was approved by the holders of not less than three-fourths in value of the (*d*) . shares in the said company Now, therefore, the said (*b*)... ... ...in pursuance of the provision of Section 153-B of the Indian Companies Act, 1913, hereby gives you notice that the said (*b*) ....desires to acquire the (*d*) .....shares in the said (*a*) ..... held by you

And further take notice that unless upon an application made to the Court by you the said (*c*) ... .on or before the ... ...day of... ...19... .., being one month from the date of this notice the Court thinks fit to order otherwise, the said (*b*) ... ...will be entitled and bound to acquire the (*d*) . ...shares held by you in the said (*a*) .. .. . on the terms of the above mentioned offer approved by the approving (*d*) .... shareholders to said company

Signature for (*b*) .. ..

Designation ... ...

(State whether Director or Manager or Secretary)

Dated the.....day of... ... ...19... .

(*a*) Name of the transferor company.

(*b*) Name of the transferee company.

(*c*) Name and address of dissenting shareholder.

(*d*) If the offer is limited to a certain class or classes of shareholders insert particulars to the shares.

No of Company. Filing fee Rs. 3.

FORM XXX.

Application by an existing company for registration as a limited Company.

THE INDIAN COMPANIES ACT, 1913.

[See Section 253, 255, 256 and 257)

Name of company... ... ...

Presented for filing by ... ...

Application by ... ...Company, for registration as a limited company under the Indian Companies Act, 1913.

... .Company, constituted by . ...dated the ... ... day of .. ..desired to Register itself as a Company limited by ... ... shares/guarantee under the Indian Companies Act, 1913, by the name of... ... ...Company, Limited, and for, that purpose, delivers the undermentioned documents for registration under the said Act.

Signature... ... ...

Designation ... ...

(State whether Director or Manager, or Secretary.)

Dated this .. .. day of... ... ...19... ...

***Documents deliver for registration with the forgoing application.**

1. Copy of the ... ...constituting or regulating the company.

2. List of the members of the company made up to the... ...day of... ... ... 19... ..

3. Statement showing the nominal capital of the company, etc.

4 List of the directors or other managers of the Company.

5. Copy of resolution of the company assenting to its registration as a limited company, and adding the work "Limited," to its name.

6. Declaration by (a) .. ..of the company, verifying the particulars set forth in the documents above mentioned.

(a) This Declaration to be by any two directors or other principal officers of the company.

*Documents 1, 2, 3, 5 and 6 are to be filed by an existing Joint Stock Company, while documents 1, 3, 4, 5 and 6 are to be filed by a company other than a Joint Stock Company.

No. of Company No. filing fee, *vide* section 260.

FORM XXXI.

Application by an existing company for registration as an unlimited company.

THE INDIAN COMPANIES ACT, 1913.

(See Section 253, 255, 256 and 257.)

Name of company... ... ...

To be used in the case of existing Companies desiring to be registered without limited liability.

Presented for filing by ... ...

Application by... ... ... company... ... ...for registration as an unlimited company under the Indian Companies Act, 1913.

... ...company, constituted by... ... ... dated the .. ...day of..... ... . desired to register itself under the Indian Companies Act, 1913, and for that purpose delivers the under mentioned documents for registration under the said Act.

Signature ... .

Designation .. ..

(State whether Director or Manager or Secretary.)

Dated the... ...day of... ... ...19.. ..

DOCUMENTS DELIVERED FOR REGISTRATION WITH THE FOREGOING APPLICATION

1. Copy of the . . ... constituting or regulating the Company
2. List of the members of the Company made up to the .. ..day of ... ...
3. Statement of the registered office of the company
4. List of the directors or other managers of the company.
5. Copy of resolution of the company assenting to its Registration.
6. Declaration by (a)... ... ...of the company verifying the particulars set forth in the documents above mentioned,

(a) This declaration is to be by any two directors or other principal officers of the company.

No. of Company. Filing fee Rs. 3.

FORM XXXII.

Registration of an existing company as a limited company

COPY OF RESOLUTIONS ASSENTING TO REGISTRATION WITH LIMITED LIABILITY.

THE INDIAN COMPANIES ACT, 1913.

(See Sections 253, 255 and 256.)

Name of company ... ...

Presented for filing by ... ...

Copy of resolutions passed at a general meeting of ... ... company... ... ...held on the... ...day of... ... ...19... ... assenting to its being registered with limited liability.

(The resolutions to be written or printed here).

Signature ... ...

Designation... ... ...

(State whether Director or Manager or Secretary.)

No of Company. Filing Fee Rs. 3.

FORM XXXIII.

Registration of an existing Company.

LIST OF MEMBERS.

THE INDIAN COMPANIES ACT, 1913.

[See Section 255.]

Name of company ... ...

Presented for filing by ... ...

List of members of ... ... Limited made up to the (*a*) ... ...day of... ... ...19.....

Surname	Christian Name	Address.	Occupation.	Number of Shares or Amount of Stock, held.	Distinctive Number of Shares (if any).

(To be signed and dated at the end.)

Signature ... ...

Designation ... ...

(State whether Director or Manager or Secretary).

Dated this... ... ...day of... ... ...19... ...

(*a*) Not more than six clear days before delivery for registration.

FORM XXXIV.

Registration of an existing company as a limited company.

Statement of nominal capital, its division into shares, the number of shares taken and amount paid thereon, or the amount of stock of which it consists, also of the name and registered office of the company.

THE INDIAN COMPANIES ACT, 1913.

(See Sections 255 and 256)

Filing fee Rs. 3.

Name of Company... . . ..

Presented for filing by .. . .

Amount of nominal capital. . . . . .

Number of shares into which it is divided, and amount of each share.

Number of shares taken up to the .day of .. .. . , 19, ...(a)

Amount paid on each share. ... .

Amount of stock of which it consists . .

Name of the company .. . . . Limited

Registered office .. . .

If the company is intended to be registered as company limited by guarantee ... .The Resolution declaring the amount of the guarantee

Resolved that the 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 afterwards, for payment of the debts and liabilities of the Company contracted before he ceased to be a member, and of the costs 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 Rs... ... ...

Signature ... ...

Designation ... ...

(State whether Director or Manager or Secretary.)

Dated this ... ... day of ... ... 19 .....

(a) Not more than six clear days before delivery for registration.

No. of Company. Filing fee Rs 3.

FORM XXXV.

Registration of an existing company.

Declaration Verifying Documents Delivered to the Registrar of Companies with Application for Registration.

THE INDIAN COMPANIES ACT, 1913.

[See Section 257]

Name of Company ... ...

Presented for filing by.. .. ..

We, ...of ... ... and... .. ..of ... ...being two .. ..of the... ... ... of ... ...company. . ...do solemnly and sincerely declare that the particulars set forth in the several documents accompanying this declaration, and marked respectively with the letters .. ..are true ; and we make this solemn declaration conscientiously believing the same to be true.

Directors/Principal Officers.

NOTE.—(1) The declaration should be signed by two or more directors or other principal officers

(2) No affidavit is required in respect of this form.

FORM XXXVI.

Documents (Charter, Statutes, or Memorandum and Articles of the Company, or other Instrument) constituting or defining the constitution of the Company.

THE INDIAN COMPANIES ACT, 1913.

(See Section 277.)

Filing fee Rs. 5.

Name of company... ... ...

Presented for filing by... ... ...

The... .. .. (name of company) incorporated in... ... ...(country of origin), having a place of business in British India at... ... ...in the Province of .. ..

Presents for filing, pursuant to sanction 227 (1) (a) of the Indian Companies Act, 1913, the following :—

1. *Charter/Statutes/Memorandum and article of association/..... .....(other instrument to be specified), constituting or defining the constitution of the company, and duly certified as required by the Indian Companies Rules, 1941.**

2. (If the aforesaid document is not written in the English language), a translation thereof, duly certified as required by the Indian Companies Rules, 1941.**

Signature or Signatures of any one or more of the persons authorised under Section 277 (1) (d) of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the company. ....
.. . .
. . . .

Dated... . ...day of . . 19...

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*Particulars of the documents required to be filed under Section 277(1) of the Indian Companies Act, 1913 —

(*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 written in the English language, a certified translation thereof ;

(*b*) The full address of the registered or principal office of the company (see Form XXXVII) ;

(*c*) A list of the directors and managers (if any) of the company (see Form XXXVIII) ;

(*d*) The names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company.

N.B.—This Form, accompanied by the certified documents, and by the Forms XXXVII, XXXVIII, XXXIX and XLII must be filed within one month from the establishment of a place of business in the Province in British India.

**Certification of documents under section 277 of the Act.

6. *Certification of documents under section 277 of the Act*—A copy of a document required to be certified under sub-section (1) of section 277 of the Act shall

(*i*) in the case of a Company incorporated in a country outside His Majesty's dominions be

(*a*) duly certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by any of the British officials mentioned in Section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vict. c. 10), or in any Act amending the same, or

(*b*) by a Notary of such country, the certificate of the Notary being authenticated by any of the British officials as aforesaid or

(c) by some officer of the company before a person having authority to administer an oath as provided by Section 3 of the said Oaths Act, the status of the person administering the oath being authenticated by any of the British officials as aforesaid ; and

(*ii*) in the case of a Company incorporated in any part of His Majesty's dominions,

(a) be duly certified as a true copy by an official of the Government to whose custody the original is committed, or

(*b*) by a Notary Public of such place, or

(c) on oath by an officer of the Company before a person having authority to administer an oath in such place.

7. *Certification of translations under section 277 or section 277B*,—Translations of documents required to be filed with the Registrar under Section 277 or section 277B of the Act shall be certified as correct translations.—

(*i*) where such translation is made outside of British India,

(*a*) by an official having custody of the original, or

(*b*) by a Notary Public of the country or place where the Company is incorporated ;

Provided that where the Company is incorporated in a country outside His Majesty's dominions, the signature or seal of the person so certifying shall be authenticated by any of the British officials mentioned in section 6 of the Commissioner's of Oaths Act, 1889 (52 and 53 Vict., c. 10), or in any Act amending the same :

(*ii*) where such translation is made in British India—

(*a*) by an advocate, attorney or pleader entitled to appear before the High Court, or

(*b*) by an affidavit of some person having, in the opinion of the Registrar, competent knowledge of the language of the original and of English.

FORM XXXVII.

Notice of Address of the Registered or Principal Office of the Company

THE INDIAN COMPANIES ACT, 1913.

(See Section 277.)

Filing fee Rs 5.

Name of company ... ...

Presented for filing by ... ...

Notice is hereby given, pursuant to section 277 (1) (*b*) of the Indian Companies Act, 1913, by the ... ... (name of company), incorporated in ... ... (country of origin), having a place of business in British India at ... ...in the Province of ... ...that the situation of the registered or principal Office of the company (in the country of origin) is :—

... ...

. ...

... .

Signature or Signatures of any one or more of the persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the company. } ... ...

... ...

Dated the day of 19 .

N. B.—This notice must be filed within one month from the establishment of a place of business in the Province in British India.

FORM XXXVIII.

Lists of directors and managers required by section 277.

THE INDIAN COMPANIES ACT, 1913.

(See section 277.)

Filing Fee Rs. 5.

Name of company... ... ...

Return pursuant to section 277 (1) by—

The... ... ...(name of Company) incorporated in... ... ...(country of origin) and which has a place of business in British India at... ... ...of a list of its directors and managers.

Presented for filing by... ... .

List of directors and managers of the ... ...

Names of directors and managers.	Address of directors and managers.	Descriptions or occupations of directors and managers.

Signature or signatures of any one or more persons authorised under section 277(1) (*d*) of the Indian Companies Act 1913, or of some other person in British India duly authorised by the Company } ... ...

Date.

FORM XXXIX.

Return of persons authorised to accept service under section 277.

THE INDIAN COMPANIES ACT, 1913,

[See Section 277.]

Filing fee Rs. 5.

Name of company... ... ...

Return pursuant to section 277 (1) by—

The ... ...(name of Company) incorporated in ... ...(country of origin) which has a place of business in British India at... ... ...of the names and addresses of some one or more persons resident in British India authorised to accept on behalf of the Company service of process and any notices required to be served on the company.

Presented for filing by ... ...

List of persons authorised to accept service on behalf of the company.

Name of persons.	Residential Addresses,	Nationality.	Description or occupations.

Signature or signatures of any one or more persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the Company. } ... ...

Date.

FORM XL.

Notice of alteration in Charter, etc., under section 277.

THE INDIAN COMPANIES ACT, 1913

(See section 277.)

Filing fee Rs. 5.

Name of company .. ..

Notice of alteration in the charter, statutes, memorandum and articles or other instrument constituting or defining the constitution of the company.

Presented for filing by... ... ...

Notice is hereby given, pursuant to section 277 (1) of the Indian Companies Act, 1913, by the..... ... ...(name of Company) incorporated in ... ...(country of origin)... ... ... and which has a place of business in British India at ... ... of alteration in the*... ... ...constituting or defining the constitution of the company.

Copy of alteration with copy of new deed, if one has been executed, and translation of alteration or any deed, if not in the English language, must accompany this notice and be shortly referred to here

Signature or signatures of any one or more persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some person in British India duly authorised by the company. } . . ..

Date

---

*Insert "charter," "statutes", "memorandum" or "articles" or other instrument as the case may be.

NOTE.—This notice must be filed within one month after the date on which particulars of the alteration could, in due course of post and if despatched with due diligence, have been received in British India from the place where the company is incorporated.

FORM XLI.

Notice of alteration in the address of the registered or principal office of the Company under Section 277.

THE INDIAN COMPANIES ACT, 1913.

(See section 277.)

Filing fee Rs. 5,

Name of Company .. ..

Presented for filing by ... ...

Notice is hereby given, pursuant to section 277 (1) of the Indian Companies Act 1913, by the .. .. (name of Company) incorporated in ... ... (country of origin) and which has a place of business in British India at . . .. of alteration in the address of the registered or principal office of the company (in the country of origin).

Previous address	Present address.	Date of change.

Signature or signatures of any one or more persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other persons in British India duly authorised by the company, ...
... ...
.. ..

NOTE.—This notice must be filed within one month after the date on which particulars of the alteration could, in due course of post, and if despatched with due diligence, have been received in British India from the place where the company is incorporated.

No of Company.

FORM XLII.

Notice of situation of the principal place of business in British India or of any change therein.

THE INDIAN COMPANIES ACT, 1913.

[See Sections 277 (1) (*e*)]

Filing fee Rs. 5.

To

The REGISTRAR of JOINT STOCK COMPANIES, ...

The .. .., Limited, incorporated in .. ..and having places of business in the Provinces of ... . in British India, hereby give you notice, in accordance with clause (*e*) of sub-section (1) of section 277 that the office situated at.. .. .. in the Province of . ...shall be deemed to be the principal place of business of the company in British India* [instead of ... . (in the case of a change of address)]

Signature of any one or more of the persons authorised under Section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the company. .. ..

Dated this day of 19

*Strike off the portion within the asterisks if not necessary

FORM XLIII.

Notice of alterations of Directors or Managers.

THE INDIAN COMPANIES ACT, 1913.

(See Section 277.)

Filing fee Rs. 5

Notice of alteration in the list of Directors or Managers of the... ... ...(name of Company).

Presented for filing by . . . .

Notice is hereby given, pursuant of section 277 (1) of the Indian Companies Act, 1913, by the .. . . 'name of company) incorporated in... . .. .(country of origin) and which has a place of business in British India at. . . of alteration in the list of directors and managers

Names of directors and managers.	Addresses of directors and managers	Descriptions or occupations of directors and managers	Remarks as to the alteration.

Signature or signatures of any one or more persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the company . ...

Date

NOTE.—This notice must be filed within one month after the date on which particulars of the alteration could, in due course of post, and if despatched with due diligence, have been received in British India from the place where the Company is incorporated.

FORM XLIV.

Notice of alteration in the names of addresses of persons authorised to accept process.

THE INDIAN COMPANIES ACT, 1913.

(See Section 277)

Filing fee Rs. 5.

Name of Company... ... ...

Notice of alteration in the names or addresses of the persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company.

Presented for filing by. .. ..

Notice is hereby given, pursuant to section 277 (1) of the India Companies Act 1913, by the... .. . . (name of Company) incorporated in .. . .. (country of origin) and which has place of business in British India at .. of alteration in the names or addresses of the persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company.

Full names of Persons*	Residential Addresses	Description or Occupation	Alterations.	
			Date of alteration	Particulars of alteration.

Signature or signatures of any one or more persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other person in British India duly authorised by the company } ... .

Date

NOTE.—This notice must be filed within one month after the date on which particulars of the alteration could in due course of post, and if despatched with due diligence, have been received in British India from the place where the company is incorporated.

*A complete list must always be given.

FORM XLV.

Statement of affairs under section 277.

THE INDIAN COMPANIES ACT 1913.

(See Section 277)

Filing fee Rs. 5.

Name of Company... . ...

Statement in the form of a balance sheet by the... - ... . (name of company)

Presented for filing by . ...

Return pursuant to section 277 (3) (*ii*) of the Indian Companies Act, 1913, by ... ...

The . . (name of Company) incorporated in . .. . (country of origin) and which has a place of business in British India at . . . . of a statement in the form of a balance sheet audited by the company's auditors* . .. . and made up to ..day of .. ..

Signature or signatures of any one or more persons authorised under section 277 (1) (*d*) of the Indian Companies Act, 1913, or of some other persons in British India duly authorised by the company }

Date

NOTE —Section 277 (3) of the Indian Companies Act, 1913, is as follows :—

"(3) Every company to which this section applies shall in every year file with the Registrar of the province in which the company has its principle place of business—

(*i*) in a case where by the law for the time being in force of the country in which the company is incorporated such company is required to file with the public authority an annual balance sheet—three copies of that balance sheet and if the balance sheet does not contain all the information provided for in the form marked H in the Third Schedule, such supplementary statements as shall furnish such information ; or

(*ii*) in a case where no such provision is made by the law, for the time being in force, of the country in which the company is incorporated,—such a statement in the form of a balance sheet as such company would if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act

The form of a balance sheet is prescribed in section 132 which is as follows :—

"(1) The balance sheet shall contain a summary of the property and assets and of the capital and liabilities of the company giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets have been arrived at.

(2) The balance sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit.

*Insert names and addresses of auditors.

FORM XLVI.

Additional declaration before commencing business in the case of a banking company.

THE INDIAN COMPANIES ACT, 1913.

(See Section 277-I.)

Filing Fee Rs. 3

Name of company... . .. .

Declaration that the conditions of Section 277-I of the Act have been complied with.

Presented for filing by ... ...

We* .. ..
... ...
... ...
being the Directors and* ... .being the
Manager of the. . . . .
do solemnly and sincerely declare (1) that shares have been allotted to an amount sufficient to yield a sum of at least fifty thousand rupees as working capital and that (2) a sum of Rupees .. .. has actually been received by way of paid up capital.

(1)

(2)

(3)

(4)

(5)

Signature of all the Directors

Signature of Manager.

Dated this... ... day of 19

---

*Names and addresses should be given

NOTES —(1) This declaration should be verified by an affidavit signed by the Directors and the Managers of the company in the form annexed.

(2) This form should be filed both by private and public banking companies.

ANNEXURE TO FORM XLVI.

(To bear a non-judicial stamp of the value of Rs. 2.)

IN THE MATTER OF THE INDIAN COMPANIES ACT, 1913,

AND

THE ... ... LTD.

Affidavit verifying declaration under section 277-I.

We,*... ... ... being the Directors, and* .. . . being the Manager of the above named company make oath (or solemnly affirm) and say as follows :—

That the declaration made by us under section 277-I of the Indian Companies Act, 1913, has been marked ... ...

That the particulars contained in the said declaration are true to the best of our knowledge and belief.

(1)

(2)

(3)

(4)

(5)

Signatures of all the Directors.

... ...

Signature of Manager.

Sworn or solemnly affirmed at... ... .

this... .. ...only of .. ..19 .

before me... ... ...

Commissioner for Oaths ... .

*Names and addresses should be given.

No. of Company.

FORM XLVII.

Form of monthly statement of Banking company.

THE INDIAN COMPANIES ACT, 1913.

[See Section 277-L.]

Filing Fee Rs. 3.

Name of company . ...

Presented for filing by .. . .

Statement for the month of . . .. of the position of ... . , Ltd, as at the close of business on the following days of *the Month*.

(To be filed with the Registrar of Joint Stock Companies... .. .. within the tenth day of the *next* month

	1st Friday *	2nd Friday *	3rd Friday *	4th Friday *	5th Friday *
I —Demand Liabilities—					
II —Time Liabilities—					
III —Cash—†					
(*a*) Notes—					
(*b*) Rupees—					
(*c*) Subsidiary Coin—					

Signature . .. .

Designation .. ..

Date .. . .

(Director, Managing Director, Manager or Managing Agent.)

*Give dates (where Friday is a holiday under the Negotiable Instruments Act, the preceding working day).

†Cash must not include Balances at Bank or any item other than currency notes, Rupees and subsidiary coins.

CALCUTTA HIGH COURT RULES.

GENERAL.

Definitions.

1. In these Rules unless the context or subject-matter otherwise requires—

(*i*) "The Act" means the Indian Companies Act, 1913, as from time to time amended or modified

(*ii*) "Advocate" means, in the High Court, a person entitled to appear and plead in the High Court in the exercise of its Original Jurisdiction, and includes, as regards proceedings in Chambers in the High Court, an attorney of the said Court, and as regards proceedings in a District Court any person entitled to appear and plead in such Court

(*iii*) "Attorney means, in the High Court, an attorney of the High Court or firm of such attornies, and in a District Court, a legal practitioner or firm of legal practitioners entitled to appear and plead in such Court.

(*iv*) "Certified" means, in relation to a copy, certified as provided in section 76 of the Indian Evidence Act

(*v*) "Company" means, a company in respect of which proceedings to which these Rules apply have been instituted under the Act.

(*vi*) "Court" means the Court having jurisdiction under the Act.

(*vii*) "Creditor" includes a corporation and a firm of creditors in partnership

(*viii*) "Filed" means filed in the office of the Registrar

(*ix*) "High Court" means the High Court of Judicature at Fort William in Bengal in its Original Jurisdiction.

(*x*) "Judge" means, in the High Court, a Judge exercising Original Jurisdiction, and in the District Court, the Judge of such Court.

(*xi*) "Petition" in rules 51 to 64, both inclusive, means a petition to wind up a company by or under the supervision of the Court.

(*xii*) "Registrar" means, in the High Court, the Registrar of the Court in its Original Jurisdiction, and in a District Court, the Judge or such officer of such Court as may be authorised to perform such duties as are by these Rules assigned to the Registrar

(*xiii*) "Sealed" means sealed with the seal of the Court

(*xiv*) "These Rules" or "The Rules" means the Rules in this Chapter and includes the prescribed forms but not the marginal notes to such Rules.

Words importing the masculine gender shall include females.

Words in the plural shall include the singular and words in the singular shall include the plural.

The word "person" shall include any body of persons corporate or unincorporate.

Expressions referring to writing shall include printing, typing, lithography, photography, and other methods of representing or reproducing words in a visible form.

2. The following shall be used as general headings in all matters to which these Rules apply —

A.—In proceedings before the Judge in Chambers or in Court .—

In the High Court of Judicature at Fort William in Bengal, Original Civil Jurisdiction (or in the District Court of).

In the matter of the Indian Companies Act, VII of 1913.
and of , Limited.

B.—In all advertisements, notices and other proceedings not before the Judge in Chambers or in Court :—

In the matter of the Indian Companies Act, VII of 1913,
and of , Limited,

3 In the High Court all petitions, shall be presented and applications made to and proceedings taken before a Judge in Chambers, provided nevertheless that the Judge may adjourn any matter so brought before him into Court. In a District Court all petitions shall be presented, applications made to and proceedings taken under the direction of the Judge of such Court.

In Company matters such applications as are ordinarily dealt with in Chambers by the Registrar or Master, must be made to one of such officers. Only such applications in Chambers which can only be dealt with by a Judge, should be made to the Judge dealing with Company matters.

4. In the High Court the Rules of the Original Side of the High Court for the time being in force and the general practice of the Court, including the course of procedure and practice in Chambers, shall apply as regards all proceedings under the Act in relation to companies so far as may be applicable, except and so far as by the Act or these Rules otherwise provided

5. In the High Court (and in all Courts having jurisdiction under this Act) shall be kept and maintained a book called "the Register of Company Matters" in which shall be entered and numbered serially all applications made, under sections 13, 15, 36, 38, 54, 55, 66A, 76, 79, 83, 87, 104, 105A, 120, 124, 125, 137, 141A, 153, 153A, 153B, 154, 166, 169, 171A, 173, 175, 177A, 177B, 178A, 179, 180, 181, 182, 208B, 208C, 208E, 209B, 209C, 209D, 209E, 209F, 209H, 213, 215, 216, 218, 221, 230A, 232, 235, 237, 241, 242, 243, 244A, 247, 249A, 277N, 280 and 281 and any other originating proceeding under the Act in relation to a company. The Register of Company matters shall have the following columns namely :—

Column 1—Serial Number.

Column 2—Name of Company.

Column 3—Name of Applicants

Column 4—Section of the Act, and Number of Rule, if any, under which application is made

Column 5—Date of order.

6. All applications or orders made and all process issued or documents filed thereafter in such proceedings shall bear the serial number thereof.

7. In the High Court and Courts having jurisdiction under the Act, there shall be kept and maintained a book called the "Ledger of Company Matters" in which shall be entered under separate headings for separate companies chronologically in order of date all documents filed in connection with applications made to the Court under the Act. Every document so recorded shall be serially numbered and shall bear the same number which shall be endorsed thereon in red ink at the time when such document is recorded.

8. Notwithstanding anything contained in these Rules, the Judge, before whom proceedings are taken may enlarge or abridge the time for doing any act or taking any proceedings under these Rules.

9. Where an advertisement is required for any purpose, it shall, unless otherwise prescribed by these Rules or directed by the Judge, be inserted once in *Calcutta Gazette* and once in two daily newspapers, one in the English language and one in the vernacular circulating in Calcutta.

10. The Judge may, except in the case of an application to wind up a company, in a special case dispense with any advertisement required by these Rules.

11. No proceedings under the Act or the Rules shall be invalidated by any formal defect or by any irregularity, unless the Judge before whom an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by an order.

12. The forms to which reference is made in and to be used under these Rules are those in the Appendix and the same where applicable, and where they are not applicable, forms of the like character with such variations as circumtances may require, shall be used Where such forms are applicable any costs occasioned by the use of any other or prolix forms shall be borne by or disallowed to the party using the same unless the Judge shall otherwise direct.

13 On the hearing of an application made under these Rules, the Judge may at the first hearing or at any subsequent stage make such order or orders, and give such direction as he may think fit as to the proceedings and more particularly with respect to the following matters, namely, the giving of notice to parties who are likely to be affected by the application and the mode and manner in which such notice is to be given

14. Where an application is made on behalf of a company the verification of the petition or the affidavit as the case may be shall be affirmed by a director or some other principal officer of the company The Judge before whom the application is made may for special reasons grant leave for the verification to be made by any person other than a director or other principal officer of the company.

Rectification of Share Register.

15. All applications for leave to rectify the share register must be made on notice to the company and in case of transfers of shares to the transferor or the transferee as the case may be

Reduction of Capital.

16. An application for an order confirming the reduction of the share capital of a company shall be made on petition verified by affidavit Such petition shall be in Form No 1

17. An application for an order dispensing with the addition of the words "and Reduced" may be made *ex parte* at or after the presentation of such petition, provided the Judge may direct notice to be given of such application or adjourn the consideration thereof as he may think fit.

18. In a case where the creditors of a company are not entitled to object to the proposed reduction it shall not be necessary to obtain the certificate required by Rule 29 and on the presentation of the petition the Judge shall fix a day for the hearing thereof and shall give directions as to the advertisements to be published of the presentation of the petition, so that the first or only insertion of such notice shall be made not less than fourteen days before the date fixed for the hearing. Such notice shall be in Form No. 2.

19. In a case where the creditors are entitled to object to the proposed reduction application may be made *ex parte* by summons for directions as to the proceedings to be taken for setting the list of creditors entitled to object and for fixing the date with reference to which the list of such creditors is to be made out, and the Judge may, either then or thereafter, give directions in respect of the matters mentioned in Rules 21, 23, 25 and 26. The order shall be in Form No. 3.

20. Proceedings under the order shall be continued by adjournment or if the Judge shall so direct, by further summons

21. In a case where the creditors are entitled to object to the proposed reduction the company shall, within such time as the Judge shall direct, file a list containing the names and addresses of the creditors of the company at the date fixed under Rule 19 and stating the nature and amounts of the debts due to each of them respectively or in case of any debt payable on a contingency or not ascertained or of any claim admissible to proof in a winding-up of the company, the value so far as can be justly estimated of such debt or claim. Such list shall be verified by the affidavit of an officer of the company competent to make the same. Such affidavit shall be in Form No. 4

22 Copies of such list, containing the names and addresses of the creditors and the total amount due to them, but omitting the amounts due to them, respectively, or (if the Judge shall think fit) complete copies of such list shall be kept at the registered office of the company and at the office of its attorney, and any person desirous of inspecting the same may, at any time during the usual hours of business inspect and take extracts from the same on payment of the sum of one rupee.

23 The company shall within seven days after the filing of such affidavit, or such further time as the Judge may allow, send to each creditor whose name is entered in the said list a notice stating the amount of the proposed reduction of capital, and the amount or estimated value of the debt or claim for which such creditor is entered in the said list Such notice shall be sent by prepaid letter post to each creditor at his last known address Provided that where such address is not in British India, or is not known to the company, the Judge may direct notice to be given to such creditor in such manner as he may think fit Such notice shall be in Form No. 5

24. Notice of the filing of the list of creditors shall be advertised by the company in such manner as the Judge shall direct Such notice shall be in Form No. 6.

25. A creditor entered in the said list who claims to be a creditor for a larger amount than that stated therein shall send his name and address and particulars of his debt or claim, and the name and address of his attorney (if any) to the attorney of the company, within the time stated in such notice being not more than fourteen days from the date of the notice or such further time as the Judge may allow.

26. The company shall, within such time as the Judge shall direct, file an affidavit made by its attorney verifying a list containing the names and addresses of persons (if any) who shall have sent in particulars of their debts or claims in pursuance of the notices prescribed by Rule 24 and the amounts of such debts or claims. A competent officer of the company shall join in such affidavit proving the despatch and publications of such notices and distinguishing in such list which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company. Such affidavit shall be in Form No 7

27. Where any debt or claim, the particulars of which have been so sent, is not admitted by the company in full, then and in every such case, unless the

company is willing to set apart and appropriate in such manner as the Judge shall direct the full amount of such debt or claim the company shall, where the Judge thinks fit so to direct, send to the creditor a notice that he is required to prove such debt or claim or such part thereof as is not admitted by the company, by affidavit by a day to be therein named being not less than fourteen days after such notice and being the time appointed by the Judge for adjudicating upon such debts and claims. Such notice shall be sent in the manner provided by Rule 23 and shall be in Form No. 8 and such affidavit in proof shall be in Form No. 9.

28. The costs of proof of a debt or claim in pursuance of the notice prescribed by Rule 27 shall be in the discretion of the Judge.

29. The result of the settlement of the list of creditors shall be stated in a certificate which shall be prepared by the attorney of the company and signed by the Judge. Such certificate shall (1) specify debts or claims (if any) which have been disallowed ; (2) distinguish (*a*) debts or claims the full amount of which the company is willing to set apart and appropriate, (*b*) debts or claims (if any) the amount of which has been fixed by enquiry and adjudication in manner provided by section 59 of the Act, (*c*) debts or claims (if any) the full amount of which is not admitted by the company, and of which the company is not willing to set apart and appropriate the full amount or the amount of which has been fixed by inquiry and adjudication as aforesaid , (3) show (*a*) which of the creditors have consented to the proposed reduction, and the total amount of the debts or claims the payment of which has been secured in manner provided by section 59 of the Act and the person to or by whom the same are due or claimed. It shall not be necessary to show in such certificate the several amounts of the debts or claims of any person who has consented to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid

30 After the expiration of eight days from the filing of such last mentioned certificate, the petition shall be set down for hearing, by requisition addressed to the Registrar by the attorney of the company.

31 Notice of the day appointed for the petition to be heard shall, unless the Judge otherwise directs, be advertised in the same manner as the notice under Rule 25 so that the first or only advertisement shall be published not less than fourteen days before such day. Such notice shall be in Form No. 10.

32. Any creditor included in the said certificate whose debts or claims have not, before the hearing of the petition, been discharged or determined or been secured in manner provided by section 59 of the Act and who has not before the hearing consented to the proposed reduction of capital, may appear at the hearing of the petition and oppose the application. A creditor intending so to appear shall give two days' notice in writing of such intention to the attorney of the company and in default of such notice shall not without the leave of the Judge be entitled to appear The costs of the appearance of creditor shall be in the discretion of the Judge

33. At the hearing of the petition the Judge may, if he think fit, give such directions as may seem proper with reference to the securing, in manner mentioned in section 59 of the Act, the payment of the debts or claims of any creditors who do not consent to the proposed reduction ; and the further hearing of the petition may, if the Judge think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims.

34. Where the Judge makes an order confirming a reduction such order shall give directions as to the manner in which, in what news-papers and at what times notice of the registration of the order and of such minute as is mentioned in section 61 of the Act, shall be published and (unless the addition of the words

"and Reduced" shall have been dispensed with altogether or shall be dispensed with thenceforth) shall fix the date until which the words "and Reduced" are to be deemed part of the name of the company as provided in section 57 of the Act.

35. Where the Judge shall think fit to require the company to publish the reasons for the reduction of its capital, or any other information with regard thereto, or the causes which led to such reduction (as provided by section 65 of the Act) the same shall be advertised in such newspapers, in English and in the vernacular, as the Judge shall think fit.

Meeting held under Directions of the Court.

36 Application by a shareholder for directions to call a general meeting of a company under the provisions of section 76 or section 79 of the Act shall be made by petition supported by affidavit.

37. An order made by the Court under section 76 or section 79 of the Act directing the calling of a general meeting of a company shall contain directions as to the time and place of the meeting and a copy of the said order shall be filed by the applicant with the Registrar of Joint Stock Companies before the meeting is held,

Issue of shares at a Discount.

38. Unless in any particular case the Court shall otherwise direct every order sanctioning the issue of shares at a discount shall contain a direction that a certified copy of such order shall be delivered to the Registrar of Joint Stock Companies for registration within fifteen days of the making thereof or seven days from the date of the filing thereof whichever is later or within such further time as the Judge may allow and that no issue of shares at a discount shall be made till such copy has been so delivered

Application by Delinquent Director or Officer under Section 141(A).

39. An application by a director or manager or other officer of the company for leave to act as director or to take part in the management of the company under section 141A shall be made on notice to the company and the Advocate-General or the Public Prosecutor as the case may be.

Schemes of Compromise or Arrangement.

40. All applications for the sanction of the Court of schemes of compromise and/or arrangement under section 153 of the Act shall be by petition verified by the petitioner or by one of the petitioners if more than one or if the petition is presented by a corporation by a director or other principal officer of the company.

41. Upon the admission of the petition the Judge shall give directions as to the following matters, *viz.*—

(i) the date or dates when the scheme shall be placed before the creditors and/or the members as the case may be ;

(ii) the person who is to act as chairman ,

(iii) the time and place where the meeting (or meetings) of the creditors and members is to be held and the procedure to be followed at such meeting ·

(iv) the notice to be given to the creditors and/or the members ;

(v) the time within which the chairman is to submit his report to the Court ;

(vi) the date when the further hearing of the petition is to take place.

42. The notice to be given to the creditors and/or the members under Rule 41 shall be sent by post under certificate of posting and shall be advertised once in a newspaper having circulation in the place where the registered office of the company is situate.

Where the company is not the petitioner a copy of the petition along with a copy of the order made under Rule 41 shall be served on the company at its registered office at least 14 days before the date fixed for the meeting.

43. The petitioner or his attorney shall on or before the date fixed for the further hearing of the application cause the report to be filed. The petitioner or his attorney shall also not less 7 days before the date fixed for the further hearing of the application make and file an affidavit showing that the directions given under Rule 41 have been duly complied with.

44. A creditor and/or member shall on payment of the usual fees be entitled within 24 hours after such payment to be furnished by the petitioner or his attorney with a copy of petition and the report of the chairman and the order made thereon and shall also be entitled upon payment of the prescribed fees to obtain such copies from the Court.

45. Any creditor and/or member (or the company where the petition is presented by a person other than the company) who intends to appear on the hearing of the petition shall leave with or send by registered post to the petitioner or his attorney notice of such intention signed by him or his attorney together with a copy of the affidavit or affidavits, if any, which he intends to use Such notice shall be served or if sent by registered post shall be posted in time to reach the petitioner not later than seven clear days before the date fixed for the further hearing of the petition No person who has failed to comply with this Rule shall be allowed to appear on the hearing of the petition without the leave of the Judge.

46. Any affidavit intended to be used by the petitioner in answer to the affidavit or affidavits served in accordance with Rule 45 shall be filed not less than 2 days before the hearing of the petition.

47. Where orders are made under section 153 of the Act, Forms Nos. 35A and 35B set out in Appendix K shall be used with such variations as the circumstances of the case may require.

Attendance and Appearance of Parties.

48. Every person for the time being on the list of contributories of the company, and every creditor who has lodged his proof shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of, but if the Court shall be of opinion that the attendance of any such person has occasioned any additional costs which ought not be borne by the funds of the company, it may direct that such cost or a gross sum in lieu thereof, shall be paid by such person ; and such person shall not be entitled to attend any further proceedings until he has paid such sum or costs.

49. The Court may from time to time appoint any one or more of the creditors or contributories to represent before the Court, at the expense of the company all or any class of the creditors or contributories upon any questions or in relation to any proceedings before the Court, and may remove the person or persons so appointed. If more than one person is appointed under this Rule to represent one class, the persons appointed shall employ the same attorney to represent them.

50. No contributory or creditor shall be entitled to attend any proceedings before the Judge unless and until he or an attorney on his behalf has filed an

appearance with the Registrar. A book to be called the "Appearance Book" shall be kept by the Registrar in which all such appearances shall be entered. Such book shall be open to the inspection of the Official Liquidator and his attorney.

Winding-up · Petition.

51. The petition shall be in the Form No. 11 or Form No. 12.

52. The petition shall be verified by an affidavit to be made by the petitioner or by one of the petitioners, if more than one, or if the petition is presented by a corporation, by a Director, Secretary, or other principal officer thereof, and presented with and filed upon the admission of the petition · Provided that where the Judge is satisfied that the petitioner is unable to make such affidavit by reason of absence, illness or other sufficient cause of a like nature it may, with the sanction of the Judge to be given at the time of the presentation of the petition, be made by any person duly authorised by the petitioner and competent to make the same Such affidavit shall be in Form No. 13.

53. Upon the admission of the petition the Judge shall fix a date for the hearing thereof and give directions as to the advertisements to be published and as to the persons on whom copies are to be served. At any time before the petition has been advertised as directed the Judge may alter the date so fixed for the hearing.

54 The petition shall be advertised fourteen clear days before the date fixed for the hearing thereof as follows —Once in the *Calcutta Gazette*, and once at least in an English daily newspaper and a vernacular daily newspaper published in Calcutta and in the case of a petition to a District Court once at least in one local newspaper if such there be, and by proclamation affixed to the walls of the Court House The advertisement shall be in Form No 14 .

55. The petitioner or his attorney shall, not less than three days before the date fixed for the hearing, make and file an affidavit that the directions as to advertisements have been observed and produce for inspection copies of such advertisements In default of compliance with the directions as to advertisements the appointment for the hearing of the petition shall be cancelled and the petition removed from the file The Judge, if satisfied, as to the reasons for such default shall fix a fresh date for the hearing of the petition and it shall thereupon be advertised in accordance with Rule 54.

56. Except where the petition is presented by the company, every such petition shall be served at the registered office of the company and if there is no registered office, then at the principal or last known principal office of the company by leaving a copy thereof and a copy of the order made under Rule 53 with any officer or servant of the company, or in case no officer or servant can be found at such office then the service shall be effected either by registered post or in such other manner as the Judge may direct. Where the registered office or the principal office or the last known principal office of the company is situate outside the limits of the Original Civil Jurisdiction of the Court a copy of the petition and a copy of the order shall be served by registered post at the registered office of the company or where there is no registered office then at the principal or last known principal office of the company. If the company is at the date of the admission of the petition being wound up voluntarily, the petition shall also be served upon the liquidator, if any, appointed for the purpose of winding up the affairs of the company by leaving a copy of the petition and a copy of the order made under rule 53 with him or where he does not reside within the local limits of the Ordinary Civil Jurisdiction of the Court by sending copies to him by registered post or in such other manner as the Judge may direct. The affidavit of service shall be in Forms No, 15 and No, 16.

57. Every contributory or creditor of the company on payment of the usual fees shall be entitled within twenty-four hours after such payment to be furnished by the petitioner, or his attorney if any, with a copy of the petition, and of the affidavit in verification thereof and shall also be entitled upon payment of the prescribed fees to obtain such copies from the Court.

Hearing of Petition.

58. A person who intends to appear on the hearing of the petition shall leave with, or send by registered post to, the petitioner, or his attorney, notice of such intention signed by him or by his attorney. Such notice shall be served, or, if sent by registered post, shall be posted in time to reach the addressee not later than two clear days before the day appointed for the hearing of the petition. No person who has failed to comply with this Rule shall be allowed to appear on the hearing of the petition without the leave of the Judge. Such notice shall be in Form No. 17.

59. An affidavit intended to be used in opposition to or in support of the petition shall be filed not less than five days before the date fixed for the hearing thereof and notice of the filing thereof shall be given to the petitioner, or his attorney, on the day on which the affidavit is filed. If any person fails to comply with this Rule the affidavit, unless the Judge otherwise directs, shall not be used on the hearing of the petition.

60. An affidavit intended to be used in reply to an affidavit filed in opposition to the petition or in support of the petition shall be filed not less than two days before the date fixed for the hearing of the petition. Notice of such filing shall be given forthwith to the person by whom the affidavit in opposition was filed or to his attorney.

61. When a petitioner applies for leave to withdraw his petition or asks that it be dismissed or that the hearing thereof be adjourned or fails to appear in support thereof or if appearing does not apply for an order in terms thereof, or if for any other sufficient reason the Judge shall think fit so to do, the Judge may, upon such terms as he thinks just, substitute as petitioner any creditor or contributory who in his opinion would have a right to present a petition, and is desirous of prosecuting the petition already admitted.

62. An application for leave to withdraw a petition for winding-up which has been advertised in accordance with the provisions of Rule 54 hereof shall not be heard at any time before the date fixed in the advertisement for the hearing of the petition.

63. Where the Judge allows a creditor or a contributory to be substituted as petitioner in an application for the winding-up of the company under Rule 61, he shall adjourn the hearing of the petition to a date to be fixed by him. Such creditor or contributory shall within seven days from the making of the order file a clean copy of the petition with such amendment as he desires to incorporate therein and shall also file an affidavit setting out the grounds upon which he supports the petition. The amended petition shall be treated as the petition for the winding-up of the company.

64. The petitioner or his attorney shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition and of their respective attorneys. On the day appointed for the hearing of the petition a copy of the list or if no notice of intention to appear has been given, a statement in writing to that effect shall be submitted by the petitioner or his attorney to the Court, prior to the hearing of the petition.

Winding-up Order and Summons for Directions.

65. When an order for the winding-up of a company by or under the supervision of the Court has been made the petitioner or his attorney shall forthwith send to the Registrar of Companies a notice in Form No. 18. The Registrar shall by letter forthwith send notice of the order to the Official Receiver except where a person other than the Official Receiver has been appointed to act as liquidator.

66. At the time of making the winding-up order, or at any time thereafter, the Judge may (1) appoint an Official Liquidator either temporarily or permanently and fix his remuneration, (2) sanction the appointment by the Official Liquidator of an attorney to assist the Official Liquidator in the performance of his duties, (3) give direction as to a (*a*) the advertiesments to be published and the persons, if any, on whom the order shall be served as also the mode of such service, (b) the persons to whom notice shall be given of the further proceedings, (*c*) the persons on whom the summons for directions hereinafter prescribed shall be served and the mode of such service. The order shall be in Form No. 19 or No. 20

67. If the company is not the petitioner or does not appear at the hearing the order shall be served upon the company.

68. In default of any directions as to advertisements the order shall within fourteen days after the order shall have been sealed be advertised by the petitioner, or the substituted petitioner as the case may be, once in the *Gazette of India* and once in the *Calcutta Gazette* and shall be served upon such person and in such manner as the Judge may direct The form of advertisement shall be in Form No. 21,

69. Within fourteen days, or such less time as the Judge may direct, after the order shall have been sealed, a summons for directions shall be taken out by the Official Liquidator, if appointed otherwise by the petitioner, or by any other person directed as aforesaid. Upon the hearing of such summons directions shall be given by the Judge in respect of such matters as he shall deem necessary or expedient including any of the matters following :—(*a*) for the appointment of an Official Liquidator (if not already appointed or if appointed temporarily), (*b*) delegation under section 246 of the Act of the powers of the Court, (*c*) for the proof of debts, (*d*) settlement of the list of contributories, (*e*) powers of the Official Liquidator in respect of matters specified in section 179 of the Act. The further proceedings under the order shall be continued by adjournment of such summons, and save as otherwise provided by these Rules all applications by an Official Liquidator, creditor or contributory, shall be made by restoration of such summons supported by affidavit : Provided that the Judge may direct the service or re-service of such summons or of a further summons on any person.

70. All applications by an Official Liquidator shall be made on notice to such persons as may be affected by the order sought for and to such persons as the Court may direct.

71. Any person intending to use any affidavit in any proceeding taken in the winding-up after the making of the order shall file the same and unless the Judge otherwise directs or unless otherwise required by these Rules, shall serve a copy thereof on the Official Liquidator, or if there shall be no Official Liquidator, on the petitioner or his attorney, not less than two clear days before the hearing of any application or proceeding upon which it is intended to be used.

Provisional Appointment of an Official Liquidator.

72. The Judge may, upon the application of the petitioner or of a creditor or contributory made on petition and upon proof by affidavit or otherwise, of

sufficient grounds for making the appointment, provisionally appoint an Official Liquidator (in these Rules called a Provisional Liquidator) upon such terms, as to security, if any, and otherwise as he may think fit. An application for the appointment of a Provisional Liquidator shall except where the application is made by the company, be made on notice to the company. The Judge may, in special cases, for reasons to be recorded in writing, dispense with the notice.

73. The order appointing a Provisional Liquidator shall state the nature and description of any property of which possession is ordered to be taken and the duties of the Provisional Liquidator. Such order shall be in Form No. 22.

74. Upon the appointment of a Provisional Liquidator or at any time thereafter, the Judge may give such directions and make such order as he thinks fit as to the remuneration of the Provisional Liquidator and the payment thereof and the payment of all costs, charges and expenses properly to be incurred by him.

75. The Rules contained in this chapter relating to Official Liquidators shall, so far as the same are applicable and subject to any directions of the Judge or Court in each case, apply to Provisional Liquidators.

Appointment and Duties of Official Liquidator.

76. An application to appoint an Official Liquidator shall be made on notice to the company except where the application is made by the company and to such other persons on behalf of the creditors and contributories as the Judge may direct Notice of the said application shall also be advertised if the Judge so directs once in a newspaper having circulation in the place where the registered office is situate.

77. Where the Judge directs notice of an application to be advertised under Rule 76, the advertisement shall be in Form No. 23 and shall be published so that the first advertisement shall appear not less than seven days before the time so fixed.

78. Creditors or contributories may, on the date fixed for such appointment, nominate any person or persons for appointment as Official Liquidator , and every nomination shall be in writing signed by the nominator and nominee and contain an undertaking by the nominee that he will furnish such security as the Judge may order. Nominations shall be in Form No 24

79. Where an Official Liquidator is appointed subject to his furnishing security to the satisfaction of the Registrar or the District Judge, as the case may be, no copy of the order shall issue (except for purposes of appeal and except where the Court otherwise directs) until such security has been furnished and certified as hereinafter provided. A certified copy of the order appointing an Official Liquidator, whether with or without security, shall be filed by him with the Registrar of Joint Stock Companies within a fortnight of the order being made or within ten days of the security being furnished, where security has been directed.

80. Every Official Liquidator, directed to furnish security, shall do so by depositing Government securities or by entering into a bond with one or more sufficient sureties within such time as the Judge may direct Such bond shall be in Form No. 27 or Form No. 28 and the affidavit by such sureties shall be in Form No. 29.

81. Where security is furnished by a Liquidator in accordance with Rule 80, a certificate shall be issued by the Registrar or the District Judge, as the case may be, certifying that the security has been duly furnished. Such certificate shall be in Form No. 30.

82. If a provisional Liquidator or Official Liquidator fails to furnish the required security within the time ordered or within any extension thereof, the Judge

may rescind the order of appointment, and make such other appointment and order as to costs as he considers fit and proper.

83. If a provisional Liquidator or Official Liquidator fails to maintain the security order to be furnished the Judge may remove him and make such other appointment and such order as to costs as he may think fit.

84. If it shall appear at any time that the security furnished by the Provisional Liquidator or Official Liquidator is inadequate or excessive the Judge may upon the application of the Provisional Liquidator or Official Liquidator or of a creditor or contributory order that the security be increased or reduced in amount.

85. An order made for the appointment of an Official Liquidator shall be in Form No 25.

86. The appointment of an Official Liquidator shall be advertised by such Liquidator in such manner as the Judge may direct immediately after the order has been filed. Such advertisement shall be in Form No 26.

87. Every Official Liquidator shall at such time as may be directed by the Court but not less than twice in each year during his tenure of office file in Court an account of his receipts and payments as such liquidator. The account shall be in duplicate and shall be verified by affidavit The accounts and affidavit shall be in Forms Nos. 33 and 34.

88. Upon the accounts being filed in a Court the Registrar or the District Judge, as the case may be, shall cause the accounts to be audited. For the purposes of such audit, the liquidator shall produce before the auditor all vouchers, books, and accounts which may be required by the auditor in support of the said account and shall furnish such information as the auditor may require. After the accounts have been audited, one copy thereof shall be filed in the Court and the duplicate shall be sent by the Registrar or the District Judge, as the case may be, to the Registrar of Joint Stock Companies to be kept with his records. Notice of such audit shall be given to such persons as the Court may direct.

89. Whenever an Official Liquidator shall submit his accounts to be passed, and also at other times whenever the Judge may so direct, the Official Liquidator shall satisfy the Judge by affidavit or otherwise, as the Judge may direct, that his sureties are living, and resident in British India and have not been adjudged insolvent, or in the case of a corporation, that such surety is carrying on business in British India, and in default thereof he may be directed to furnish fresh security.

90. An Official Liquidator, except by leave of the Judge, shall not directly or indirectly, by himself or by any partner, clerk, agent, servant or otherwise, enter into any transaction of any nature whatsoever with the company or himself as such Liquidator.

91. Any transaction had in breach of the provisions of Rule 90 may be set aside by the Judge on the application of any creditor or contributory or of his own motion. The Judge may forthwith remove an Official Liquidator acting in breach of Rule 90 and may make such order as to costs as he shall think fit.

92. In any case in which the leave of Judge is given under Rule 90, all costs of obtaining such leave shall be borne by the person in whose interest such leave is obtained, and shall not be payable out of the company's assets.

Banking account and Investment by Official Liquidator.

93. Upon a winding up order being made, the Official Liquidator shall as soon as may be after his appointment open an account in the name of "the Official Liquidator of the Company in liquidation" with a scheduled Bank as defined in clause (c) of section 2 of the Reserve Bank of India Act, 1934, or with

such other bank as the Court may select on an application made by him for the purpose under the provisio to section 244A. All moneys received in the course of the winding up shall be paid into such account immediately after the receipt thereof.

94. No money shall be paid out of the aforesaid bank except upon cheques or orders signed by the Official Liquidator and countersigned by the Registrar or, where the winding up is by a District Court, by the District Judge or such other person as he may nominate for the purpose, provided that the Court may in special cases dispense with such countersignature

95. All bills, *hundies*, notes and other securities of a like nature payable to the company or to the Official Liquidator thereof shall as soon as they shall come to the hands of such liquidator be deposited by him with such bank for the purpose of being presented for acceptance and payment or for payment only as the case may be.

96, No bills *hundis*, notes or other securities deposited as aforesaid shall be delivered out save upon a request signed by the Official Liquidator and countersigned by the Registrar or the District Judge or the officer nominated by the District Judges as the case may be

97, All or any part of the money for the time being standing to the credit of the account of the Official liquidator at the bank and not immediately required for the purposes of winding-up, may be invested in the purchase of securities issued by the Government of India in the name of the Official Liquidator All such investments shall be made by the bank, upon a request signed by the Official Liquidator; such request shall be in Form No 32, Such securities shall be retained by the bank in the name and on behalf of the Official Liquidator, and shall not afterwards be sold or transferred or otherwise dealt with, except upon a direction for that purpose signed by the Official Liquidator and countersigned by the Registrar or where the winding up is by a District Court, by the District Judge or such other person as he may nominate for the purpose

98 All dividends and interest to accrue due from any such securities shall from time to time be received by the bank (for which purpose the Official Liquidator may execute such power or powers of attorney as may be necessary) and placed to the credit of the account of such Official Liquidator.

99 The sanction of the Judge under section 179(f) of the Act shall be endorsed on any bill of exchange, *hundi* or promissory note and signed by the Registrar,

Books of account and records of official liquidator.

100. The Official Liquidator shall forthwith upon his appointment provide and keep proper books of account for the purpose of showing the receipts and payments of the company in its liquidation and of all such transactions and matters as may be necessary to furnish a correct record of his administration of the affairs of the company. In particular, he shall keep (*a*) a cash book, in which shall be entered from day to day all receipts and payments, (*b*) a ledger which shall include individual accounts of the contributories, in which every contributory shall be debited with the amount payable by him in respect of any call, and (*c*) a book to be called the "Record Book," in which shall be recorded all minutes, all proceedings had, and resolutions passed at any meeting of creditors or contributories and all such matters other than matters of account as may be necessary to furnish a correct record of his administration of the affairs of the company.

101. Where the Liquidator is authorised to carry on business of the company, he shall keep separate books of accounts in respect of such business.

102. A creditor or a contributory shall be entitled to obtain from the Court or from the Registrar of Joint Stock Companies a copy of any account filed by the Liquidator upon payment of the prescribed fees.

Statement of Affairs.

103. Any person who under section 177A of the Act has been required by the Official Liquidator to submit and verify a statement as to the affairs of the company shall be furnished by him with such forms and instructions as he may in his discretion consider necessary The statement shall be made out in duplicate and shall be submitted to the Official Liquidator within the time prescribed by the section or within such extended time as the Official Liquidator or the Judge may, for special reasons, appoint. One copy shall be verified by an affidavit. The Official Liquidator shall cause the verified statement of affairs to be filed in the Court and shall retain the duplicate thereof for his records

104. The Official Liquidator may from time to time, whether before or after the submission of the statement, hold personal interviews with persons required to submit the statement for the purpose of investigating the company's affairs and it shall be the duty of every such person to attend on the Official Liquidator at such time and place as the Official Liquidator may appoint and give the Official Liquidator all information that he may require and answer all such questions as may be put to him by the Official Liquidator.

105. Any person making or concurring in the making of a statement in the affidavit as required by section 177-A shall be allowed and shall be paid by the Official Liquidator out of the assets of the company such costs and expenses incurred in or about the preparation and making of the statement and affidavit as the Official Liquidator may consider reasonable or as the Judge may on application by such person direct.

106. Where any person required to submit a statement under section 177-A requires any extension of time, he shall apply, in the first instance, to the Official Liquidator who may, if he thinks fit, give a written certificate extending the time and this certificate shall be filed with the proceedings in the winding up.

107. Where the Official Liquidator refuses to grant an extension of time for submitting the statement of affairs, the person required to submit the statement may on notice to the Official Liquidator apply to the Judge.

108. Any application to dispense with the requirements of section 177-A shall be supported by a report of the Official Liquidator showing the special circumstances which in his opinion render such a course desirable. Where the Judge makes an order dispensing with the requirements of the section, he may give such consequential directions as he things fit

Report of Official Liquidator.

109. The Official Liquidator shall, as soon as practicable after receipt of the statement, to be submitted under section 177-A, and not later than four or with the leave of the Court six months from the date of the order and in a case where the Court orders that no statement shall be submitted as soon as practicable prepare and file in the Court a report in accordance with the provisions of section 177-B.

110. The Official Liquidator may if he thinks fit make from time to time further reports to the Court stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or in its formation or by any director or other officer of the company in relation to the company since the formation thereof and any other matters which in his opinion it is desirable to bring to the notice of the Court.

111. Where a further report is made by the Official Liquidator in accordance with Rule 110, the Judge shall fix a date when the said report shall be considered, and shall on date so fixed give such directions to the Official Liquidator, as he shall think fit in relation thereto The Official Liquidator shall personally or by advocate or attorney attend the consideration of the report and give the Court any further information or explanation with reference to the matters stated in the report which the Court may require.

Committee of Inspection.

112. As soon as possible after the meeting of the creditors and contributories held in accordance with section 178-A, the Official Liquidator shall report the result of such meeting to the Court.

113. Where there is a difference between the determinations of the meetings of the creditors and contributories, the Judge shall on the application of the Official Liquidator fix a time and place for consideration of the resolutions and determinations and make such order as may be necessary In any other case, the Judge may on the application of the Liquidator forthwith make any appointment necessary for giving effect to such resolutions or determinations.

114 When the time and place has been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the Liquidator in such manner as the Judge may direct.

115 On the date fixed in accordance with Rule 113, the Judge shall hear the Liquidator and any creditor or contributory who may appear on the application.

116 If an Official Liquidator appointed by the Court shall die or resign or be removed, another Official Liquidator may be appointed in his place in the same manner as in the first appointment

117 An Official Liquidator who desires to resign his office shall apply to the Judge by petition for permission, and thereupon the Judge shall determine whether or not the resignation shall be accepted, or may give such directions and make such order as he shall deem expedient.

118. If an Official Liquidator be adjudged insolvent the Judge shall, upon the application of any creditor or contributory, remove such Liquidator.

119. Upon an Official Liquidator being permitted to resign or being removed from his office, he shall deliver to his successor or to such person as the Judge may direct, the property and assets of the company in his hands and all books kept by him and all other books, documents, papers and accounts in his possession relating to the Company.

120. The Judge may, at any time during the progress of the liquidation, on the application of the Official Liquidator, give directions as to the disposal of such of the books, papers and documents of the company or of the Official Liquidator as are no longer required for the purpose of the Liquidation.

Remuneration of Official Liquidator.

121. The Official Liquidator shall be allowed, in his accounts or otherwise paid, such remuneration as the Judge may direct, and such remuneration may be fixed either at the time of his appointment, or thereafter and may be altered. Such remuneration may be fixed or altered, to cover or exclude the employment of assistants or clerks, office rent and incidental expenses. No money shall be appropriated to such remuneration. save upon the passing of an account, or upon an application by the Official Liquidator for that purpose on notice to such persons (if any) and supported by such evidence as the Judge may direct; provided

nevertheless that the Judge may from time to time allow an Official Liquidator to appropriate such sum as he may think fit on account of remuneration to be thereafter fixed.

122. An Official Liquidator shall not accept or agree to accept from any person any gift, remuneration or benefit whatever nor shall he without the sanction of the Judge give up or agree to give up any part of such remuneration to any person.

Debts, Claims and Proofs.

123. For the purpose of ascertaining the debts due by and claims against the company and of requiring debts and claims to be proved an advertisement shall be published by the Official Liquidator in such manner as the Judge shall direct. Such advertisement shall be in Form No 36 Unless otherwise ordered by the Judge the date fixed in the advertisement shall not be less than 14 days from the date of the publication thereof

124. In a winding up by the Court every creditor shall subject as hereinafter provided prove his debt unless the Judge in any particular case shall give directions that any creditor or class of creditors shall be admitted without proof.

125. A debt may be proved in any winding up by delivereing or sending through the post an affidavit, The affidavit may be made by the creditor himself or by some person authorised by or on his behalf. If made by a person so authorised, it shall state his authority and means of knowledge

126 The affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt and shall specify the vouchers, if any, by which the same can be substantiated, The Liquidator to whom the proof is sent may at any time call for the production of the vouchers

127. An affidavit proving a debt shall state whether a creditor is or is not a secured creditor Where a creditor seeks to prove in respect of a bill of exchange, promissory note or any other negotiable instrument or security of a like nature on which the company is liable, such bill of exchange, note, instrument or security must be produced to the Liquidator and be marked by him before the proof is admitted. Such affidavit shall be in Form No 38

128. No creditor need attend upon the investigation, nor prove his debt or claim unless required to do so by notice from the Official Liquidator, to be given by prepaid letter post at the last known address of the creditor. Such notice shall be in Form No 37.

129. A creditor so required to prove his debt of claim shall do so by affidavit to be sent by him to the offical Liquidator by registered letter post and if not made by the creditor himself such affidavit shall state the authority and means of knowledge of the deponent. Such affidavit shall contain particulars of any security held sufficient to identify the same and shall be in Form No. 38.

130. The Official Liquidator may at any time call for the production of the securities or vouchers specified in the affidavit referred to in Rule 129 and in default of such production may reject the proof.

131. The Official Liquidator shall within twenty-eight days after receiving a proof either admit or reject it wholly or in part and shall thereupon inform those creditors whose claim he wholly admit of his decision in respect of such claims. If he rejects the proof he shall state in writing to the creditor the grounds of the rejection.

132. When the Official Liquidator has completed his investigation of all debts and claims he shall file a list thereof in Court supported by affidavit and obtain an appointment from the Judge to settle the same, and shall give not less than four days' notice of such appointment to every person included in such list except those whose claims he wholly admits stating that his debt or claim has been rejected in whole or in part as the case may be and requiring him to prove as much of it as has been rejected before the Judge. Such affidavit and notice shall be in Form No. 39 and Form No. 40 respectively

133. Upon the date appointed for settlement of the list of creditors or any adjourned date the Judge shall adjudicate thereon.

134. Such creditors as prove their debts or claims shall, unless the Judge shall otherwise direct, bear the costs of such proof.

135. The settlement of the list of debts and claims shall be recorded in a certificate signed by the Judge in Form No. 41.

136. If the Official Liquidator is of opinion that a proof has been improperly admitted he may apply, on notice to the creditor who made the proof, to expunge the proof or reduce its amounts

137. If the Official Liquidator declines to interfere in the matter a creditor or contributory may apply to the Judge to expunge or reduce a proof.

Collection and Distribution of Assets.

138. The duties imposed on the Court by section 184 (1) of the Act in a winding up by the Court, with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities, shall be discharged by the Official Liquidator as an officer of the Court subject to the control of the Judge.

139. For the purpose of the discharge by the Official Liquidator of such duties the Official Liquidator shall, for the purpose of acquiring or retaining possession of the property of the company, be in the same possession as if he were a Receiver of property appointed by the Court, and the Judge may, on his application, enforce such acquisition or retention accordingly

List of Contributories.

140. The Official Liquidator shall with all convenient speed after his appointment, prepare a list of the contributories of the company and shall, subject to any order made upon the hearing of the summons for directions, appoint a time and place for the preliminary settlement of such list. The Official Liquidator shall so far as is practicable, state therein the respective address of and the number of shares or extent of interest to be attributed to each contributory, and shall distinguish the several classes of contributories. As regards representative contributories the Official Liquidator shall observe the requirements of section 184 (2) of the Act.

141. The Official Liquidator shall give notice in writing of the time and place appointed for the preliminary settlement of the list of contributories to every person included in the list, and shall state in the notice to each person in what character and for what number of shares or interest such person is included in the list. Such notice shall be in Form No. 42.

142. On the day appointed for the preliminary settlement of the list of the contributories the Official Liquidator shall hear any persons who has any objection to prefer with reference to his inclusion or to the extent thereof in the said list, and after such hearing the Official Liquidator shall complete the preliminary settlement of the list and file the same. Such list shall be in Form No. 43.

143. Upon the list of contributories being filed the Official Liquidator shall obtain an appointment from the Judge to settle the same, and shall give notice in writing of such appointment to every person included in such list, stating in what character and for what number of shares or interest such person is included in such list and by such notice shall inform such person that any application for the removal of his name from the list, or for any other variation of the list, should be made on such appointed day. Unless the Judge otherwise directs no application to vary the list as filed shall be entertained unless made on the day so appointed Any application for such purpose made on any day other than the day so appointed shall be made by summons to be served on the Official Liquidator at least four clear days before the returnable date of such summons and unless good cause be shown that such application could not have been made on the appointed day, all costs of and incidental to such application shall be payable by the applicant. The notice prescribed by this Rule shall be in Form No 44.

144. Upon the settlement of the list by the Judge the same shall be endorsed and signed by the Judge. Such endorsement shall be in Form No. 45.

145. The Official Liquidator may at any time apply to the Judge to vary the list of contributories Upon such application the Judge shall give such directions as to notice and otherwise and make such orders as may be necessary

146. The address of a contributory as stated in such list shall, unless otherwise directed by the Judge, be his address for service under these Rules

Calls

147. Where the Official Liquidator desires to make any call on a contributory or contributories for any purpose authorised by the Act, he shall in the first instance summon a meeting of the Committee of Inspection, if any, for the purpose of obtaining their sanction to the intended call The notice of such meeting shall be sent to each member of the Committee of Inspection and shall contain a statement of the proposed amount of the call and the purpose for which it is needed. The sanction of the Committee of Inspection shall be given by a resolution and shall be passed by a majority of the members Where there is no Committee of Inspection, the Liquidator shall not make a call without obtaining the leave of the Court.

148. Where there is no Committeee of Inspection of where the Official Liquidator does not agree with the decision of the Committee of Inspection, he may apply to the Court for leave to make a call and the Court shall on such application make such orders as it thinks fit. If on the hearing of such an application, the Court directs that the Official Liquidator may have leave to make a call, the subsequent proceedings shall be in accordance with the provisions of Rule 151 hereof.

149. An application by the Official Liquidator for leave to make a call on contributories of the company or any of them shall be made by petition. Such petition shall be in Form No 46

150. Upon such application, the Judge, if he admits the petition, shall fix a date for the hearing thereof, and notice of such appointed date shall be given by advertisement or otherwise as the Judge may direct. No contributory shall be served with individual notice unless the Judge shall so direct and every notice and advertisement to be served, given or published under this Rule shall be served or published at least 14 days before the date so appointed. Such notice shall be in Form No. 47.

151. When any order authorising a call has been made a copy thereof shall forthwith be served by registered post, or as the Judge may direct, upon each of the contributories liable to pay such call, together with a notice by the Official

Liquidator making such call and specifying the amount due from such contributory in respect of such call. Such order and notice shall be in Form No. 48 and Form No, 49 respectively. At the time of making an order authorising the call, the Judge shall give directions as to the time within which such calls shall be paid and shall indicate whether the payment shall be made to the Official Liquidator or to the bank where the Liquidator has his account.

152. The payment of the amount due from each contributory may be enforced by order of the Judge to be made on summons by the Liquidator, supported by an affidavit. Such summons, affidavit, and order shall be in Forms Nos. 50, 51 and 52, respectively. The affidavit of service of the order shall be in Form No. 53

Compromise of Claims by Company.

153, No claim by the company against any person shall be compromised or abandoned by the Official Liquidator without the sanction of the Judge upon notice to such person or persons if any, as the Judge shall direct.

154, Every application for sanction to a compromise or arrangement with any person indebted to the company shall be supported by the affidavit of the Official Liquidator stating that he is satisfied for reasons stated in such affidavit that the proposed compromise or arrangement will be beneficial to the company.

Appeals against the Decision of the Liquidator.

155. If a creditor or contributory is dissatisfied with the decision of the Liquidator on any matter, the Judge may on the application of the creditor or contributory reverse or vary the decision

Application under Section 183(5).

156. An application under section 183(5) of the Act shall be made by petition supported by the affidavit of the applicant on notice to the Official Liquidator and shall be made within twenty-one days from the date of the act or decision complained of.

Proceedings under Sections 215 & 216.

157. (a) An appeal under section 215 shall be by petition verified by affidavit and shall be on notice to the Liquidator

(*b*) An application under section 216 of the Act shall be by petition verified by affidavit. Notice of the application shall be given to such person or persons as the Court shall direct.

Sales of Property.

158. No property belonging to a company which is being wound up by the Court shall be sold by the Liquidator without the sanction of the Court. Where a sale is sanctioned by the Court, the sale shall be held by the Liquidator or if the Judge shall so direct by an agent or auctioneer appointed by him for such purpose. All sales shall, unless the Judge otherwise directs, be made by public auction.

159. In sales of movable property, unless the Judge otherwise directs, the conditions or contract of sale shall be the same as those in force in sales under decrees or orders of the Court Where for special reasons the Liquidator is of opinion that a special contract is necessary, he shall apply to the Registrar or the District Judge, as the case may be, to settle the terms.

160 The purchase money in sales held in accordance with Rule 156 shall be paid in such manner as the Judge may direct and in the absence of any directions shall be paid by the respective purchasers to the Official Liquidator or to his credit at the bank where he has his account.

Dividends.

161. No dividend shall be declared by the Official Liquidator without the sanction of the Judge.

162. Not less than two months before applying to Court for leave to declare a dividend, the Official Liquidator shall give notice of his intention to do so to such of the creditors mentioned in the statement of affairs as have not proved their debt. Such notice shall specify the latest date up to which proofs must be lodged which shall not be less than 14 days from the date of such notice.

163. Where any proof is lodged pursuant to such notice, the Official Liquidator shall in relation to the admission or rejection thereof act in accordance with Rule 131. The Official Liquidator shall apply, if necessary, to vary the list of creditors settled by the Court.

164. Not less than one month's notice shall be given by the Official Liquidator of his intention to declare and pay a dividend. Such notice shall be given by advertisement (unless the Judge otherwise directs) and by sending by prepaid letter post a notice to every person whose name appears in the list of creditors as certified Such notices shall be in Form No 59 and Form No. 60

165. Dividends may, at the request and risk of the person to whom they are payable, be transmitted to him by post

166. A person to whom dividends are payable may lodge with the Official Liquidator an authority in writing to pay such dividends to another person named therein. Such authority shall be in Form No. 61.

167. Every order by which the Official Liquidator in a winding-up by the Court is authorised to make a return to contributories of the company shall, unless the Judge shall otherwise direct, contain or have appended thereto a schedule or list (which the Official Liquidator shall prepare) setting out in tabular form the names and addresses of the persons to whom the return is to be made and the amount of money payable to each person and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of settlement of the list of contributories The schedule or list shall be in Form No 62, and notice of the return shall be given to each contributory in Form No 63.

General Meeting of Creditors and Contributories.

168. All general meetings of creditors or contributories shall, unless the Judge otherwise directs, be convened and held in the manner hereinafter provided.

169. The Official Liquidator shall summon a meeting by giving not less than seven days' notice of the time and place thereof in two daily newspapers published in Calcutta and shall, not less than seven days before the day fixed for the meeting, send notice thereof by prepaid letter post to every person appearing to him to be entitled to be present thereat Such notice shall be in Form No. 54.

170. In the case of a meeting convened by direction of the Judge the Official Liquidator shall certify by affidavit that such notices of the meeting have been duly posted. Such affidavit shall be in Form No 55.

171. All meeting shall be held at such time and place as in the opinion of the Official Liquidator is most convenient for the majority of those entitled to be present thereat.

172 The Official Liquidator may require a creditor or contributory who is desirous that he should convene a meeting to deposit as a condition precedent thereto a sum sufficient for the costs thereof, to be computed in manner hereinafter

stated, and on any application to the Judge by a creditor or contributory to direct the Official Liquidator to convene a meeting whether the Official Liquidator shall or shall not have required such deposit to be made, the Judge may fix a sum to be deposited by the applicant for such costs, and such sum shall include all disbursements for printing, stationery, postage and hire of room, to be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, Re. 1 per creditor or contributory for the first 25 creditors or contributories, annas 8 per creditor or contributory for the next 75 creditors or contributories, annas 4 per creditor or contributory for any number of creditors or contributories after the first hundred. The said sum so deposited shall be repaid out of the assets of the company if the Judge shall so direct.

173 At every meeting of creditors or contributories the Official Liquidator, or some person nominated by him, shall be Chairman of the meeting. In the event of more than one person being appointed Official Liquidator the person named first in the order of appointment shall be entitled to take the chair or make the aforesaid nomination. Such nominations shall be in Form No. 56.

174. At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy, and voting on the resolution, have voted in favour of the resolution. At a meeting of contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulation of the company.

175. The Official Liquidator shall file with the Registrar a copy certified by him of every resolution passed at a meeting of creditors or contributories.

176. No proceedings or resolutions had or passed at a meeting of creditors or contributories shall, unless the Judge otherwise orders, be invalidated by reason of any creditor or contributory not having received notice thereof.

177. The Chairman may, with the consent of the meeting, adjourn it from time to time and from place to place, but the adjourned meeting shall be held at the same place as the original place of meeting unless in the resolution for adjournment another place is specified or unless the Judge otherwise orders.

178. (1) A meeting may not act for any purpose except for the adjournment of the meeting unless there are present thereat in person at least three creditors entitled to vote, or three contributories so entitled, or all the creditors entitled to vote, or all the contributories, if the number of creditors entitled to vote, or the contributories as the case may be, shall be less than three.

(2) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the Chairman may appoint not being less than seven or more than fourteen days. If at such adjourned meeting a quorum be not present two creditors or contributories present in person shall form a quorum and may transact the business for which the meeting was convened

179. Unless the Judge otherwise directs no person shall be entitled to vote at a meeting of creditors unless he has lodged with the Official Liquidator a proof of the debt which he claims to be due to him from the company, and such proof has been admitted, wholly or in part, before the date on which the meeting is held.

180. A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

181. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of the security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security.

182. If a secured creditor votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Judge on application is satisfied that the omission to value the security has arisen from inadvertence.

183. The Chairman shall cause minutes of the proceedings at the meetings to be drawn up and fairly entered in a book kept for that purpose and he shall sign the same and affix by his own hand the date of such signature.

184. The Chairman of a meeting summoned by the direction of the Judge shall report the result thereof to the Judge. Such report shall be in Form No. 57.

Proxies

185. A creditor or contributory may vote either in person or by proxy.

186. Every instrument of proxy shall be in Form No 58, unless the Judge shall otherwise direct.

187. A form of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the Official Liquidator nor of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent,

188 No creditor shall appoint a proxy who is not a creditor of the company whose debt or claim has been admitted or allowed and no contributory shall appoint a proxy who is not a contributory of the company but a creditor or contributory may appoint the Official Liquidator to act as his proxy

189. A proxy shall be lodged with the Official Liquidator not later than twenty-four hours before the time fixed for the meeting or adjourned meeting at which it is to be used and no proxy shall be admitted thereafter.

190. No minor shall be appointed a proxy.

191. Where a corporation is a creditor, any person who is duly authorised in writing by the corporation to act generally on behalf of the corporation at meetings of creditors and contributories and to appoint himself or any other person to be the corporation's proxy, may fill in and sign the form of proxy on the corporation's behalf and appoint himself to be the corporation's proxy and a proxy so filled in and signed by such a person shall be received and dealt with as the proxy of the corporation.

192. Where an Official Liquidator holds any proxies and cannot attend the meeting for which they are given, he may, in writing depute some person to use the proxies on his behalf in such manner as he may direct.

193. The proxy of a creditor, blind or incapable of writing, may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence: provided that all insertions in the proxy are in the handwriting of the witness, and that such witness shall have certified at the foot of the proxy that all such insertions were made by him at the request of the creditor and in his presence before the creditor attached his signature or mark.

194. A proxy signed in the vernacular shall also bear, adjacent to the signature, the name of the signatory in Roman characters, and where such name

is that of the creditor or contributory the Official Liquidator shall not be bound to make further enquiry as to the genuineness of the vernacular signature.

Examinations under Section 195 and Section 196.

195. An application for the examination of a person or persons under section 195 of the Act shall be made *ex parte* to the Judge by petition verified by the Official Liquidator stating the facts upon which the application is based. At the hearing of the application the Judge may, if satisfied that a *prima facie* case for examination has been made out, direct the issue of a summons or summonses against the person or persons named in the order for examination and/or for production of documents. The summons shall be in Form No. 68.

196. At the examination of a person so summoned, the Official Liquidator may attend in person, or by attorney or advocate and assist the Court in examining the person summoned.

197. At such examination, save and except the Liquidator and the advocate or attorney employed by him and the person to be examined, no person shall be entitled to attend.

198. Unless the Judge shall otherwise direct, no such examination shall be made in open Court. The notes of the depositions of a person so examined shall be signed by the person examined, and notwithstanding that such notes shall have been filed, shall not be open to the inspection of any creditor, contributory or person other than the Official Liquidator. The person examined, the person having the conduct of the proceedings and the Official Liquidator shall be entitled to a copy on payment of the usual charges, save and except as aforesaid no person shall be entitled to a copy unless the Judge shall so direct.

199. In the High Court the Judge may, at the time of making the order for such examination, direct that it shall be held by an officer of the High Court, and that the powers of the Court as to the conduct of the examination, but not as to costs, shall be exercised by such officer.

200. An application under section 196 of the Act shall be made *ex parte* by petition verified by the Official Liquidator and shall be based on the report made under section 177-B (2) of the Act. The petition shall state the names of the persons intended to be examined and that in the opinion of the Liquidator fraud has been committed by such persons in relation to a company or in relation to the promotion or formation thereof and the facts on which such opinion is based.

201. On the hearing of such an application, the Judge may make the order or may require the Official Liquidator to furnish a further report on any facts or matter which are in his opinion relevant to the application.

202. Where the order directs an examination under section 196 of the Act to be held before the Judge, the order shall fix a date for such examination. Where the order directs the examination to be held before an officer of the High Court or other person nominated for the purpose the Official Liquidator shall forthwith obtain an appointment for such examination.

203. Notice of the day and the place appointed for such an examination shall be given by the Official Liquidator to the person who is to be examined by serving upon him a copy of the order. by registered post addressed to his usual or last known address.

204. The deposition of the person so examined shall after being read over and signed by him be filed and kept with the records. The Liquidator, the person examined and any creditor or contributory of the company shall be entitled to obtain a copy from the Court on payment of the usual fees.

205. When making an order under section 195 or section 196 of the Act, the Judge may, if he thinks fit, either in the order for examination, or by any subsequent order, give directions as to specific matters on which any person is to be examined.

206. The Court in respect of any examination under section 195 or section 196 of the Act may order that the evidence be taken down in short hand. Where such order is made, the officer of the Judge before whom such evidence is taken shall nominate a person to take down such evidence and the costs of such person shall be paid by the party at whose instance the order was made or out of the assets of the company as may be directed by the Court

207. Where during the course of such examination, the person under examination refuses to answer to the satisfaction of the officer or other person appointed, the officer or other person shall report such refusal to the Judge and the person in default shall be in the same position and be dealt with in the same manner as if he had made default in answering before the Judge. The report shall be in writing and shall set forth the question or questions put and the answer or answers, if any, given by the person examined.

208. Upon receiving the report, the Judge may take such action as he shall think fit. Where the Judge is sitting at the time when the default in answering is made, such report may be made immediately.

Application under Section 235.

209 An application under section 235 of the Act shall be made to the Judge on summons, to be served, with a copy of any affidavit intended to be used in support, on every person against whom an order is sought eight days before the returnable date of the summons.

210. The Judge may give such directions for the hearing of the summons as to him may seem fit and may direct that evidence shall be taken wholly or in part by affidavit or orally

211. At the hearing of the Official Liquidator and the applicant (if other than the Official Liquidator) and any other person whom the Judge may allow and any person against whom an order is sought may appear and may do so by attorney and advocate and may put such questions to any person orally examined as the Judge may allow.

Application under Section 230-A.

212. An application for leave to disclaim any part of the Company's assets pursuant to section 230-A of the Act shall be made *ex parte* by petition verified by an affidavit of the Official Liquidator in the first instance. The petition shall indicate the parties who are interested in the matter and what their interests are and shall state whether any notice has been served on the Liquidator by any such party requiring him to decide whether he will or will not disclaim.

213. On the hearing of the application, the Judge may make an order or may give such directions as he thinks fit as to notice to be given to any of the parties interested and may adjourn the hearing to enable such party or parties to attend.

214. Where such an order is made *ex parte* a copy of the order shall be served on every person, interested in the property disclaimed.

215. Where a Liquidator disclaims a leasehold interest he shall forthwith file the disclaimer at the office of the Registrar of Joint Stock Companies.

216. An application under sub-section (6) of section 230-A of the Act for an order to vest any disclaimed property in or to deliver any such property to any person or persons shall be made by petition verified by affidavit.

217. Where such an application relates to property of a leasehold nature and it appears that there is a mortgage or an under-lease of such property, the Court may direct that notice shall be given to the mortgagee or under-lessee that if he does not elect, within a time to be fixed by the notice, to accept and apply for a vesting order upon the terms named in the proviso to the abovementioned sub-section and stated in the notice and such other terms as the Court may think just he will be excluded from all interest in any such security. The Court may adjourn the application for such notice to be given to such mortgagee or under-lessee. If at the expiration of the time so fixed by the Court, such mortgagee or under-lessee fails to apply for such vesting order, the Court may make an order vesting the property in the applicant and excluding such mortgagee or under-lessee from all interest in or security upon the property.

Meetings of Creditors and Contributories in Relation to a Creditor's Voluntary Winding up.

218. Subject to any directions which the Judge may give, all meetings in a voluntary winding up shall be governed by Rules Nos. 219 to 230.

219. Except and in so far as the subject matter or the context may otherwise require, Rules 172, 174 177, 178 and 185 to 194, shall apply to meetings of creditors or contributories convened in a voluntary winding up of a company.

220. In any creditor's voluntary winding up, the Liquidator may from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding up.

221. The Liquidator shall summon all meetings of creditors and contributories by giving not less than seven days notice of the time and place thereof in the *Calcutta Gazette* and in a local newspaper; and shall, not less than seven days before the day appointed for the meeting, send by post under certificate of posting to every person appearing in the company's books to be a creditor notice of the meeting of creditors and to every person appearing in the company's books or otherwise to be a contributory notice of the meeting of contributories. Notice to a creditor shall be sent to the address given in his proof, or if he has not proved to the address given in the Statement of Affairs of the company or such other address as may be known to the Liquidator. Notice to a contributory shall be sent to the address mentioned in the company's books as the address of such contributory or to such other address as may be known to the Liquidator.

222. An affidavit by the Liquidator that notice of a meeting has been duly posted in accordance with Rule 221 shall be sufficient evidence of such notice having been sent to the person to whom it was addressed.

223. Different times and/or places may, if thought expedient by the Liquidator, be appointed for the meetings of creditors and contributories respectively.

224. Every meeting shall be held at such place and at such time as in the opinion of the Liquidator shall be most convenient. The cost of summoning a meeting of creditors or contributories convened by a Liquidator shall be paid by him out of the assets of the company.

225. The Chairman of any meeting shall be the Liquidator appointed by the company or some person nominated by him for that purpose and in the event of more than one person having been appointed Liquidator each of them shall, if present at the meeting, be entitled to be Chairman or to nominate some other

person to be Chairman in priority to the other or others of them according to the order in which they are named in the resolution by which they were appointed : Provided that if a Liquidator shall have been appointed by the Judge in the place of a sole Liquidator appointed by the company, the Liquidator so appointed or his nominee shall be Chairman.

226. The Chairman of the meeting shall have power to adjudicate upon the right of a creditor to vote and the amount for which he should be allowed to vote.

227. For the purpose of voting, a secured creditor shall, unless he surrenders his security, lodge with the Liquidator, before the meeting, a statement giving the particulars of his security the date when it was given, and the value at which he assesses it, and shall be entitled to vote in respect of the balance (if any) due to him after deducting the value of his security. The vote of a secured creditor who has not complied with this Rule shall not be counted at the meeting.

228. No Liquidator appointed by the company nor any person who shall be proposed for appointment by the Judge as Liquidator under the provisions of section 209 of the Act shall directly or indirectly solicit or canvass any person for the purpose of obtaining votes or proxies in his favour No person contravening this Rule shall be appointed Liquidator and any Liquidator who shall be proved to have contravened this Rule may be removed if the Judge thinks fit.

229. Proxies in favour of the Liquidator appointed by the company may be used by him in voting against any resolution for an application for the appointment of a Liquidator under the provisions of section 209 of the Act.

230. Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall unless the Court otherwise orders be valid notwithstanding that one or more creditors or contributories may not have received the notice sent to them

Unclaimed Funds and Undistributed Assets in the Hands of a Liquidator in a Voluntary Winding up.

231. In a voluntary winding up, all moneys in the hands of or under the control of a Liquidator representing unclaimed dividends or undistributed assets shall within one week from the date of the final resolution of the company be paid into Court to be held by the Court to the credit of an account to be opened in the name of the company and to be designated the Company's Liquidation Account.

232. The Liquidator when paying in such moneys shall furnish a copy of the final account showing the balance so paid in.

233. An application by a person claiming to be entitled to any part of the moneys so paid in by a Liquidator in accordance with Rule 231 hereof shall be made by petition.

234. Where an order for payment is made on such application, the amount directed to be paid shall be paid out of the funds so paid into Court in accordance with Rule No. 231 hereof.

Termination of Winding up Proceedings.

235. Upon the termination of proceedings for the winding up of a company the Official Liquidator shall file a final account to which in the event of there being a balance in his hands there shall be attached a statement signed by the Official Liquidator setting out 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. Upon the passing of such account the balance in his hands (if any) shall be certified by the Judge; and upon payment by the Official Liquidator of such balance in such manner as the Judge shall direct the recognizance entered into by the Official Liquidator and his sureties shall be vacated. Such certificate shall be in Form No. 64.

236. Unless the Judge shall otherwise direct, such balance shall be paid either into Court or in the High Court to the Registrar.

237. Upon such payment such balance shall be paid, in the case of a winding-up by the High Court, by the Registrar into an account to be called the "Companies Liquidation Account" to be kept with the Imperial Bank of India.

238. When the Official Liquidator has passed his final account, and such balance has been duly paid the Official Liquidator shall apply to the Judge for an order that the company be dissolved. Such order shall be in Form No. 65.

239. Upon such order being made all documents and books of account or records of the Official Liquidator shall be deposited in Court unless the Judge otherwise directs. Unless otherwise directed, the books and papers of a company which has been wound up shall be destroyed after a period of 3 years from the date of deposit in Court.

Transfer of Winding up Proceedings.

240. Applications for the transfer of winding up proceedings either from the High Court to a District Court, or from one District Court to another, as the case may be, shall be made to the Judge by petition verified by affidavit, An order for transfer shall be in Form No. 66.

Suits and Proceedings in which a Company in Liquidation, by or under the Supervision of the Court is a Party.

241. Upon the making of an order by the High Court for the winding-up of a company by or under the supervision of the Court all suits and proceedings to which the company is or shall be a party then pending, or thereafter instituted in, or transferred to the High Court, shall be assigned to and placed in the list of the Judge for the time being exercising jurisdiction under the Act in respect of such company.

Application under Section 277N.

242 An application under section 277N of the Act shall be made by petition verified by affidavit. Every such application shall be accompanied by a report made by the Registrar of Companies under section 277N (2).

Application under Section 281.

243. An application under section 281 shall be by petition verified by affidavit and shall be made on notice to the company or where the company is being wound up to the Liquidator.

Application for Prosecution.

244. An application under section 237 (1) of the Act shall be made by petition, verified by affidavit, upon notice to the Official Liquidator or Liquidator, as the case may be.

245. Statements, with respect to the proceedings in and the position of a liquidition of a company, under section 244 shall, untill the winding up is completed, be filed in Court or with the Registrar of Joint Stock Companies as the case may be once in each year at intervals of twelve months as follows :—

(a) The first statement commencing at the date when a Liquidator was first appointed and brought down to the end of twelve months from the commencement of the winding-up, shall be filed within

thirty days from the expiration of such twelve months, or within such extended period as the Judge may sanction, and the subsequent statements shall be filed at intervals of twelve months, each statement being brought down to the end of the twelve months for which it is filed.

(b) If a Liquidator resigns, he must file a statement up to the date of his resignation.

(c) Every statement shall be in Form No. 33 and shall be verified by an affidavit in Form No. 34.

246. Any creditor or contributory of a company, which is being wound up, shall be entitled to inspect the statement filed under section 177-A or the statement filed under section 244 on payment of a fee of Rs. 3 and to receive a copy thereof or extract therefrom on payment of the usual charges for supplying copy.

247. Where a Liquidator has not, during any period for which a statement has to be filed, received or paid any money on account of the company, he shall at the period when he is required to file his statement, file a statement, in duplicate and with such statement shall also file an affidavit. Such statement and affidavit shall be in the Forms No. 33 and 34, respectively.

248. The statement to be laid before the meeting summoned under sections 208-D and 209-G of the Act shall, in the case of the first statement, be a statement similar in all respects to the first statement filed in Court or with the Registrar of Joint Stock Companies as the case may be under Rule 245 and subsequent statements shall be similar in form to the first statement, but shall commence at the date when the last previous statement terminated and be brought down to the end of twelve months from such date

248-A. The returns to be made under sub-section (3) of section 208-B and sub-section (3) of section 209-H of the Act shall be in Forms Nos. 70-A and 70-B, respectively.

248-B. The declaration of solvency under section 207 of the Act shall be in Form No. 69.

249. The notice of appointment of a Liquidator in a voluntary winding-up to be filed with the Registrar of Companies under section 214 of the Act shall be in Forms Nos. 67-A and 67-B.

Miscellaneous Rules

250. Service upon contributories and creditors shall be effected except where personal service is required, by sending the notice, or a copy of the petition, summons or order or other documents to be served, through the post in a registered letter addressed to the attorney (if any) of the party to be served, or otherwise to the party himself, and if a creditor, to the address stated in the list of debts and such notice or copy, summons, order or other proceedings shall be considered as served at the time the same ought to have been delivered in due course of delivery by the Post Office, and notwithstanding the same may be or have been returned by the Post Office.

251. No service under these Rules shall be deemed invalid by reason of any error or omission in the name, style or designation of the person on whom service is sought to be made, provided the Judge is satisfied that such person has not been prejudiced thereby.

Costs.

252. In the High Court attorneys shall be entitled to charge and shall be allowed the fees set forth in the Table of Fees in Chapter XXXVI of the Rules of

the High Court on the Original Side, so far as the same are applicable, but the Judge may in a special case allow an attorney fees as if he were an advocate.

253. Where an order is made in the High Court for the payment of any costs, they shall, where they relate to any proceedings in Court, be taxed by the Taxing Officer. In the District Court such costs shall be taxed or assessed by the Judges or by such officer as may be authorised to perform such duties.

254. In the High Court, in conveyancing matters and in matters which do not relate to proceedings in Court, the costs shall be certified by two independent attorneys.

255. An application for an order for costs, for which provision might have been but has not been made by a previous order shall only be made upon notice to the Official Liquidator who may appear on such application and object thereto. No costs of or incidental to such application shall be allowed to the applicant, unless the Judge is satisfied that the omission to make such provision was not due to any default on the part of the applicant.

256. Where an application is made in the voluntary winding-up of a company, whether or not an order shall have been made that the voluntary winding-up shall continue but subject to the supervision of the Court, these Rules so far as may be, shall be applied to the subject matter and mode of such application.

APPENDIX TO THE RULES OF THE HIGH COURT UNDER THE INDIAN COMPANIES ACT. Etc.

FORM No. 1 (Rule 16).

Petition for reduction of capital.

(Title).

(a) Insert full name of company

The humble petition of (a) Limited and Reduced.

Sheweth—

1. Your petitioner the abovenamed company (hereinafter called "the company") was incorporated on the day of 19 , under the provisions of the Indian Companies Act as a company limited by shares.

(b) State full address of the registered office (c) State principal objects according to Memorandum of Association.

2. The registered office of the company is situated at (b).

3. The objects of the company are as follows (c) :— and other objects set forth in the Memorandum of Association thereof,

4. The nominal capital of the company is Rs. divided into of which have been issued and are fully paid up or credited as fully paid up.

5. Shortly after its incorporation the company commenced to carry on and it has since been and still is carrying on business.

6. By article (s) of the Articles of Association of the company it is provided that the company may (set out Article or Articles of Association authorising a reduction of capital).

7. (Set out the reasons for reduction stating all material facts and circumstances).

8. Under the provisions of section 55 of the Indian Companies Act, 1913, and in pursuance of the powers in that behalf contained in the said Articles of Association the company by a Special Resolution of its shareholders duly passed and confirmed at Extraordinary General Meetings duly convened and held on the day of 19 , and the day of 19 , respectively, *resolved :—

(Set out the special resolution for reduction of capital.)

9. (*d*) The reduction of capital does not involve either the diminution of liability in respect of unpaid capital or the payment to any shareholder of any paid up capital and in consequence no creditor is entitled to object to the reduction under the provisions of section 58 of the said Act.

(*d*) Omit if creditors are entitled to object to the reduction.

10. (If the petition asks that the use of the words "and reduced" be dispensed with, here state reasons.)

11. The form of minute proposed to be registered under the provisions of section 61 of the said Act is as follows :—

(Set out proposed Minute of Reduction)

Your petitioners therefore humbly pray (*e*)—

(e) Omit or alter paragraphs(2)and (3) according to circumstances.

(1) That the reduction of capital to be effected by the Special Resolution set out in paragraph 8 hereof be confirmed and that the minute set forth in paragraph 11 hereof be approved by the Court.

(2) That the addition of the words "and reduced" to the company's name be dispensed with.

(3) That the obtaining of the certificate provided for by Rule 29 of the Rules of this Honourable Court may be dispensed with and that in accordance with rule 18 of the said Rules a day may be fixed for the hearing of this petition and directions given as to the advertisements to be published.

(4) That such other order may be made in the premises as to the Court shall seem fit.

Petitioners' Attorneys.

I , of ,
make oath (or solemnly affirm) and say as follows :—

(1) That I am a (director) of the petitioner company and as such I am fully acquainted with the affairs of the said company

(2) That the facts stated in the foregoing petition are true to my knowledge.

Sworn (or, solemnly affirmed), etc.

FORM No. 2 (Rule 18).

Advertisement of presentation of petition.

(Title.)

Notice is hereby given that a petition has been presented to the abovenamed Court for an order confirming the reduction of the share capital of the abovenamed company from Rs. to Rs. resolved on by the special

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No change has been made in these Forms, although under the amended Section 81, confirmation of a special resolution is no longer necessary.

resolution passed and confirmed* at extra-ordinary general meeting of the said company, held respectively on the day of 19 , and the day of .

The said petition is directed to be heard by the said Court at the Court house, Calcutta, on day, the day of 19 .

Attorney(s) for the company.

*See note under p. 262.

FORM No. 3 (Rule 19).

Order where creditors are entitled to object.

(Title.)

Upon the application by summons, dated 19 of Limited, and reduced, and upon hearing for the company and upon reading the petition presented to this Court on the day of 19 , and the affidavit in verification thereof, it is orded that an enquiry be made as to what are the debts, claims, and liabilities of or affecting the said company as on the day of 19 , and it is further ordered that a list of creditors of the said company be made out as at the said day of 19 , and that such list shall (not) disclose the amounts due to the crditors respectively and that such list be filed by the said company in this Court on or before day of 19 ; and that a copy of such list shall be kept at the registered office of the said company and at the office of its attorney : and that notice of the said application shall be sent to each creditor on or before the day of 19 , and that such notice in the case of those creditors whose addresses are not within British India shall be given by (registered post or advertisement) and that such notices in the case of those creditors whose addresses are not known to the said company shall be given by advertisements to be published in (*a*) ; and that any creditor whose name does not appear in such list or who claims to be a creditor for a larger amount than that stated in the said list shall give notice thereof in manner prescribed : (*b*) and send his name and address and particulars of his debt or claim and the name and address of his attorney if any to the attorney of the said company within (14) (*c*) days from the date of the said notice : and that notice of the filing of the said list shall be advertised by the said company (*d*) : and that the said company shall on or before the day of 19 file an affidavit verifying such list of creditors if any as may have given such notice (or, made such claim as aforesaid) distinguishing which if any of such claims are wholly or as to any and what part thereof admitted by the said company and which if any of such claims are wholly or as to any and what part thereof disputed by the said company.

(*a*) Specify publicat ons.

(*b*) See Form 5 and Rule 23.

(*c*) Or as the Judge may allow. See Rule 24.

(*d*) Specify publications and any special directions given in regard thereto.

FORM No. 4 (Rule 21)

Affidavit in verification of list of creditors.

(Title.)

I, , of make oath (or solemnly affirm) and say as follows :—

1. I am a (director) of the company abovenamed, and duly authorised to make this affidavit.

2. The Schedule hereto annexed is a list containing the names of the creditors of and persons having claims upon the said company on the (a) day of 19 , together with their respective addresses, and stating the nature and amount of the debts or claims due to or had by them respectively and such list is, to the best of my knowledge, information and belief, a complete, true accurate list of such creditors and persons and in the cases of debts payable on a contingency or not ascertained, and of claims admissible to proof in a winding up of the said company, the values thereof as stated in such list, are, in my belief, just estimates of the values of such debts and claims respectively.

(a) Insert date fixed under Rule 19 with reference to which the claim is to be made out.

3. To the best of my knowledge information and belief there was not, at the date aforesaid, any debt, claim or liability which, if such date were the commencement of the winding up of the said company, would be admissible in proof against the said company, other than and except the debts and claims set forth in the said list. I make this statement upon facts within my knowledge as such (director) of the said company, and upon information derived by me from my investigation of the affairs and the books, documents and papers of the said company.

Sworn (or solemnly affirmed).

SCHEDULE.

(1) Ascertained Debts and Liquidated Claims.

Names, addresses and descriptions of the creditors or claimants	Nature of debt or claim	Amount of the debt or claim.
1	2	3

(2) (a) Debts Payable on a Contingency, or not Ascertained.

(b) Claims not Liquidated, but Admissible to Proof in a Winding up of the Company.

Names addresses and descriptions of the creditors or claimants	Nature of debt or claim.	Estimated value or debt or claim
1	2	3

(Signature of deponent)

FORM No. 5 (Rule 23).

Notice to creditors.

Title.)

Notice is hereby given that a petition has been presented to the abovenamed Court praying for an order confirming the reduction of the share capital of the

abovenamed company from Rs. to Rs. resolved on by the special resolution passed and confirmed* at extraordinary general meetings of the said company held respectively on the day of 19 , and the day of 19 ,

Take notice that your name has been entered in the list of creditors of the said company as a creditor (or, as claiming to be a creditor) of the said company for the sum (or, for the estimated sum) of Rs. in respect of (here state nature of debt or claim as in list of creditors)

If you claim to be a creditor for a larger amount than the said sum, you must within (a) (14) days from the date of this notice send to the undersigned particulars of your debt or claim, together with your name and address, as also the name and address of your attorney, if any.

(a) Or as the Judge may allow See Rule 24.

Attorney (s) for the company.

Dated 19 .

*See footnote in p. 262.

FORM No. 6 (Rule 24).

Advertisement of list of creditors.

(Title).

Notice is hereby given that a list of the creditors of the above-named company has been filed in Court. Any person may, upon payment of the sum of Re. 1, inspect a copy of such list during the usual hours of business, either at the registered office of the abovenamed company, at No. or at the office of the undersigned.

Attorney(s) for the company abovenamed.

Dated 19 .

FORM No 7 (Rule 26).

Affidavit in verification of list of creditors.

(Title).

We, of , of and of make oath (or, solemnly affirm) and say as follows :—

1. I, the said , make oath (or solemnly affirm) and say as follows :

I am the attorney (or a partner, or an assistant of Messrs. , the attorneys) of the company abovenamed. The annexure, hereto, marked "A" is a list containing the names and addresses of all persons who have sent in particulars of their debts or claims in pursuance of notice given in accordance with Rule 23, and the amounts of such debts or claims (or, no creditor has sent in particulars of any debt or claim in pursuance of notice given in accordance with Rule 23).

2. And I, the said , make oath (or solemnly affirm) and say as follows :—

I am a (director) of the company abovenamed. Notice complying in all respects with the requirements of Rule 23 has been duly given to all the creditors whose names are entered in the list of creditors of the company abovenamed filed in Court.

In the cases of notices sent by prepaid letter post, such notices were despatched by posting the same at the post office at on the day of 19 , before the hour of .

In the cases of notices directed by the Court to be given otherwise than by sending the same by post, such notices were given in the manner directed, namely,—

(a) If by advertisement, state names of publications and dates of publication. [Here state particulars (a).]

In the said annexure "A" I have truly stated the particulars required by Rule 26 in respect of each of the debts or claims therein mentioned.

Sworn (or solemnly affirmed), etc.

FORM No. 8 (Rule 27).

Notice to creditor to prove debt.

(Title).

Sir, (Place and date).

You are hereby required to prove (such part of) the debt claimed by you against the abovenamed company (as is not admitted by the company) by filing your affidavit and giving notice thereof to of the attorney of the company on or before the day of 19 . (a) and you are to attend in person or by your attorney at the Court-house, Calcutta, on the said date being the date appointed for hearing and adjudicating upon the claim and to produce any documents or securities relating thereto.

(a) Insert the day appointed for adjudication.

In default of compliance with the above directions you will be precluded from objecting to the proposed reduction of the capital of the company (or, in all proceedings relative to the proposed reduction of the capital of the company be treated as a creditor for such amount only as is set against your name in the list of creditors).

Attorney(s) for the said company

FORM No. 9 (Rule 27).

Affidavit of creditor in proof of debt.

(Title).

I, , of make oath (or solemnly affirm) and say as follows :—

1. (If not made by the creditor personally, the deponent must state his authority for making the affidavit and his means of knowledge).

2. The abovenamed company is justly and truly indebted to me (or the said) in the sum of Rs. for etc. (describe shortly the nature of the debt and exhibit any security for it and in the case of a trade debt exhibit vouchers).

3. I have not nor has nor have any person or persons by my order or to my knowledge or belief for my use received the said sum of Rs.

or any part thereof or any security or satisfaction for the same or any part thereof (except the said security hereinbefore referred to) (a).

(a) This paragraph to be adapted in the case of a person other than the creditor being the deponent

Sworn (or solemnly affirmed), etc.

FORM No. 10 (Rule 31).

Notice of the day appointed to hear the petition for reduction of capital.

(Title).

Notice is hereby given that a petition presented to the said Court on the day of 19 for an order confirming the reduction of the capital of the company from Rs. to Rs. is directed to be heard by the said Court on the day of 19 .

Attorney(s) for the company.

FORM No. 11 (Rule 51)

Petition.

(Title).

(a) Insert full name, address, description, etc., of petitioner.

The humble petition of (a).

Sheweth—

1. The , Limited (hereinafter called the company) is a company duly incorporated under the Indian Companies Act.

(b) Sate the full address of the registered office

2. The registered office of the company is at (b)

3. The nominal capital of the company is Rs. divided into shares of Rs. each. The amount of the capital paid up or credited as paid is Rs.

(c) State principal objects according to Memorandum of Association.

4. The objects of the company are as follows (c):— and other objects set forth in the Memorandum of Association thereof.

5. (Here set out in numbered paragraphs the facts on which the petitioner relies and in the case of an application for a supervision order the date of the winding up resolution and the appointment of Liquidator and conclude as follows :—

Your petition therefore humbly prays as follows :—

(1) That , Limited, may be wound up by the Court (d) under the provisions of Indian Companies Act, 1913.

(d) Or under the supervision of the court.

(2) Or that such other order may be made in the premises as shall be just.

(e) This note will be unncessary if the company is petitioner.

Note.—(e) It is intended to serve this petition on

FORM No. 12 (Rule 51)

Petition by unpaid creditor.

(Title.)

Paragraphs 1, 2, 3 and 4 as in Form No. 11.

5. The company is indebted to your petitioner in the sum of Rs. for (f)

(f) State consideration for the debt, with particulars so as to establish that the debt is due.

6. On the day of 19 your petitioner served (or caused to be served by *A.B.* of) on the company by leaving the same at its registered office a demand under his hand in the words and figures following :—

(Set out demand in full.)

7. The company has neglected to pay the said sum of Rs. or to secure or compound for it to the reasonable satisfaction of your petitioner.

8. The company is (insolvent and) unable to pay its debts.

9. In the circumstances it is just and equitable that the company should be wound up.

Your petitioner, therefore, etc. (as in Form No. 11).

FORM No. 13 (Rule 52).

Affidavit verifying petition.

(Title.)

I, *A.B.*, of , etc., make oath (or, solemnly affirm) and say, that the statements in paragraphs Nos. in the petition now produced and shown to me, and marked with the letter A, are true to my knowledge, and the statements in paragraphs Nos. in the said petition are based on information received (state source of information) which I believe to be true. The statements contained in paragraphs 1, 2, 3 and 4 of the said petition are matters of record.

Sworn (or solemnly affirmed), etc.

FORM No. 14 (Rule 54).

Advertisement of petition.

(Title.)

Notice is hereby given that a petition for the winding up of the abovenamed company by the (or subject to the supervision of the) High Court of Judicature of Fort William in Bengal (or District Court of) was on the day of 19 presented to the said Court by the said company (or *C.D.* of a creditor or contributory of the said company as the case may be) and that the said petition is directed to be heard before the Court on the day of 19 ; any creditor or contributory of the said company desirous of opposing an order for the winding up of the said company under the

above Act should appear at the time of hearing by himself or his Attorney or Advocate for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same, by the undersigned, on payment of the prescribed charge for the same.

A.B.,
(Attorneys for the petitioners.)
(Address.)

Dated 19 .

Note.—Rule 57 provides that any person who intends to appear on the hearing of the said petition must serve on or send by post to the abovenamed, notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be served, or if posted, must be sent by post in sufficient time to reach the abovenamed not later than 2 clear days before the day of 19 .

FORM No. 15 (Rule 56).

Affidavit of service of petition on officer, or servant of the company.

(Title.)

In the matter of a petition, dated

I, , of , make oath (or solemnly affirm) and say :—

(a) In the case of service of petition on a company by leaving with an officer or servant at the registered office or if no registered office, at the principal or last known principal office of the company.

1. (a) That I did on day the day of 19 , serve the abovenamed company with the abovementioned petition by delivering to and leaving with (name and description) an officer (or servant) of the said company a copy of the abovementioned petition and a copy of the order made under Rule 53, at (registered office or principal office as aforesaid).

or

(b) In the case of no officer or servant of the company being found at the registered office or principal or last known principal office of the company by sending through registered post.

1 (b) That I did on day, the day of 19 , having failed to find any officer, or servant, of the abovenamed company at (here state registered office or principal or last known principal office) send by registered post a copy of the abovementioned petition and a copy of the order under Rule 53 addressed to the company at its registered (or principal or last known principal) office (as the case may be).

or

(c) In the case of the company having its registered or principal or last known principal office outside the Original Civil Jurisdiction of the Court by sending through registered post.

1 (c) That I did on day, the day of 19 , the abovenamed company having its registered (or principal or last known principal) office outside the Original Civil Jurisdiction of this Court, send by registered post a copy of the abovementioned petition and a copy of the order made under Rule 53 addressed to the abovenamed company at its registered (or principal or last known principal) office aforesaid (as the case may be).

(d) In the case of directions having been given by the Court as to other persons to be served.

2 (d) That I did on day, the day of 19 , serve (name or names and description) with a copy of the abovementioned petition, by delivering the same personally to the said at (place).

Sworn (or solemnly affirmed), etc.

FORM No. 16 (Rule 56).

Affidavit of service of petition on liquidator.

(Title).

In the matter of a petition, dated 19 , for winding up the above company (by) or (under the supervision of) the Court (as the case may be).

I, , of , make oath and say :—

That I did, on day, the day of , serve (name and description) the Liquidator of the abovenamed company, with a copy of the abovementioned petition and a copy of the order made under Rule 53 by delivering the same personally to the said at (place).

Sworn (or, solemnly affirmed), etc.

FORM No. 17 (Rule 58).

Notice of intention to appear on petition.

(Title).

(a) State full name or if a firm, the name of the firm and address

Take notice that A.B., of (a) a creditor for Rs. of [or contributory holding

(b) State number and class of shares held.

(b) shares in] the above company intends to appear on the hearing of the petition advertised to be heard on the day of 19 , and to support (or oppose) such petition.

(c) To be signed by the person or his attorney.

Signed (c) (Name of person or firm).
(Address).
(Date).

To

Attorneys for petitioner.

FORM No. 18 (Rule 65).

Notice of winding up order to Registrar of Companies.

(Title).

To

The Registrar of Companies, Bengal.

Take notice that by an order of the High Court of Judicature at Fort William in Bengal (or District Court of) made on the day of 19 . Limited, was ordered to be wound up by the Court (or under the supervision of the Court).

Signed (Petitioner or his Attorney).
(Address).
(Date).

FORM No, 19 (Rule 66).

Order for winding up by the Court.

(Title).

Upon the petition of (the abovenamed company or A. B. of etc. a creditor or contributory of the abovenamed company) filed on the day of 19 , and presented to the said Court, and upon hearing for the petitioner and for and upon reading the said petition (an affidavit of the said petitioner filed, etc., verifying the said petition, and affidavit of S. M. filed on the day of 19 , as to advertisement of said petition) this Court doth order that the said company be wound up by this Court under the provisions of the Indian Companies Act, 1913, (a) and that be appointed Provisional Liquidator of the affairs of the company.

(a) Omit if no Provision Liquidator is appointed at the time of making the winning up order.

FORM No. 20 (Rule 66).

Order for winding up, subject to supervision.

(Title).

Upon the petition, etc. (as in Form No. 19), this Court doth order that the voluntary winding up of the said Limited, be continued, but subject to the supervision of this Court, and any of the proceedings under the said voluntary winding up may be adopted as the Court shall think fit; and it is ordered that the Liquidator appointed in the voluntary winding up of the said company, do on the day of next, and thenceforth every months file with the Registrar a report in writing as to the position of, and the progress made with, the winding up of the said company and with the realization of the assets thereof and as to any other matters connected with the winding up as the Court may from time to time direct. And the creditors, contributories, and Liquidator of the said company and all other persons interested, are to be at liberty to apply generally as there may be occasion.

FORM No. 21 (Rule 68).

Advertising of order to wind up.

(Title).

By an order by the High Court of Judicature at Fort William in Bengal (or District Court of) in the above matter, dated the day of 19 , on the petition of the abovenamed company (or A. B. of) it was ordered that (etc , as in Form 19 or 20).

C. and D.

(Attorneys for the said petitioner).

Dated the day of 19 .

FORM No. 22 (Rule 73).

Order for appointment of a Provisional Liquidator.

(Title).

Upon the application of and upon reading the Court doth hereby appoint of to be the Provisional Liquidator of the abovenamed company. And the Court doth hereby

limit and restrict the powers of the said as such Liquidator to the following acts (describe the acts which the Liquidator is authorised to do and the property of which he is to take possession). And the Court doth hereby fix the remuneration of the said as such Liquidator at (set out particulars of remuneration) (a). And it is ordered that the said do on or before the day of next furnish security in the sum of Rs. to the satisfaction of the Registrar of the said Court.

(a) If security ordered to be furnished add.

FORM No. 23 (Rule 77).

Advertisement as to appointment of Official Liquidator.

(Title).

Notice is hereby given that the day of 19 , at o'clock in the noon at the Court-house at Calcutta (or at the District Court-house at) has been fixed as the time and place for the appointment of an Official Liquidator of the abovenamed company.

(Attorneys for the Petitioner).

(Address).

Dated 19 .

FORM No. 24 (Rule 78).

Form of nomination of Official Liquidator.

(Title).

We, the undersigned (creditors or contributories) of the abovenamed company for the (debt or number of shares) placed opposite our respective names hereby nominate of etc., to be the Official Liquidator of the said company who is prepared and by his signature hereto undertakes to furnish security in the sum of Rs. or such less sum as may be ordered by the Court.

Name. 1	Address. 2	Creditor or contributory. 3	Amount of debt. 4	Number of shares held. 5
			Rs. A. P.	

Signed (Nominator).....

Signed (Nominee).....

Dated 19 .

FORM No. 25 (Rule 85).

Order appointing an Official Liquidator.

(Title.)

Upon the application of and upon reading and upon hearing the Court doth hereby appoint of (*a*) (and of with joint and several Powers) to be Official Liquidator(s) of the abovenamed company. And it is ordered that the said do on or before the day of next furnish security in the sum of Rs. to the satisfaction of the Registrar of the said Court (or without security). And it is ordered that the said on the day of and the day of 19 . and on the same days in each succeeding year file his (or their) accounts of receipts and payments in the office of the Registrar (or in the District Court at). And it is ordered that the said be at liberty to open, operate upon and maintain in his own name as such Official Liquidator as aforesaid a banking account with the (*b*) Bank at its Head Office (or Branch). and it is orderded that all money to be received by the said be paid by him (or them) into the (*b*) at its Head Office (or Branch) (or into the District Court at) to the credit of the account of the Official Liquidator (s) of the said company within 7 days after the receipt thereof and that out of the said account all payments shall be made by cheque signed by the said as such Official Liquidator as aforesaid and countersigned by the Registrar (*c*).

(*a*) If more than one person be appointed and the Court so directs.

(*b*) Insert name of a scheduled bank.

(*c*) As to dispensing with counter signature See Rule 93.

FORM No. 26 (Rule 87).

Advertisement of appointment of Official Liquidator.

(Title)

Notice is hereby given that of by an order, dated the day of 19 , has been appointed Official Liquidator of the abovementioned company (*a*) with joint and several powers.

(Signed) (Attorneys for the Petitioner)

Dated this day of 19 .

(*a*) If more than one person appointed add.

FORM No. 27 (Rule 80).

Security Bond by Official Liquidator and a Guarantee Society.

(Title.)

Know all men by these presents that I/We (name of the Official Liquidator or Liquidators his or their description and address) and we (name of the Guarantee Society) carrying on business in Calcutta at (Place of business) through (name of the Guarantee Society's Agent) hereinafter called the Society are jointly and severally held and firmly bound unto (name of the Registrar, Original Side), Esquire, Registrar of the High Court of Judicature at Fort William in Bengal in its Ordinary Original Civil Jurisdiction (or name of the Judge) Esquire, Judge of the District Court of his successor or successors in office and assigns in the sum of Rs. of lawful money of British India to be paid to the said (name of the Registrar, Original Side)

Esquire (or name of the Judge) Esquire his successor or successors in office or assigns as the case may be, for which payment well and truly to be made I/we the said (name of the Official Liquidator or Liquidators) for myself (ourselves) my (our) heirs, executors, administrators, and representatives and every of them and we, the Society, for ourselves and our successors do hereby bind and oblige ourselves for the whole firmly by these presents, and we the Society, do hereby submit ourselves to the Jurisdiction of the said High Court (or District Court): and appoint (place of business of the Agents) aforesaid as the address for the service of all writs, proceedings or notices that may be issued taken or given with reference to the conditions of this Bond or with respect to the liability of the said (name of Official Liquidator or Liquidators) thereunder. Signed, Sealed and Delivered by the said (name of the Official Liquidator or Liquidators) and sealed with the seal of the said Society. Dated this day of one thousand nine hundred and .

Whereas by an order, dated the day of one thousand nine hundred and made by the said High Court (or District Court) in the matter of the Indian Companies Act VII of 1913 and in the matter of (name of the company) the said (name of the Official Liquidator or Liquidators) was (were) appointed the Official Liquidator (s) of the said Company and he (they) was (were) thereby directed to give security for Rs. to be approved of by the said Registrar (or Judge of the District Court) And whereas the said (name of the Official Liquidator or Liquidators) has (have) proposed and the said Registrar (or Judge of District Court) has under the Rules of the said High Court accepted the said Society as surety for the said [name of the Official Liquidator or Liquidators].

Now the condition of the above written Bond or Obligation is such that if the said (name of the Official Liquidator or Liquidators) or his (their) executors or administrators or some or one of them do and shall duly account for all and every the sum or sums of money or other property which the said (name of the Official Liquidator or Liquidators) has (have) received and shall receive or has (have) or shall become or be held liable to pay or account for as such Official Liquidator(s) as aforesaid and do and shall pay or deliver the same as the Court or Judge hath directed or shall hereafter direct and shall give immediate notice to the Court if the said Society shall become insolvent, or go into liquidation and do and shall from time to time and at all times hereafter so long as he (they) shall continue as such Official Liquidator(s) duly and faithfully in all respects discharge the duties and obligation which shall devolve upon him (them) as Official Liquidator(s) as aforesaid and file and pass his (their) account(s) before a Judge at the said Court at the times and in the manner required by the Rules of the said Court or as the Court or a Judge may direct and obey and carry out all other directions contained in the said order and all other orders which may hereafter be made by the said High Court (or District Court) in the premises: then the above written Bond or Obligation shall be void, otherwise the same shall remain in full force and virtue.

Signed, Sealed and Delivered by the said (name of the Official Liquidator or Liquidators) at Calcutta in the presence of

The Seal of the Society was hereunto affixed in the presence of

Signed for and on behalf of the Society.

FORM No. 28 (Rule 80).

Security Bond by Official Liquidator and Surety other than Guarantee Society.

Know all men by these presents that I (we) (name of the Official Liquidator(s) his or their description and address) and I (we) name(s) of the Surety or Sureties his or their description(s) and address(es) are jointly and severally held and firmly bound unto (name of the Registrar, Original Side) Esquire, Registrar of the High

Court of Judicature at Fort William in Bengal in its Ordinary Original Civil Jurisdiction (or name of the Judge) Esquire, Judge of the District Court of his successor or successors in office and assigns in the sum of Rs. of lawful money of British India to be paid to the said (name of the Registrar, Original Side) Esquire, (or name of the Judge), Esquire his successor or successors in office or assigns as the case may be, for which payment well and truly to be made, we the said (name of the Official Liquidator(s) and Surety or Sureties) for ourselves, our heirs, executors, administrators and representatives and every one of them do hereby bind and oblige ourselves for the whole firmly by these presents, Signed, Sealed and Delivered by the said (name of the Official Liquidator(s) and surety or sureties.]

Dated this day of one thousand nine hundred and

Whereas by an order dated the day of one thousand nine hundred and made by the said High Court (or District Court of) in the matter of the Indian Companies Act VII of 1913 and in the matter of (name of the Company) the said [name of the Official Liquidator(s)] was (were) appointed the Official Liquidator(s) of the said Company and he (they) was (were) thereby directed to give security for Rs. to be approved by the said Registrar (or the Judge of the said Court). And whereas the said [name of the Official Liquidator(s)] has (have) proposed and the said Registrar has accepted the said (name of the Surety or Sureties) as Surety (Sureties) for the said (name of the Official Liquidator(s)

Now the condition of the above written Bond or Obligation is such that if the said [name of the Official Liquidator(s)] or his (their) executors or administrator or some or one of them do and shall duly account for all and every the sum and sums of money or other property which the said [name of the Official Liquidator(s),] has (have) received and shall receive or has (have) or shall become or be liable to pay or account for as such Official Liquidator(s) as aforesaid and do and shall pay or deliver the same as the Court or a Judge hath directed or shall hereafter direct and do and shall from time to time and at all times hereafter so long as he (they) shall continue as such Official Liquidator(s) duly and faithfully in all respects discharge the duties and obligations which shall devolve upon him (them) as Official Liquidator(s) as aforesaid and file and pass his (their) accounts before a Judge of the said Court at the times and in the manner required by the Rules of the said Court or as the Court or a Judge may direct and obey and carry out all other directions contained in the said order and all other orders which may hereafter be made, the above written Bond or Obligation shall be void, otherwise the same shall remain in full force and virtue.

Signed, Sealed and Delivered at Calcutta in the presence of

FORM No. 29 (Rule 80).

Affidavit by Sureties.

(Title).

We, , of , etc., and of , etc. severally make oath (or solemnly affirm) and say as follows :—

1. I, the said for myself say that I am worth (a), the sum of Rs. of lawful money of British India over and above what is sufficient for the payment of all my just debts and liabilities.

(a) Particulars of property to be specified if required by the Registrar.

2. And, I, the said , for myself say that I am worth the sum of Rs. of, etc, (as above).

Sworn etc.

FORM No. 30 (Rule 81).

Certificate that Official Liquidator has given Security

(Title.)

This is to certify that of who was on the day of 19 . appointed Official Liquidator of the abovenamed company, has duly given security as ordered by the Court.

J. S.

(Signed) Registrar.

Dated this day of 19 .

FORM No. 32 (Rule 97).

Request to invest cash in Government Securities.

(Title.)

To

(Name of Bank)

Sir,

It appearing that the sum of Rs. is standing to the credit of the account of the Official Liquidator of the abovenamed company, you are hereby requested to invest the sum of Rs. being part thereof, in the purchase of (here insert the description of the Government security intended to be purchased) in the name of of the Official Liquidator of the said campany and to retain such Government securities on behalf of the Official Liquidator, The said securities are not to be sold, transferred, or otherwise dealt with, except upon a direction for that purpose signed by the official Liquidator of the said company and countersigned by the Registrar, (or by the Judge of the District Court of or under an order to be made by the Judge,)

I am,

Sir,

Your most obedient servant,

Official Liquidator

Dated this day of 19 .

FORM No. 33 [Rules 86 and 245].

(a) When filed under Rule 245 this statement must be filed in dupticate.

Liquidator's statement of Account (a).

[Title.]

1. [Name of the Company].

2. [Nature of proceeding whether wound up by the Court, or under the supervision of the Court, or voluntary.]

3. (Date of commencement of winding up).

4. (Name and address of Liquidator).

	Realizations.				Disbursements.			
	Date.	Of whom received.	Nature of assets realised.	Amount.	Date.	To whom paid.	Nature of disbursements.	Amount.
	1	2	3	4	5	6	7	8
(*b*) If Trading Account authorised total to be inserted and detailed receipts and payments account to be attached,			(*b*) From Trading Account	Rs. a. p.			(*b*) From Trading Account	Rs. a. p.

Analysis of Balance.

Rs. a. p.

Total realizations ... ...
Total disbursements ... ...
Balance ...

The balance is made up as follows :—

Rs. a p.

(1) Cash in the hands of Liquidator ...
(2) Total payments into bank, including balance at date of commencement of winding up as per Bank Book
Total withdrawal from bank ...
Balance at bank ...
(3) Amounts invested by Liquidator—
Less—Amount realised from same ...
Balance ...
Total balance as shown above ...

Note.—Full details of stock purchased for investment and of realisations thereof should be given in a separate statement.

Note.—The Liquidator should also state—

Rs.

(1) The amount of the assets and liabilities at the date of the commencement of the winding up according to the Liquidator's estimate.
Assets (after deducting amounts charged to secured creditors) ...
Debenture holders ...
Liabilities—
Secured creditors
Debenture-holders
Unsecured creditors
Paid up in cash
Issued as paid up otherwise than for cash.
(2) The total amount of the capital paid up at the date of commencement of the winding up.
(3) The general description and estimated value of outstanding assets (if any).
(4) The cause which delayed the termination of the winding up.
(5) The period within which the winding up may probably be completed.

Note.—If no receipts or payments, the portion of the form under the headings 'Realisations', 'Disbursements' should be omitted.

FORM No. 34 (Rules 86 and 245).

Affidavit verifying Liquidator's Account.

(Title).

I, , of the (Official) Liquidator of the abovenamed company, make oath and say :—

That (the account hereunto annexed and marked "A" contains a full and true account of my receipts and payments in the winding up of the abovenamed company) from the day of 19 , to the day of 19 , inclusive (and that) I have not nor has any other person by my order, or for my use during such period, received or paid any moneys on account of the said company (other than and except the items mentioned and specified in the said account).

I further say that the particulars in the annexed account marked "A", with respect to the proceedings in and position of the liquidation, are true to the best of my knowledge and belief.

Sworn (or solemnly affirmed), etc.

If no receipts or payments the words in brackets should be omitted

FORM No 35A (Rule 47).

In the matter of The Indian Companies Act

and

In the matter of the , Ltd,

Upon reading on the part of the abovenamed company, a petition and the exhibits thereunto annexed verified by an affidavit of affirmed on the and filed this day and upon hearing for the applicants. It is ordered that the applicants do convene a meeting of the creditors and/or members of the abovenamed company such meeting to be held at the registered office of the company at on at o'clock in the afternoon for the purpose of considering and if thought fit approving with or without modifications a Scheme of Arrangement proposed to be made between the company and its said creditors and/or members. And it is further ordered that at least one week before the date appointed for such meeting advertisements convening the same stating that a copy of the Scheme of Arrangement may be seen at the office of the Solicitor of the applicants be inserted as follows : once in the and once in the . And it is further ordered that at least 10 days before the date appointed for such meeting circular letters to the same effect together with proper form of proxy and a copy of the proposed Scheme be sent under certificates of posting to each of the said creditors and/or members at their addresses as recorded in the books of the company and this Court doth hereby appoint and failing him as Chairman of the said meeting. And it is further ordered that the said Chairman do report the result of the said meeting to this Court. And it is further ordered that the applicants do bear and pay their own costs of this application to be taxed, if necessary, by the Taxing Officer of this Court as between attorney and client,

Witness, etc.

FORM No. 35B (Rule 47).

In the matter of the Indian Companies Act.

and

In the matter of Limited.

Upon reading on the part of the abovenamed company its petition verified by an affidavit of affirmed on the and the exhibits annexed thereto marked respectively A, B and C and an affidavit of as to due advertisement and service of the notice affiirmed on the ar.d the exhibits annexed thereto marked respectively A, B and C all filed on the and the report of the Chairman appointed to preside over the meeting and upon reading on the part of creditors of the abovenamed company their joint affidavit affirmed on the and filed on the and upon reading the order made herein and dated whereby the company was directed to convene a meeting of its creditors and/or members for the purpose of considering and if thought fit approving with or without modification a Scheme of Arrangement proposed to be made between the said company and its creditors and/or members and upon hearing advocate for the said company and Mr. , advocate for the creditors supporting the said application.

It is ordered that this Court doth hereby sanction the Scheme of Arrangement as modified by the creditors and/or members at their meeting held on the and as set forth in Annexure "B" to the said petition (a copy whereof is hereunder written) and doth hereby declare the same to be binding on the creditors and or members of the company and on the said company. And it is further order that the company do file an office copy of this order with the Registrar of Joint Stock Companies, Bengal, within fifteen days from the same being filed. And it is further ordered that the costs of the parties appearing of an incidental to this application (including fees to Counsel) to be taxed by the Taxing Officer of this Court be paid by the said company out of its assets.

Witness, etc,

FORM No, 36 (Rule 123).

Advertisement of Creditors.

(Title.)

The creditors of the abovenamed company are required on or before the day of 19 , to send their names and addresses of their attorneys (if any) to of the Official Liquidator of the said company, and if so required by notice in writing from the Official Liquidator, shall, either in person or by their attorneys, prove their said debts or claims at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved The day of 19 ' at o'clock in the noon at the said is appointed for the investigation of debts and claims.

Official Liquidator.

Dated this day of 19 .

FORM No. 37 (Rule 128)

Notice to creditors to prove their debts before the Official Liquidator.

(Title)

(Address and date).

Sir,

You are hereby required to prove the debt claimed by you against the abovenamed company, by filing your affidavit, and giving notice thereof to me on or

before the day of next, and you are to attend at my office in person or by your attorney on the day of 19 , at o'clock in the noon, being the time appointed for the investigation of the claim.

Official Liquidator.

Dated this day of 19 ,

To

(Name of creditor.)
(Address),

FORM No, 38 (Rule 129),

Affidavit of creditor in proof of debt.

(Title).

I, , of make oath (or solemly affirm) and say as follows :—

1. (If not made by the creditor personally, the deponent must state his authority for making the affidavit and his means of knowledge).

2. The abovenamed company was on the (*a*) day of 19 , and still is justly and truly indebted to me (or the said) in the sum of Rs, for , etc. (Describe shortly the nature of the debt and exhibt any security held and in case of a trade debt exhibit vouchers.

(*a*) Date of the winding up order.

3. (*b*) I have not nor has nor have any person or persons by my order or to my knowledge or belief for my use, received the sum of Rs. or any part thereof or any security or satisfaction for the same or any part thereof [except the said (security) hereinbefore referred to,)

(*b*) This paragraph to be adapted in the case of a person other than the creditor being the deponent.

Sworn (or solemnly affirmed), etc.

FORM No. 39 (Rule 132).

Affidavit of Official Liquidator as to Debts and Claims.

(Title.)

I, , of , the Official Liquidator of the abovenamed company make oath (or solemly affirm) and say as follows —

1. I have, by the paper hereto annexed and marked with the letter A, set forth a list of all the debts and claims, the particulars of which have been sent to me by persons making claim upon or claiming to be creditors of the said company pursuant to the advertisement issued in that behalf, dated the day of 19 , and the names and addresses of the persons by whom such claims are made.

2. I have investigated the said debts and claims and examined the same with the books and documents of the said company in order to ascertain, to the best of my ability, which of such debts and claims are justly due from the said company; and I have, in the first part of the said list, set forth such of the said debts and claims or parts thereof, as in my opinion are justly due from the said company, and proper to be allowed without further evidence and I have, in the sixth column of the said first part of the said list, set forth the amount proper to be allowed in respect of such debts and claims; and I believe that such amounts, respectively, are justly due and proper to be allowed; and I have, in the seventh column of the said first part of the said list, stated my reasons for such belief.

3. I have, in the second part of the said list, set forth such of the said debts and claims as in my opinion ought to be proved by the respective creditors.

Sworn (or solemnly affirmed), etc.

Exhibit A referred to in the affidavit of sworn (or solemnly affirmed) before me this day of 19 .

(Signed).

List of Debts and Claims of which the Particulars have been sent to the Official Liquidator.

(First Part).

Debts and claims which ought to be allowed without further evidence.

Serial number.	Names of creditors	Address and description.	Particulars of debt or claim	Amount claimed.	Amount proper to be allowed	Reasons for belief that amounts are proper to be allowed.
1	2	3	4	5	6	7
				Rs, AS, P	Rs. As. P.	

(Second Part)

Debts and claims which ought to be proved by the creditors.

Serial number.	Number of creditors.	Address and description.	Particulars of debts or claims.	Amount claimed.
1	2	3	4	5
				Rs. a. p.

FORM No. 40 (Rule 132).

Notice to creditors to prove as much of their debts as is not admitted before the Judge.

(Title).

You are hereby required to prove before the Judge the debt/Rs. out of the debt claimed by you against the abovenamed company. You are accordingly required to attend in person or by your attorney or advocate at the Court House on the day of 19 , at o'clock in the forenoon, being the time appointed for hearing and adjudicating upon the claim.

(Where the claim is admitted in part).

Particulars identifying the part of the claim rejected.

... .
Official Liquidator.

Dated this day of 19

To

.. ..
(Name of creditor).
(Address).

FORM No. 41 (Rule 135).

Certificate as to settlement of list of debts and claims.

(Title).

The debts and claims which have been allowed are set forth in the first schedule hereto, and (with the interest thereon and costs mentioned in the schedule) are due to the persons therein named.

In the first part of the said schedule are set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry, down to date of the winding up.

In the second part of the said schedule are set forth such of the debts and claims as do not carry interest.

The claims set forth in the second schedule hereto have been disallowed,

The First Schedule above referred to.

(First Part.)

Debts and claims which carry interest.

Serial number. 1	Names of creditors. 2	Addresses and descriptions. 3	Particulars of debt. 4	Total amount 5
			On bills of exchange dated, etc.	Rs. a. p
			Principal	
			Interest at per cent. per annum from to the date of commencement of the winding up.	
			Cost of proof ...	

(Second Part.)

Debts and claims which do not carry interest.

Serial number.	Names of creditors.	Addresses and descriptions.	Particulars of debts.	Interest on principal.	Total due.
1	2	3	4	5	6
				Rs. a. p.	Rs. a. p.
			Goods sold ...		
			Cost of proof ...		

The Second Schedule above referred to.

Serial number.	Names of creditors.	Addresses and descriptions.	Particulars of claims.	Amount claimed.
1	2	3	4	5

Signature of the Judge (or District Judge).

Dated this day of 19 .

FORM No. 42 (Rule 141).

Notice of preliminary settlement of the list of contributories.

(Title.)

(Address).

(Date).

Take notice that I have appointed the day of 19 at o'clock in the forenoon at (the above address) for the preliminary settlement of the list of contributories of the abovenamed company.

According to the books of the company you will be included in such list for the number of shares stated below. If you object to such inclusion you should

attend in person or by your attorney at the time and place stated above when your objections will be heard and considered.

Official Liquidator.

Number on list.	Name.	Address	Description.	In what character included.	Number of shares or extent of interest.

FORM No. 43 [Rule 142].

Preliminary list of contributories made out by the Official Liquidator.

[Title.]

The following is a list of members of the company liable to be placed on the list of contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses and the number of shares [or extent of interest] to be attributed to each, so far as I have been able to ascertain the same.

In the first of the list, the persons who are contributories in their own right are distinguished.

In the second part of the said list, the persons who are contributories as being representatives of, or being liable for the debts of others, are distinguished.

[First Part.]

Contributories in their own right.

Serial No.	Name.	Address.	Description.	Number of shares (or extent of interest.)	Remarks.
1	2	3	4	5	6

[Second Part]

Contributories as being representatives of or liable for the debts of others.

Serial No.	Name.	Address,	Description.	In what character included.	Number of shares [or extent of interest].	Remarks.
1	2	3	4	5	6	7

Dated the day of 19 .

Official Liquidator.

FORM No. 44 [Rule 143]

Notice to contributories of settlement of list of contributories by the Judge.

(Title.]

[Address].

[Date.]

Notice is hereby given that the day of 19 , at o'clock in the forenoon at the Court-house, Calcutta [or at the District Court at], has been fixed for the settlement of the list of contributories of the abovenamed company made out and filed in Court by the Official Liquidator and you are included in such list in the character and for the number of shares or extent of interest stated below : and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled by the Judge, including you therein.

Unless the Judge shall otherwise direct no application for any variation of the list will be entertained after the day so appointed.

Official Liquidator.

Number on list.	Name.	Address.	Description.	In what character included.	Number of shares or extent of interest.
1	2	3	4	5	6

FORM No. 45 (Rule 144).

Endorsement by Judge on settlement of List of Contributories.

(Title).

List settled as filed (except that Nos. are expunged from the list and Nos. stand over for determination and subsequent endorsement hereon).

Judge.

Dated the day of 19 .

FORM No. 46 (Rule 149).

Petition for leave to make a call.

(Title.)

The humble petition of , Official Liquidator of the abovenamed company, sheweth as follows :—

1. The abovenamed company, was by an order of this Court, dated the day of 19 , ordered to be wound up by this Court (or under the supervision of this Court).

2. By an order of this Court, dated the day of 19 , I was appointed Official Liquidator.

3. On the day of 19 , the list of contributories of the said company was settled by the Honourable Mr. Justice (or Esqr., District Judge of).

4. The amount of debts proved and admitted against the said company and the estimated amount of the costs, charges and expenses of the winding up aggregate the sum of Rs. or thereabouts.

5. Of the assets set forth in the statement of assets I have realised the sum of Rs. of which I still have in hand the sum of Rs. I estimate that the assets still remaining to be collected will realise approximately Rs. There are no other assets belonging to the said company except the amounts due from contributories.

6. In the settled list of contributories of the said company appear the names of persons in respect of shares.

7. For the purpose of satisfying the debts and liabilities of the company and of paying the costs, charges and expenses of the winding up I believe the sum of Rs. will be required in addition to the amount I now have in hand and the amount still to be collected by realisation of the outstanding assets.

8. In order to provide the said sum of Rs. it is necessary to make a call upon the several persons who have been settled on the list of contributories and to provide for the contingency of some of such contributories partly or wholly failing to pay the amount of such call I believe that for the purpose of realising the said amount required it is necessary that a call of Rs. per share be made.

Your petitioner therefore humbly prays as follows :—

(1) That leave be given to your petitioner to make a call of Rs per share on all the contributories of the said company (a) and to fix the date for the payment of such call.

(a) Or as the case may be.

(2) That the costs of and incidental to this petition and the order to be made thereunder and the costs of and incidental to making and enforcing such call be paid out of the call money to be collected (or out of the assets coming to the hands of your petitioner).

(3) Or that such other order may be made in the premises as may be fit and proper.

Verification

I, , the Official Liquidator of the above-named company, make oath (or solemnly affirm) that the statements contained in the foregoing petition are true to the best of my knowledge, information and belief

Sworn (or solemnly affirmed) etc

FORM No. 47 (Rule 150).

Advertisement of intended call.

(Title).

Notice is hereby given that the day of 19 , at o'clock in the noon at the Court-House, Calcutta (or at the District Court) has been appointed for the hearing of an application to sanction a call on (all) the contributories of the said company (or as the case may be) and that the said call shall be for Rs, per share. All persons interested are entitled to attend at such day, hour and place and to object to such call being sanctioned.

Official Liquidator.

Dated the day of 19 .

FORM No 48 (Rule 151).

Order giving leave to make a call.

(Title).

Upon the application of the Official Liquidator of the abovenamed company, and upon reading the petition of the said Official Liquidator, filed the day of 19 , and an affidavit of (a) filed the day of 19 , and upon hearing

(a) Affidavit as to advertisements.

It is ordered that leave be given to the Official Liquidator to make a call of Rs. per share on (all) the contributories of the said company (b).

(b) Or as the case may be.

And it is ordered that each such contributory do on or before the day of 19 , pay to the Official Liquidator of the said company (into the bank at its head office or branch to the account of the Official Liquidator or, in the case of a District Court, into the District Court at) the amount which is due from each such contributory in respect of such call.

FORM No. 49 (Rule 151).

Notice to be served with the order sanctioning a call.

(Title).

(Address).

(Date).

The amount due from you (name) in respect of the call made pursuant to the order whereof a copy is attached hereto is the sum of Rs. (a) which sum is to be paid by you on or before the day of 19 , to me as the Official Liquidator of the said company at my office No. (a) (or into the bank at its head office or branch or into the District Court at) to the account mentioned in the said order. You may pay the same in person, or through a banker or other agent, but this notice and copy of the order attached must be produced at the bank (or to the Court) upon such payment and the Secretary and Treasurer (or the Agent) of the bank, or the Nazir or other proper officer of the said Court) will, upon receiving the same, deliver to you a certificate of the payment signed by the said Secretary and Treasurer (or Agent) (or Judge). In order to prevent proceedings being taken against you for non-payment, you must immediately upon such payment, cause written notice of the payment, and of the date thereof to be given to me, as the Official Liquidator of the said company, at my Office No.

(a) For use according as the call is to be paid to the Official Liquidator or into the bank.

Official Liquidator.

To

[Name of contributory]

[Address].

FORM No. 50 (Rule 152.)

Summons to enforce call.

[Title]

Let all parties concerned attend at on the day of 19 , at o'clock in the noon on the hearing of an application on the part of the Official Liquidator of the abovenamed company, that a call to the amount of Rs. per share may be enforced on the contributories of the said company set out in the schedule annexed hereto.

This summons was taken out by of attorney for the said Official Liquidator.

To , a contributory of the said company against whom the call is to be enforced.

The Schedule above referred to.

Number of list.	Name.	Address.	Description.	In what character included.	Amount due.
1	2	3	4	5	6

FORM No 51 [Rule 152.]

Affidavit in support of application for order for payment of call.

[Title.]

I, , of , the Official Liquidator of the abovenamed company, make oath [or solemnly affirm] and say as follows :—

1. None of the contributories of the said company whose names are set forth in the schedule to the summons herein annexed have paid the sums set opposite their names respectively in the said schedule, which sums are the amounts now due from them respectively in respect of the call of Rs. per share, in pursuance of the order of this Court in that behalf dated the day of 19 .

2. The sums set opposite the names of such contributories respectively in the said schedule are the amounts due and owing by such contributories respectively in respect of the said call.

Sworn [or solemnly affirmed], etc

The Schedule above referred to.

Number of list 1	Name. 2	Address 3	Description. 4	In what character included. 5	Amount due. 6

Note —In addition to the above affidavit, an affidavit of the service of the applications for the call will be required

FORM No. 52 (Rule 152).

Order for payment of call due from a contributory.

(Title)

Upon the application of , the Official Liquidator of the abovenamed company, and upon reading an affidavit of filed the day of 19 (*a*) and an affidavit of the Official Liquidator, filed the day of 19 (*b*) and upon hearing, it is ordered that of (or of the legal personal representative of late of deceased) one of the contributories of the said company (or, if against several contributories, the several persons named in the second column of the schedule to this order being contributories of the said company), do, on or before the day of 19 , or within four days after service of this order, pay to the Official Liquidator of the said

(*a*) An affidavit of non-payment.

(*b*) Affidavit of service the application for payment of the call.

company at his office No. the sum of Rs. (or into the bank at its head office or branch to the account of the Official Liquidator (or into the District Court at) (if against a legal personal representative add, out of the assets of the said deceased, in his hands as such legal personal representative as aforesaid, if the said has in his hands so much to be administered, or, if against several contributories, the several sums of money set opposite to their names respectively in the sixth column of the said schedule hereto), such sum(s) being the amount(s) due from the said (or) (or the said several persons respectively) in respect of the call of Rs. per share duly made, dated the day of 19 .

The Schedule referred to in the foregoing order.

Number of list.	Name.	Address	Description.	In what character included,	Amount due.
1	2	3	4	5	6

Note —The copy for service of the above order must bear the following notice :—

"If you, the undermentioned , neglect to obey this order by the time mentioned therein, you will be liable to process of execution, for the purpose of compelling you to obey the same"

FORM No 53 (Rule 152).

Affidavit of service of order for payment of call.

(Title)

I, , of , make oath (or solemnly affirm) and say as follows :—

(1) I did, on the day of 19 personally serve of with the order made on the day of 19 which is hereto annexed and marked A by delivering to and leaving with the said at in the a true copy of the said order.

(2) There were on the said copy when so served the following words :—

" If you, the undermentioned , neglect to obey this order by the time mentioned therein, you will be liable to process of execution for the purpose of compelling you to obey the same."

Sworn (or solemnly affirmed), etc.

FORM No. 54 (Rule 169).

Notice of Meeting (General Form).

(Title.)

(Address).

(Date).

Take notice that a meeting of creditors (or contributories) in the above matter will be held at on the day of 19 at o'clock in the noon.

Agenda.

(a) Here insert the purpose of the meeting.

(a)

Official Liquidator.

FORM No. 55 (Rule 170)

Affidavit of postage of notices of meeting.

(Title).

I, , a (a) make oath (or solemnly affirm) and say as follows :—

(a) Description.

(1) I did on the day of 19 , post to each creditor mentioned in the company's list of debts (or to each contributory mentioned in the register of members of the company) a notice of the time and place of the meeting in the form hereto annexed and marked "A".

(2) The notices for creditors were addressed to the said creditors respectively according to their names and addresses appearing in the list of debts of the company.

(3) The notices for contributories were addressed to the contributories respectively according to their names and addresses appearing in the register of members of the company.

(4) I despatched the said notices by posting the same prepaid at the post office at before the hour of o'clock in the noon on the said day.

Sworn (or solemnly affirmed), etc.

FORM No. 56 (Rule 173)

Nomination of Chairman of a meeting.

(Title).

I , the Official Liquidator of do hereby nominate Mr. of to be Chairman of the meeting of creditors (or contributories) in the above matter, appointed to be held at on the day of 19 , and I depute him to use at such meeting, on my behalf, all proxies held by me for use thereat.

Official Liquidator.

Dated this day of 19 .

FORM No. 57 (Rule 184).

Report of result of meeting of creditors or contributories.

(Title).

I, , the Official Liquidator of the abovenamed company or Chairman of a meeting of the creditors (or contributories) of the abovenamed company summoned in accordance with directions given on the day of 19 , by advertisement (or notice) dated the day of 19 , and held on the day of

19 , at , do hereby report the result of such meeting as follows :—

The said meeting was attended, either personally or by proxy, by creditors whose proofs of debts against the said company were admitted for voting purposes, amounting in the whole to the value of Rs (or by contributories, holding in the whole shares in the said company, and entitled respectively by the regulations of the company to the number of votes hereinafter mentioned).

The proposal (or resolution) submitted to the said meeting was (here state proposal or resolution as submitted to the meeting)

The said meeting was unanimously of opinion that the said proposal (or resolution) should (not) be adopted . [or the result of the voting upon such proposal (or resolution) was as follows] (a) —

(a) Here set out the majorities by which the respective resolutions were carried or lost

Resolutions put to the meeting	Voting on Resolutions.					
	For			Against.		
	Number	Amount		Number	Amount	
(State the substance of any resolutions put and total amount of their proofs if creditors or shares if contributories)						
	No	Shares	Votes	No	Shares	Votes
Creditors ..						
Contributories ..						

Dated this day of 19 .

Chairman

FORM No 58 (Rule 186)

Form of Proxy.

(Title)

(a) If a firm write "we" instead of "I" and set out the full name of the firm.

I (a) of , a creditor (or contributory) of the abovenamed company hereby appoint (b) as my (our) proxy to vote for me (us) at the meeting of creditors (or contributories) of the said company to be held on the day of 19 , and at any adjournment thereof

(b) Here insert either Mr. " " of or "the Official Liquidator in the above matter."

(c) If a firm, sign the firm's trading title and add "by partner in the said firm

Signed (c).

Dated this day of 19 .

Signature of witness.

Address

Description.

N B—No creditor shall appoint a proxy who is not a creditor of the company whose debt or claim has been admitted or allowed and no contributory shall appoint a proxy who is not a contributory, but a creditor or contributory may appoint the Official Liquidator to act as his proxy

FORM No. 59 (Rule 164).

Advertisement as to declaration of a dividend.

(Title).

(Address).
(Date).

Notice is hereby given that a first (or, as the case may be) dividend of in the rupee has been declared and that the same will be payable on the day of 19 at the office of the Official Liquidator No.

Every person entitled to participate in this dividend will receive a notice to that effect and no payment will be made except upon production of such notice.

Official Liquidator.

FORM No. 60 (Rule 164).

Notice of dividend.

(Title).

Dividend of in the rupee.

(Address).
(Date).

Notice is hereby given that a first (or, as the case may be) dividend of in the rupee has been declared, and that the same will be payable at my office, as above, on the day of 19 or on any subsequent day between the hours of and

Upon applying for payment this notice must be produced together with any bills of exchange, promissory notes or other negotiable securities held by you. If you desire the dividend to be paid to some other person you may sign and lodge with the Liquidator an authority in the prescribed Form No. 61. If you do not attend personally, you must fill up and sign the subjoined Forms of Receipt and Authority.

Official Liquidator.

To

Note.—The receipt and authority should in the case of a firm, be signed in the firm's name.

Receipt.

(Title).

(Address).
(Date)

Received from the Official Liquidator the sum of rupees being the amount payable to me (us) in respect of the dividend of in the rupee.

Payee's signature.

Rs.

Authority for delivery.

(Title).

(Address).
(Date).

Sir,

Please deliver to bearer [or me (us) by post, at my (our) risk] the dividend of Rs. payable to me (us).

Payee's signature.

To the Official Liquidator

FORM No. 61 (Rule 166).

Authority to Liquidator to pay dividends to another person.

(Title).

(Address).
(Date).

To the Official Liquidator.

Sir,

I (we) hereby authorise you to pay the dividend referred to in the enclosed notice (a) to of (a specimen of whose signature is given below) whose receipt shall be sufficient discharge.

(a) Form No. 60 must be enclosed with this authority.

Signature (b).

Witness.
Address.
Occupation.

(b) If signed by a firm, sign the firm's name and add "by H B., a partner in the said firm."

Specimen of Signature of person appointed as above.
Witness.
Address.
Occupation.

FORM No. 62 (Rule 167).

Schedule or list of contributories to whom a return is to be paid.

(Title).

1 Number in settled list.	2 Name of contributory as in settled list.	3 Address.	4 Number of shares held as per settled list.	5 Total called up value	6 Total paid up value	7 Arrears of calls at date of return	8 Previous returns of capital appropriated by liquidator for arrears of calls.	9 Amount of return payable at per share.	10 Net return payable.	11 Date and particulars of transfer of interest or other variation in list	12 Remarks.

FORM No. 63 (Rule 167).

Notice of return to contributories.

(Title).

Return of Rs. per share.

(Address).

(Date).

Notice is hereby given that a first (or as the case may be) return of Rs. per share has been declared, and that the same will be payable at my office, as above, on day of 19 , or on any subsequent day between the hours of M. and M.

Upon applying for payment this notice must be produced together with the share certificate(s). If you do not attend personally you must forward the share certificate and fill up and sign the subjoined Forms of Receipt and Authority.

(Signed).

Official Liquidator.

Note —The receipt should be signed by the contributory personally, or in the case of joint contributories by each.

Receipt

(Title.)

(Address).

(Date).

No.

Received from the Official Liquidator the sum of Rupees being the amount payable to me (us) in respect of the return of per share held by me (us).

Rs.

Signature(s).

Authority for Delivery.

(Address).

(Date).

Sir,

Please deliver to bearer [or me (us) by post, at my (our) risk], the return of Rs. payable to me (us).

Signature(s).

To the Official Liquidator.

FORM No. 64 (Rule 235).

Certificate of passing final account.

(Title.)

I hereby certify that the Official Liquidator of the abovenamed company, has passed his final account as such Official Liquidator, and that a balance of Rs. is shown by such account to be in his hands.

Judge.

Dated this day of 19 .

FORM No. 65 (Rule 238)

Order for dissolution of the company.

(Title.)

Upon the application of the Official Liquidator of the abovenamed company, and upon reading the certificate dated the day of (*a*) and it appearing that the balance of Rs found in the hands of the Official Liquidator has been paid to , it is ordered that the said , Limited, be dissolved as from this day of 19 , and that the recognizances, dated the day of 19 , entered into by the said Official Liquidator, together with his sureties be vacated and

(*a*) Certificate of passing final account.

FORM No 66 (Rule 240).

Form of order transferring winding up proceedings from the High Court to a District Court or from one District Court to another.

(Title)

It is hereby ordered that the winding up proceedings in the above matter, together with all documents and papers thereto relating and all moneys and securities standing therein to the credit of the Official Liquidator, be transferred to the District Court at (or from the District Court at to the District Court at) and the said District Court at shall hereafter have cognizance of all such proceedings and take into its custody all such moneys and securities

Judge.

Dated this day 19 .

FORM No 67-A (Rule 249).

The Indian Companies Act, 1913.

Members' Voluntary Winding up

Notice of appointment of Liquidators.

(Pursuant to section 214)

Name of company

Presented by

Members of voluntary winding up.

To the Registrar of Joint Stock Companies.

I (or we) of hereby give you notice that I (or we) have been appointed Liquidator(s) of , Limited, by (*a*) Resolution of the company, dated the day of 19 .

(*a*) State how appointed whether by Resolution of the company, or how otherwise, and adapted, if necessary.

(*b*) To be signed by each Liquidator, if more than one.

Dated the day of (Signature) (*b*)
19 .

FORM No. 67-B (Rule 249)

The Indian Companies Act, 1913.

Creditors' Voluntary Winding up.

Notice of appointment of Liquidators.

(Pursuant to section 214.)

Name of company

Presented by

Creditors' voluntary winding up

To the Registrar of Joint Stock Companies.

I (or we) of

hereby give notice that I (or we) have been appointed Liquidator (s) of , Limited, by (*a*)

(*a*) State how appointed, whether by the creditors of the company or how otherwise.

(*b*) To be signed by each Liquidator, if more than one

(Signature) (*b*).

Dated the day of 19 .

FORM No. 68 (Rule 195).

Summons under section 195 of the Indian Companies Act, 1913.

(Name of Court).

In the matter of Ltd. (in liquidation),

And

In the matter of section 195 of the Indian Companies Act, 1913.

GEORGE, VI, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith. Emperor of India.

To

You are hereby required to attend this Court on the day of at twelve o'clock noon to give evidence before in the above matter and thereafter on such other dates as you may be required, and to bring with you and produce at the time and place aforesaid hereof if you fail having no lawful impediment to be then made known to the said and allowed by him the Court may by Warrant cause you to be apprehended and brought up for examination.

Witness at aforesaid, the day of in the year of our Lord one thousand nine hundred and

Attorney.

(District Judge) Master.

The serving officer will tender a reasonable sum to the witness abovenamed for conduct money and expenses.

NOTE.—This summons is issued on the application of

FORM No. 69 (Rule 248-B).

The Indian Companies Act, 1913.

Member's Voluntary Winding Up.

Declaration of Solvency.

(Pursuant to section 207.)

Name of Company ... .
Presented by .. ..

Declaration of Solvency

We, of
of
of
of
of

being all the/the majority of the Directors of Company, Limited, do swear (or solemnly affirm) and declare that we have made a full enquiry into the affairs of this Company, and that, having so done, we have formed the opinion that this Company will be able to pay its debts in full within a period, not exceeding three years from the commencement of the winding up.

Signature of Directors.
Sworn/Solemnly affirmed by the abovenamed.....
....
at. . . ..
this day of
19 , before me
Commissioner for Oaths.

FORM No 70-A (Rule 248-A)

The Indian Companies Act, 1913.

Members' Voluntary Winding Up.

Return of Final Winding-up Meeting.

(Pursuant to section 208-E).

Name of Company... . . . .
Presented by.. .. ..

Members' Voluntary Winding Up,

To the Registrar of Joint Stock Companies, ...

I, (or we) of

being the Liquidator(s) of Limited, have to inform you that a General Meeting of the Company was duly(*a*) held on/summoned for the day of , 19 pursuant to Section 208-E of the Indian Companies Act, 1913, for the purpose of having an account of which a copy is attached hereto (*b*) laid before it showing how the Winding up of the company has been conducted, and the property of the Company has been disposed of, and that (*c*) the same was done accordingly/no quorum was present at the Meeting.

(Signature) (*d*)

Dated this day of 19 .

(*a*) Strike out that which does not apply.

(*b*) The Copy Account accompanying this Return must be authenticated by the signature(s) of the Liquidator(s).

(*c*) Strike out that which does not apply

(*d*) To be signed by each Liquidator if more than one.

FORM No. 70-B (Rule 248-A)

The Indian Companies Act. 1913.

Creditors' Voluntary Winding Up.

Return of the Final Winding-up Meetings of Members and Creditors.

(Pursuant to Section 209-H)

Name of Company..... .....

Presented by.....

Creditors' Voluntary Winding Up.

To the Registrar of Joint Stock Companies,... ... ...

I (or we) of being the Liquidator(s) of , Limited have to inform you,

(1) that a General Meeting of the Company was duly (*a*) held on/summoned for the day of 19 pursuant to Section 209-H of Indian Companies Act, 1913, for the purpose of having an Account (of which a copy is attached hereto) (*b*) laid before it showing how the Winding-up of the Company has been conducted and the Property of the Company has been disposed of, and that (*a*) the same was done accordingly/no quorum was present at the Meeting

(2) that a Meeting of the Creditors of the Company was duly (a) held on/summoned for the day of 19 , pursuant to Section 209-H of the Indian Companies Act, 1913, for the purpose of having the said Account laid before it showing how the Winding-up of the Company has been disposed of, and that (a) the same was done accordingly/no quorum was present at the Meeting.

(*a*) Strike out that which does not apply.

(*b*) The Copy Account accompanying this Return must be authenticated by the signature(s) of the Liquidator(s).

(Signature) (*c*)

(*c*) To be signed by each Liquidator if more than one.

Dated the day of 19 ,

APPENDIX B.

ADDITIONAL FORMS.

ADDITIONAL FORMS.

Form No 1

NOTICE

OF THE

SITUATION OF THE REGISTERED OFFICE

OF

....Limited.

[See now Form VI Appendix A—Rules]

Form No 2.

NOTICE

OF

CHANGE OF SITUATION OF THE REGISTERED OFFICE

[See now Appendix A—Forms]

Form No. 3

THE INDIAN COMPANIES ACT, 1913.

Company Limited by Shares.

MEMORANDUM OF ASSOCIATION

OF

....**LIMITED.**

1. The name of the Company is "..... .....COMPANY LIMITED."

2. The Registered Office of the Company shall be situate in (a).....

3. The objects for which the Company is established are as follows :—

*(*a*) To acquire and carry on the business of.....and with a view thereto to enter into the agreement referred to in article .....of the Company's Articles of Association (see Form No. 5 (*infra*) and to carry the same into effect with or without modification.

OR

*To enter into and carry into effect an agreement between the Company and.....in terms of the draft already prepared, a copy whereof has for the purpose of identification been subscribed by.....

(a) State the Province where the office is situated.

*Note :—These paragraphs as well as bracketed portion of clause (*b*) are not required when a company is started to work a fresh scheme instead of taking a going concern.

(*b*) To carry on the trade and business of (b)..... (by taking over the business formerly carried on by the aforesaid..... .....under the name and style of.....) and any other trade or business whatsoever and in any other manner which may be deemed by the Company advisable and fit to be conveniently or profitably carried on by way of extension of or in connection with such business or is calculated directly or indirectly to develop the Company's business or any branch or section of it.

• • *(c)

(*c*) To acquire from time to time and to manufacture and deal in all such stock-in-trade, goods, chattels and effects as may be necessary or convenient for any business for the time being carried on by the Company.

(*d*) To acquire and take over the whole or any part of the business, goodwill trade marks etc. and property and liabilities of any person or persons, firm or corporation, carrying on any business which this Company is authorised to carry on.

(*e*) To subscribe for, purchase or otherwise acquire and hold shares, stock, debentures or other interests in any other compeny. (d)

(*f*) To purchase, take on lease or in exchange or otherwise acquire any moveable or immoveable property, patents, licenses, secret formulae, rights or privileges which the Company may think necessary or convenient for the purpose of its business, and to construct, maintain and alter any buildings or works necessary or convenient for the purpose of the Company.

(*g*) To borrow or raise or secure the payment of money by mortgage, or by debenture or debenture-stock, perpetual or otherwise or in such other manner as the Company shall think fit, and for the purposes aforesaid to charge all or any of the company's property or asset, both present and future, *including its uncalled capital* and collaterally or further to secure any securities of the company by a trust deed or any other assurance. (See p. 21 cl. (8) and cl. 3).

(*h*) To draw, make, accept, indorse, discount, execute and issue promissory notes, bills-of-exchange, hundies, bills of lading, warrants, debentures and other negotiable or transferable instruments. (See p. 21 cl. 9).

(*i*) To grant pensions, allowances, gratuities and bonuses to employees or ex-employees of the Company or its predecessors in business or the dependants of such persons, and to support or subscribe to any charitable or other institutions, clubs, societies or funds. (See however p 196).

(*j*) To lend money on any terms that may be thought fit, and particularly to customers or other persons having dealing with the Company. (See p. 21 cl 7).

(b) Here state the objects of the Company and the nature of the business or undertakings of the Company fully stating the essential things. See pages 17 to 19 in the Manual.

(c) Additional paragraphs may be added, giving the Company power to carry on various specified businesses or to do things which are incidental to the main business.

(d) Sometimes this clause is qualified by adding having objects altogether or in part similar to those of this company' or carrying on any business capable of being conducted so as directly or indirectly to benefit this company. This would limit the scope of the power of the Company to invest in shares of other companies. This may be a real handicap specially in the case of insurance companies and others who have large balances or reserves which must be invested in liquid securities.

(*k*) To enter any partnership or arrangement in the nature of partnership or other arrangement of a like nature with any person or persons or corporation engaged or interested in or about to become engaged or interested in the carrying on or conduct of any business or enterprise which this Company is authorised to carry on or conduct or from which the Company would or might derive any benefit whether direct or indirect. (See p. 21 cl 3).

(*l*) To sell or dispose of the undertaking of the Company or any part thereof in such manner and for such consideration as the Company may think fit, and in particular for shares (fully or partly paid up), debentures, debenture-stock or security of any other Company, whether promoted by this Company for the purpose or not, and improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company. (See p. 21 cls. 10 and 12),

(*m*) To distribute any of the Company's property among the members in specie,

(*n*) To do all or any of the things in any part of the world, and either as principal, agent, trustee, or otherwise either alone or in conjunction with others, and by or through agents, sub-contractors, trustees, or otherwise,

(*o*) To promote, organise or float any Public or Private Company or Companies for the carrying on any of the aforesaid objects or any objects allied thereto or incidental or accessory to any business or undertaking of the Company. (See p. 21 cl. 5)

(*p*) To deal in Government Promissory Notes and Securities, Port Trust Debentures, Corporation Securities etc (See p. 21 cl. 14).

(*q*) To enter into any arrangement with any Government or Feudatory State that may seem expedient. (See p 21 cl. 15).

(*r*) To appoint legal practitioners for the Company to appear before the Court and to represent the Company in suits or to refer to arbitration. (See p. 21 cl. 16).

(*s*) To do all such other things as are incidental or as the Company may think conducive to the attainment of the above objects or any of them (See p. 21 cl. 17).

4. The liability of the members is limited. (See page 25)

5. The share capital of the Company is Rs..... ..divided into .....shares of Rs..... ... .each. The shares in the original or any increased capital may be divided into several classes and there may be attached thereto respectively any preferential, deferred or other special rights, privileges, conditions or restrictions. (See p. 27 seq).

We, the several persons whose names and addresses are subscribed, are desirous of being formed into 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 to our respective names.

Names, addresses and descriptions of subscribers.	Signature and address of the witness	Number of Shares taken by each subscriber.
Total...		

Dated, the.....day of.....19 .

The Memorandum of Association for the Public and Private Company may be in the same form. The only difference is that in the Memorandum of a Public Company there shall be at least seven subscribers, while in a Private Company there shall be two

Forms No 4

(Form of Articles of Association partly adopting and partly excluding Table A).

THE INDIAN COMPANIES ACT, 913.

Company Limited by Shares

ARTICLES OF ASSOCIATION

OF

.....**LIMITED.**

1. The regulations of the Company shall be those contained in Table A in the First Schedule of the Indian Companies Act, 1913, subject to the additions and modifications herein after set forth.

2 The minimum subscription upon which the Directors may proceed to allotment in case of the first allotment of any shares payable in cash shall be shares to the nominal value of Rs . ... .

(sec. 101 of the Act).

3. It shall be lawful for the Company to pay to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares in the Company, or procuring or agreeing to procure subscription, whether absolute or conditional for any shares in the Company a commission at the discretion of the directors not exceeding Rs ... .per share (or a commission at the rate of.. .....per cent) on the nominal amount of the shares so subscribed or the subscription whereof is so procured or agreed to be procured.

(sec. 105 of the Act).

4. The first Directors of the Company shall be (e) .....who shall hold office until the ordinary general meeting in the year of 19....., unless disqualified as provided by clause 77 of the Table A. At the said general meeting and at the ordinary general meeting in every subsequent year, one-third of the Directors or if their number is not three, or a multiple of three then the number nearest to one-third shall retire from office in the manner provided in Table A.

OR

Until the first Directors are appointed the subscribers of the Memorandum of Association shall have all powers of Directors of the Company, but shall act without remuneration. (sec. 83-B of the Act).

5. The Directors' remuneration shall be at the rate of Rs.....per meeting for each Director. (see p. 182).

6. The qualification of the Director shall be the holding, in his own right, of shares to the nominal value of not less than Rs.....A first Director may act before acquiring his qualification, but shall acquire the same within two months after his appointment. (see p. 183).

* * * (f)

(e) Insert here the names, addresses of the Directors who are appointed.

(f) By adding a few more clauses of the kind required for the regulations of the Company, Articles of Association may be made complete.

Form No. 5

(Form of Articles of Association excluding Table A.)

THE INDIAN COMPANIES ACT, 1913.

Company Limited by Shares.

ARTICLES OF ASSOCIATION

OF

.....LIMITED.

1. The Regulations contained in Table A in the First Schedule to the Indian Companies Act, 1913, shall not apply but instead thereof the following shall be the regulations of the Company.

2. The marginal notes hereto shall not affect the construction hereof and in these presents unless there be something in the subject or context inconsistent therewith :—

Words signifying the singular number only shall include the plural and *vice versa*.

Words signifying males only shall extend to and include females.

Words signifying person shall apply *mutatis mutandis* to Corporations.

"The Directors" means the Directors for the time being

The word "month" shall mean "calendar month" according to the English style.

"Special Resolution" and Extraordinary Resolution" shall have the meaning assigned thereto respectively by the Indian Companies Act, 1913.

"The Register" means the register of members to be kept pursuant to Section 31 of the Indian Companies Act, 1913.

"The Registrar" means a Registrar or Assistant Registrar performing under the Indian Companies Act, 1913, the duty of Registration of Companies.

"The Court" means the High Court.

"In writing" or written" includes printing, lithography and other modes of representing words or reproducing words in a visible form.

"Dividend" includes bonus.

3. The Company shall forthwith enter into an agreement with..... .in the terms of the draft a copy whereof has for the purpose of identification been signed by Mr..... .....Solicitor... ....which draft agreement provides for the acquisition by the Company of the.. . ...and the Directors shall carry the said agreement into effect with full power nevertheless from time to time to agree to such modifications in the terms of such agreement either before or after the execution thereof.

The basis on which the Company is established is that the Company shall acquire the property comprised in the said Agreement on the terms therein set out subject to such modification (if any) as aforesaid and that Mr,. ..... is to be one of the first Directors of the Company, and that the firm of Messrs..... ..... are to be the First Managing Agents of the Company, and accordingly it shall be no objection to the said Agreement that the said Mr..... .....is a Promoter, and one of the Directors, or that the said firm Company stand in a fiduciary relation towards the Company, or that the Board of Directors or the Managing Agents are not under the circumstances independent

and every member of the Company, present and future, is to be deemed to join the Company on this basis.

4. The business of the Company shall include the several objects expressed in the Memorandum of Association or any of them.

5. The Company shall have its Head Office at in the Province of or at such other place as the Managing Agents with the approval of the Directors may from time to time determine.

6, No shareholder or other person shall be entitled to enter the property of the Company, or to inspect or examine the Company's premises, or properties, or the books or accounts of the Company for the time being or to require discovery of any information respecting any detail of the Company's trading or any matter which is or may be in the nature of a trade secret, mystery of trade, or secret process, or of any matter whatsoever which may relate to the conduct of the business of the Company and which in the opinion of the Managing Agents or Directors it will be inexpedient in the interests of the Members of the Company, to communicate, But shareholders shall have the right to inspect each register of the company as they are entitled to inspect under the law at such hours as may be specified by the Directors.

7. The Company shall not employ its funds or any part thereof in the purchase of or in lending upon the security of shares of the Company.

II—CAPITAL

(i) SHARES.

8. Subject to the provisions of Articles 46 and 47 hereof the shares shall be under the control of the Directors who may allot or otherwise dispose of the same to such person, on such terms and conditions, and at such times as they think fit, and with full power to give to any person, the right to call for the allotment of any shares either at par or at a premium, for such time and for such consideration as the Directors may see fit. As regards all allotments from time to time made, the Directors shall duly comply with Section 104 of the Indian Companies Act, 1913.

9. If the Company shall offer any of its shares to the public for subscription, the Directors shall not make any allotment thereof, unless and until at least per cent. of the shares so offered shall have been subscribed for, and the sums payable on application shall have been paid to and received by the Company, but this provision is no longer to apply after the first allotment of shares offered to the public for subscription has been made, the amount payable on application on each of the shares so offered shall not be less than 5 per cent. of the nominal amount of the shares,

10. In addition to the payment of any reasonable sums as brokerage, the Company may at any time, pay a commission to any person for subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the Company or procuring or agreeing to procure subscriptions (whether absolutely or conditionally) for any shares in the Company but so that (if the commission paid or payable out of the capital) the commission shall not exceed ten per cent. on the shares in each case subscribed or agreed to be subscribed and that (in the case of shares offered to the public for subscription) the actual rate per cent. of the commission paid or agreed to be paid shall be disclosed in the prospectus, and in the case of shares not offered to the public for subscription the said actual rate per cent. shall be disclosed in the statement in lieu of prospectus or in a statement signed in like manner as a statement in lieu of prospectus and filed with the Registrar, and where a circular or Notice not being a prospectus inviting subscription for the shares is issued, also disclosed in that Circular or Notice.

11. The joint-holders of a share shall be severally as well as jointly liable for the payment of all instalments and calls due in respect of such share.

12. The Company may make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and the time of payment of such calls.

13. If by the condition of allotment of any share the whole or part of the amount or issue price thereof shall be payable by instalments, every such instalment shall when due be paid to the Company by the person who for the time being shall be the registered holder of such share or his legal representatives.

14. Every shareholder shall name to the Managing Agents a place in India to be registered as his address and such address shall for all purposes be deemed his place of residence.

15. The company shall not save as ordered by some Court of competent Jurisdiction be bound to recognise any benami, equitable. contingent, future, or partial interest in any share or any other right in respect of a share except an absolute right thereto in the person or persons from time to time registered as the holder or holders thereof.

16. Shares may be registered in the name of the Managing Agents firm (but no other) or of any Limited Company but not in the name of a minor, nor shall more than four persons be registered as joint-holders of any share.

(2) Certificates.

17. The Certificates of title to shares shall be issued under the seal of the Company and shall be signed by two Directors.

18, Every shareholder shall be entitled to an original certificate for all his shares or to several certificates each for a proportion of his shares. Every certificate shall specify the number and denoting number of the share or shares in respect of which it is issued and the amount paid up thereon.

19. If any certificate be worn out, defaced, destroyed or lost, a new one or new ones may be issued in lieu thereof on production to the Managing Agents of evidence satisfactory to them of its being worn out, defaced, destroyed or lost, or in default of such evidence on such indemnity being given as the Managing Agents may think sufficient.

20. Every person to whom shares in the capital of the Company have been allotted shall be entitled gratis to one certificate in respect of every shares allotted to him, but for every other certificate there shall be paid to the Company such sum not exceeding one rupee as the Managing Agents may from time to time determine.

21. The certificates in respect of shares registered in the names of two or more persons shall be delivered to the person first named in the register.

(3) CALLS ON SHARES

22. The Managing Agents, subject to the approval of the Directors, may from time to time subject to any terms on which any shares may have been issued, make such calls as they think fit upon the shareholders in respect of all money unpaid on the shares held by them respectively and each Member shall pay the amount of every call so made on him to the persons and at the times and places appointed by the Managing Agents. A Call may be made payable by instalments.

23. A Call shall be deemed to have been made at the time when the Resolution of the Directors approving such call was passed.

24. On the trial or hearing of any suit or other proceeding for the recovery of any money due for any call, it shall be sufficient to prove that the name of the member against whom such proceeding is being taken is entered in the register as the holder or one of the holders of the shares in respect of which the debt accrued, that the Resolution approving the call is duly recorded in the Directors' Minute Book and that notice of such call was duly given to the Member against whom the proceeding is being taken in pursuance of these presents, and it shall not be necessary to prove the appointment of the Directors who approved such call, nor any other matters whatsoever, but the proof of the matters aforesaid shall be conclusive evidence of the debt.

25. Fourteen clear days notice at least of any call shall be given specifying the time and place of payment and to whom such call shall be paid.

26. If the sum payable in respect of any call or instalment be not paid before or on the day appointed for payment thereof, the holder for the time being of the share in respect of which such call or instalment shall be due shall be liable to pay interest for the same at such rate as the Managing Agents may determine, not exceeding 12 per cent per annum from the day appointed for payment thereof to the time of actual payment.

27. The Managing Agents may if they think fit receive from any shareholder willing to advance the same all or any part of the moneys due upon the share or shares held by him beyond the sums actually called for and upon the moneys so paid in advance or so much thereof as from time to time exceeds the amount of the calls then made upon the share or shares in respect of which such advance has been made, the Company may pay interest at such rate as the shareholder paying such sum in advance and the Managing Agents agree upon. Money so paid in excess of the amount of calls shall not rank for dividend.

(4) FORFEITURE, SURRENDER AND LIEN

28. If any Member fail to pay any call or instalment on or before the day appointed for payment thereof, the Managing Agents may at any time thereafter during such time as the call or instalment remains unpaid, serve notice on him to pay the same together with any interest that may have accrued and any expenses that may have been incurred by the Company by reason of such non-payment and stating that in the event of non-payment on or before some day to be named in the notice (such day not being less than fourteen days from the date of such notice) and at some place (either Office or a Bank named in such notice) the shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

29. If the requisitions of such notice are not complied with any share in respect of which such notice has been given may at any time thereafter before payment of all calls or instalments, interest and expenses due in respect thereof be forfeited by the Managing Agents, with the approval of the Directors, and the forfeiture shall be recorded in the Directors' Minute Book, and the holder thereof shall thereupon cease to have any interest therein and his name shall be removed from the register as such holder, and thereupon notice shall be given to him of such removal, and an entry of the forfeiture with the date thereof shall forthwith be made in the register. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

30. Any Member whose shares shall be so forfeited shall notwithstanding the forfeiture be liable to pay and shall forthwith pay to the Company all calls or instalments, interest and expenses owing upon or in respect of such shares at the time of forfeiture, together with interest thereon from the time of forfeiture until

payment at the rate of 12 per cent per annum, and the Managing Agents shall enforce the payment thereof if they think fit.

31. Any share so forfeited shall be deemed to be the property of the Company, and the Managing Agents, subject to the approval of the Directors, may sell, re-allot or otherwise dispose of the same in such manner as they think fit.

32. The Managing Agents, subject to the approval of the Directors may at any time before any share so forfeited shall have been sold, re-allotted or otherwise dispose of, annul the forfeiture thereof upon such conditions as they think fit.

33. The Managing Agents, subject to the approval of the Directors, may accept a surrender of any share on such terms as they think fit provided that no part of the assets of the Company shall be employed in the purchase of the Company's shares.

34. The Managing Agents, subject to the approval of the Directors, may sell any surrendered shares as they see fit and register the purchaser as the holder thereof.

35. The Managing Agents, subject to the approval of the Directors may cancel any shares acquired by surrender and may issue shares in lieu thereof.

36. The Company shall have a first and paramount lien upon all the shares registered in the name of each Member (whether solely or jointly with another) for his debts liabilities and engagements whether solely or jointly with any other person to or with the Company whether the period for the payment, fulfilment or discharge thereof shall have actually arrived or not and in respect of such shares, unless otherwise agreed the registration of a transfer of shares shall operate as a waiver of the Company's lien (if any) on such shares.

37. The Company shall be entitled to give effect to such lien by sale or forfeiture and re-issue of the shares subject thereto or by retaining all dividends and profits in respect thereof or by any combination of the said means, but no sale or forfeiture shall be made until such period as aforesaid shall have arrived and until notice in writing of the intention to sell or forfeit shall have been served on such Member, his heirs, executors or administrators and default shall have been made by him or them in the payment, fulfilment or discharge of such debts, liabilites or engagements for seven days after such notice.

38. Upon any sale after forfeiture or surrender or for enforcing a lien in purported exercise of the powers hereinbefore given the Managing Agents may cause the purchaser's name to be entered in the register in respect of the shares sold and the purchaser shall not be bound to see to the regularity of the proceedings or to the application of the purchase money and after his name has been entered in the register in respect of such shares the validity of the sale shall not be impeached by any person and the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

(5) TRANSFER AND TRANSMISSION OF SHARES

39. The transfer of shares shall be effected by an instrument in writing in the usual common form modified so as to suit the circumstance of parties and shall be executed both by the transferor and the transferee whose execution shall be attested by at least one witness who shall add his or their address and occupation and the transferor shall be deemed to remain the holder of such shares until the name of the transferee shall have been entered in the register in respect thereof.

40. Every instrument of transfer shall be deposited with the Company and no transfer shall be registered until such instrument shall be so deposited together with the certificate of the shares to be transferred together with any other evidence

the Managing Agents may require to prove the title of the transferor or his right to transfer the shares, and also any fee or sum whatever shall be payable for the registration of any transfer and the transfer shall after registration be kept by the Company but all instruments of transfer which the Managing Agents may decline to register shall be returned to the person depositing the same.

41. The Managing Agents, subject to the approval of the Directors, may without assigning any reason decline to register any transfer of shares upon which the Company has a lien or of shares which are not fully paid up.

42. The transfer books and register of Members may be closed during such times as the Managing Agents think fit not exceeding in the whole 45 days in each year and not more than 30 days at any one time.

43. The executor or administrator of a deceased shareholder, where there is one, or the heir where there is no Will and no Letters of Administration has been taken out, shall be entitled to be recognised by the Company as having title to the share of the deceased shareholder upon satisfactory proof of his title by producing either a probate or Letters of Administration or a Succession Certificate or a certificate of the Administrator General.

44. Any Committee or guardian of a lunatic or infant member or any person becoming entitled to or to transfer shares in consequence of the death, bankruptcy or insolvency of any Member or otherwise than by transfer may with the consent of the Managing Agents (which they shall not be under any obligation to give) be registered as a member upon such evidence that he sustains the character in respect of which he proposes to act under this clause or of his title being produced as may from time to time be required by the Managing Agents or such person instead of being registered himself may subject to the regulations as to transfer hereinbefore contained transfer such shares.

(6) BRANCH REGISTER IN THE UNITED KINGDOM

45. The Managing Agents with the approval of the Directors, may exercise the powers conferred by Section 41 of the Indian Companies Act, 1913, and may cause to be kept in the United Kingdom a Branch Register of Members and the Managing Agents with the like approval may from time to time appoint an authority in the United Kingdom to approve of or reject transfers and to direct the registration of approved transfers in the Branch Register and every such authority may in respect of transfers or other entries proposed to be registered in the Branch Register exercise all the powers of the Managing Agents and of the Directors in the same manner and to the same extent and effect as if the Managing Agents and Directors themselves were actually present in the United Kingdom and exercised the same; and subject to the provisions of the Indian Companies Act, 1913, and to the foregoing provisions the Managing Agents, with the appoval of the Directors, may from time to time make such provisions as they may see fit respecting the keeping of such Branch Register.

(7) INCREASE AND REDUCTION OF CAPITAL

46. The Company in General Meeting may from time to time increase the capital by the creation of new shares of such amount as may be deemed expedient. The new shares shall be issued upon such terms and conditions and with such rights and privileges annexed thereto as the General Meeting resolving upon the creation thereof shall direct, and if no direction be given as the Managing Agents subject to the approval of the Directors, shall determine and in particular such shares may be issued with a preferential or qualified right to dividends and in the distribution of assets of the Company and with or without any special right of voting.

47. Subject to any direction to the contrary that may be given by the meeting, which sanctions the increase of the capital, all new shares shall be disposed of by the Managing Agents in such manner as they may deem to be most beneficial to the Company subject to the provisions of sec. 105C of the Act.

48. Any capital raised by the creation of new shares shall be considered as part of the original capital in all respects so far as may be and shall be subject to the foregoing provisions with reference to the payment of calls and instalments, transfer and transmission, forfeiture, lien and surrender unless it may be otherwise resolved by the General Meeting sanctioning the increase.

49. The Company may subject to confirmation by the Court from time to time by Special Resolution reduce its capital by paying off capital or cancelling capital which has been lost or is unrepresented by available assets or reducing the liability on the shares or otherwise as may seem expedient and capital may be paid off upon the footing that it may be called up again or otherwise.

(8) CONSOLIDATION AND SUBDIVISION OF SHARES.

50. The Company may by Ordinary Resolution subdivide or consolidate its shares or any of them.

51. The Resolution whereby any share is subivided and a resolution passed by the class of shareholders whose rights will be affected thereby passed in manner prescribed in Article 52 hereof may determine that as between the holders of the shares resulting from such subdivision one or more of such shares shall have some preference or special advantage as regards dividend, capital, voting or otherwise over or as compared with the other or others.

(9) MODIFICATION OF RIGHTS.

52 All or any of the rights and privileges attached to each of the classes of shares into which the capital may at any time be divided whether by reason of the issue of preference shares or otherwise may be modified, commuted, affected or abrogated by agreement between the Company and any person purporting to act on behalf of the holders of such class of shares, confirmed by an Extraordinary Resolution, passed at a separate general meeting of the holders of shares of that class and all the provisions hereinafter contained as to general meetings shall ***mutatis mutandis*** apply to every such meeting but so that the quorum thereof shall be Members holding or representing by proxy or power-of-attorney one fifth of the nominal amount of the issued shares of the class.

III. BORROWING POWERS.

53. The Managing Agents may from time to time with the approval of the Directors borrow from the Members or other persons and may themselves lend any sum or sums of moneys for the purposes of the Company.

54. The Directors may raise and secure the repayment of such money in such manner and upon such terms and conditions in all respects as they think fit and in particular by the issue of debentures or bonds of the Company or by the creation of debenture-stock or by making, drawing, accepting or endorsing on behalf of the Company any promissory notes or Bills of Exchange or giving or issuing any other security of the Company or by mortgage or charge of all or any part of the property of the Company, both present and future, including its uncalled capital for the time being and the Managing Agents with such approval as aforesaid may on behalf of the Company guarantee the whole or any part of any loans or debts incurred by the Company with power for them to secure the guarantors against liability in

respect of such loans by means of a mortgage or charge of the Company's property moveable or immoveable or otherwise. Whenever any uncalled capital of the Company is included in or charged by any mortgage or other security such mortgage or security may include an authority to the person in whose favour the same is executed or any other persons in trust for him to make calls on the Members in respect of such uncalled capital and the provisions hereinbefore contained in regard to calls shall, *mutatis mutandis*, apply to calls made under such authority and such authority may be made exercisable either conditionally or unconditionally and either presently or contingently and either to the exclusion of the Managing Agents' powers or otherwise and shall be assignable if expressed so to be.

55. Any debentures or other securities may be issued at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawing and otherwise and may be so framed that the same shall be assignable free from any equities between the Company and the original or any intermediate holders.

56. The Managing Agents shall cause a proper register to be kept in accordance with section 123 of the Indian Companies Act, 1913, of all mortgages and charges specifically affecting the property of the Company and shall also duly comply with the requirements of sections 109, 110, 111, 115 and 117 of the Indian Companies Act, 1913, in regard to the registration of mortgages and charges therein specified and otherwise.

IV.—RESERVE AND DEPRECIATION FUND.

57. The Managing Agents with the sanction of the Directors may from time to time set apart any and such portion of the profits of the Company as they think fit as a reserve fund applicable at their discretion with the like sanction for the liquidation of any debentures, debts or other liabilities of the Company, for equalization of dividends or for any other purposes of the Company with full power to employ the assets constituting the reserve funds in the business of the Company and that without being bound to keep the same separate from the other assets.

58 The Managing Agents with the sanction of the Directors may from time to time set apart any and such portion of the profits of the Company as they think fit as a depreciation fund applicable at the discretion of the Managing Agents with the like sanction for rebuilding, restoring, replacing or altering any part of the buildings, works, plant, machinery or other property of the Company destroyed or damaged by fire, flood, storm, tempest, accident, riot, wear and tear or other means and for repairing, altering, and keeping in good condition the property of the Company or for extending and enlarging the buildings, machinery and property of the Company with full power to employ the assets constituting such depreciation fund in the business of the Company and that without being bound to keep the same separate from the other assets.

59. All moneys carried to the reserve fund shall nevertheless remain and be profits of the Company applicable subject to due provision being made for actual loss for the payment of dividends and such moneys and all the other moneys of the Company not immediately required for the purposes of the Company may be invested by the Managing Agents in or upon such investments or securities as they may subject to the approval of the Directors select or may be used as working capital or may be kept at any Bank on deposit or with the Managing Agents on deposit or otherwise as the Managing Agents with such approval as aforesaid may from time to time think proper.

V.—MEETINGS

(1) Convening Meeting

60. The first or Statutory general meeting of the Company shall be held at such time within six months from the date upon which the Company becomes

entitled to commence business and at such place as the Managing Agents may determine. Subsequent general meetings of the Company shall be held once at least in every year at such time and place as may be prescribed by the Company in general meeting or if no time or place is so prescribed at such time and place as the Managing Agents may from time to time appoint. The above mentioned general meetings shall be called ordinary meetings; all other meetings shall be called extraordinary meetings.

61. An extraordinary general meeting may at any time be called by the Managing Agents and shall be also called upon the request of the Directors or upon a requisition of shareholders holding in the aggregate not less than one-tenth of the share capital of the Company then issued upon which all calls or other sums then due have been paid and stating the object of the meeting and signed by the requisitionists and left at the office for and addressed to the Managing Agents. The requisition may consist of several documents in like form each signed by one or more of the requisitionists.

62. If the Managing Agents fail to cause a meeting to be held within 21 days after the delivery of any such requisition, the requisitionists or a majority of them in value may call the meeting but in either case every meeting so called shall be held within three months from the date of the deposit of the requisition. The meeting must be convened for the purpose specified in the requisition and if convened otherwise than by the Managing Agents for those purposes only.

63. The Managing Agents calling any general meeting and the shareholders calling any extraordinary general meeting shall respectively give at least seven clear days' notice specifying the time and place of the meeting and in case of special business the general nature of such business.

64. The non-receipt by a shareholder of notice of a general meeting shall not affect the validity of the proceedings of the meeting.

65. It shall not be requisite in any event to give notice of a general meeting or other meeting to any shareholder who has not a registered address in India.

(2) PROCEEDINGS AT GENERAL MEETINGS

66. The business of an ordinary meeting shall be to receive and consider the profit and loss account and the balance-sheet, the report of the Managing Agents, Directors and Auditors, to elect Directors' and other officers in place of those retiring, to declare dividends and to transact any other business which under these presents ought to be transacted at any ordinary meeting and any business which is brought under consideration by the report of the Managing Agents issued with the notice convening the meeting. All other business transacted at any ordinary meeting and all business transacted at an extraordinary meeting shall be deemed special.

67. Two shareholders entitled to vote and present in person shall be a quorum for a general meeting for the choice of a Chairman, the declaration of a dividend and for the adjournment of the meeting; for all other purposes the quorum for a general meeting shall be three shareholders entitled to vote and present in person or by proxy or attorney

68. No business except the choice, when necessary of a Chairman or the adjournment of the meeting shall be transacted or discussed at a general meeting while the chair is vacant.

69. If within half-an-hour after the time appointed for the holding of a general meeting a quorum be not present, the meeting, if convened on the requisition of shareholders, shall be dissolved and in every other case shall stand adjourned to the same day in the next week at the same time and place as was

appointed for holding the general meeting and if in such an adjourned meeting the quorum be not present, those members who are present and entitled to vote shall be a quorum whatever their number and the amount of shares held by them and may transact the business for which the meeting was called.

70 The Chairman, with the consent of the meeting, may adjourn any general meeting from time to time and place to place but no business shall be transacted at any adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place, and which might have been transacted at that meeting.

71. At every general meeting the Chairman of the Board of Directors shall take the Chair. If at any general meeting the Chairman of the Board be not present, a Director chosen by the shareholders present, or in case of the absence or refusal of all Directors, a shareholder chosen by the shareholders present and entitled to vote shall take the Chair.

72. Except where otherwise provided by the Indian Companies Act, 1913, or by these presents every question to be decided by any general meeting shall in the first instance be decided by a show of hands. In case of an equality of votes the Chairman shall both on a show of hands and a poll have a casting vote in addition to the vote or votes to which he may be entitled as a member.

73. As in Table—A Art 56

74. If a poll is demanded as aforesaid, it shall be taken in such manner and at such time and place as the Chairman of the meeting directs and either at once or after an interval or adjournment or otherwise and the result of the poll shall be deemed to be the Resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn.

75. Minutes shall be made in books provided for the purpose of all resolutions and proceedings at general meetings and any such minutes if signed by the Chairman of the meeting to which it relates or by the Chairman of the next subsequent general meeting shall be receivable as evidence of the facts therein stated without further proof.

76. Any poll duly demanded on the election of a Chairman of a meeting, or on any question of adjournment shall be taken at the meeting, and without adjournment.

77. The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business other than the business on which a poll has been demanded.

(3) VOTES OF MEMBERS.

78. On a show of hands every member present in person shall have one vote and at a poll every member present in person or by proxy or attorney shall have one vote for every share held by him.

79. If two or more persons are jointly registered as holders of any share any of such persons may vote at any meeting either personally or by proxy or attorney as if he were solely entitled thereto, and if more than one of such joint-holders be present at any meeting personally or by proxy or attorney, that one of such persons so present whose name stands first in the register in respect of such share shall alone be entitled to vote in respect of the same. Several heirs, executors or administrators of a deceased member in whose names any share stands shall for the purpose of this clause be deemed joint-holders.

80. Any guardian or other person entitled under the transmission clause (Clause 44 hereof) to transfer any shares may vote at any general meeting in

respect thereof as if he was the registered holder of such shares, provided that at least 48 hours before the holding of the meeting he shall satisfy the Managing Agents of his right to act in that capacity unless the Managing Agents shall have previously admitted his right to vote at such meeting in respect thereof.

81. No member shall be entitled to be present, or to vote at any general Meeting either personally or by proxy or attorney or as a proxy or attorney for any other member or be reckoned in a quorum whilst any call or other sum shall be due and payable to the Company in respect of any of the shares of such members.

82. Votes may be given either personally or by proxy or by an Agent acting under a duly executed power-of-attorney.

83. The instrument appointing a proxy shall be either printed or written or partly printed and partly written, and shall be signed by the appointor or his Attorney, or if such appointor be a corporation it shall be under its common seal. No person shall be appointed a proxy who is not a member of the Company and qualified to vote, but an Attorney under a power may attend and vote at meetings without being a shareholder, and where a corporation is the registered holder of shares of the Company, it may by resolution of its Directors appoint any of its officials or any other person to act as its representative at any meetings of this Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the Company which he represents as if he were an individual share-holder of this Company.

84. The instrument appointing a proxy, and every power of attorney under which a shareholder is intended to be represented at a meeting shall be deposited at the office of the Company not less than 72 hours before the time for holding the meeting or adjourned meeting as the case may be at which the person named in such instrument proposes to vote unless in the case of a power of attorney it has already been previously registered in the Company's books. No instrument appointing a proxy shall be valid after the expiration of twelve months from the date of the execution.

85. A vote given in accordance with the terms of an instrument of proxy or a power-of-attorney shall be valid notwithstanding the previous death of the principal or revocation of the proxy or power-of-attorney or transfer of the share, in respect of which the vote is given unless an intimation in writing of the death, revocation or transfer shall have been received at the office of the Company before the meeting.

VI.—MANAGEMENT.

(1) MANAGING AGENTS.

86. The business of the Company shall be carried on by Managing Agents subject to the supervision of the Board of Directors hereinafter mentioned. At the date of the adoption of these Articles the Managing Agents are the persons at present carrying on business in.....under the style or firm of Messrs.....

87. The said firm of Messrs..... .... or other persons for the time being carrying on business under that style or firm or their assigns or successors in business, whether under the same or any other style, shall be entitled to retain and continue in the said office of Managing Agents for a period of twenty years unless before such time they voluntarily resign the same, until they be removed therefrom in accordance with the provisions of sec. 87B of the Act by an Extraordinary Resolution passed at a general meeting, to be convened for the express purpose, and of which meeting.....calendar months' notice at least shall be given to each shareholder at his address on the register and

not by advertisement and at which meeting not less than three-fourths in number of the members of the Company entitled to vote shall be present in person or by proxy or Attorney and not less than three-fourths of the paid-up capital of the Company for the time being shall be represented.

88. The remuneration of the said Managing Agents shall be firstly, a commission at the rate of.....per cent. on the net yearly profits of the Company, as defined in section 87C of the Act subject to a minimum payment of Rs.....in case the percentage of actual profits should be less, the said commission shall be payable yearly immediate after the audit of the Company's accounts for the year has been completed, and secondly, such office allowance not being less than Rs.....per mensem as the Directors may from time to time sanction.

In consideration of the said remuneration the said Managing Agents shall provide a suitable office, and office establishment for the Company in..... ....., but shall be entitled to charge and be paid for all actual postages, telegrams, stationery and the like expenses.

The said Managing Agents, if willing, in addition to their duties as Managing Agents of the Company shall perform any other duties and work for the Company, which the Directors may decide and shall receive such reasonable and proper remuneration for such work as may be provided by a special resolution of the Company.

89. The said Managing Agents shall subject to the control of the Directors have the engagement and dismissal of managers, engineers, clerks and assistants and the general direction, management and superintendence of the business of the Company with full power to do all acts, matters and things deemed necessary, proper or expedient for carrying on the business and concerns of the Company, including the power to make such investment by loan or otherwise of the Company's funds upon such securities as the Managing Agents, with the sanction of the Directors, shall think fit and to make and sign all such contracts and to draw, accept, endorse and negotiate on behalf of the Company all such Bills of Exchange, Promissory Notes, Hoondies, Cheques, Drafts, Government Promissory Notes, and other Government Paper and other instruments as shall be necessary, proper or expedient for the carrying on of the business of the Company, and exercise all the powers, authorities and discretions of the Company except only such of them as by the Companies Acts for the time being in force or these presents are expressly directed to be exercised by the Board of Directors or by the shareholders in general meeting. All money belonging to the Company shall for the purposes of the Company be retained by the Managing Agents in their own hands or paid to such Banker as the Managing Agents shall deem expedient, and all receipts for money paid to the Company shall be signed by the Managing Agents, whose receipts shall be an effectual discharge for the moneys therein stated to have been received. The said Managing Agents may with the sanction of the Board of Directors delegate all or any of their powers except power to invest the funds of the Company to such managers, agents or other persons as they may see fit and shall have power to grant to such managers, Agents or other delegates such powers-of-attorney as the said Managing Agents may, subject to the approval of the Board of Directors, deem expedient and such powers at pleasure to revoke. The said Managing Agents shall duly make, keep and file or cause to be made, kept and filed all such registers, returns, statements and accounts as under the provisions of the Indian Companies Act, 1913, are required to be made, kept and filed by the Company or its officers and in particular shall comply with the provisions of the following Sections of the said Act, namely :—

(a) Section 31 of the said Act relating to keeping a register of the members of the Company.

(*b*) Section 32 relating to the making and filing with the Registrar of an annual list of members and summary.

(*c*) Section 72 relating to giving notice to the Registrar of any change in the Registered Office of the Company,

(*d*) Section 73 relating to the publication of the name of the Company.

(*e*) Section 75 relating to the publication of the amount of the subscribed and paid up capital of the Company.

(*f*) Section 82 relating to the filing and publication of Special or Extra-ordinary Resolutions passed by the Company.

(*g*) Section 83 relating to the keeping of minutes of the proceedings of all General and Directors meetings.

(*h*) Section 87 relating to keeping and filing with the Registrar a list of the Directors of the Company.

(*i*) Sections 109, 110, 111, 115 and 117 relating to the registration of mortgages and charges and Sections 123 and 124 of the said Act relating to the keeping and inspection of the register of all mortgages and charges affecting the property of the Company.

(*j*) Section 130 relating to keeping proper accounts of the affairs of the Company.

(*k*) Sections 131, 132, 133 and 134 relating to the preparation, auditing, publication, authentication and filing of Company's balance-sheet.

90. The provisions of the last three preceding Articles shall be embodied in an Agreement between the Company and the said firm of Messrs....., and the Directors shall cause the Common Seal of the Company to be affixed to such Agreement and shall carry the same into effect.

91. Subsequent Managing Agents and their remuneration shall be appointed and determined by the Company in general meeting and the Company may at any time or times, after the first Managing Agents above named cease to be Managing Agents, appoint a manager or secretary instead of Managing Agents. Until otherwise determined by the Company in general meeting, the Managing Agents, manager or secretary for the time being shall have the like powers and perform the like duties as are conferred and imposed by these Articles upon the first Managing Agents.

(2) DIRECTORS.

92. Until otherwise determined by a general meeting the number of Directors shall not be less than four nor more than five.

93. The First Directors of the Company are :—

94. The Directors shall have power, from time to time, and at any time, to appoint any other persons to be Directors, but so that the total number of Directors shall not at any time exceed the maximum number fixed as above.

45. Until otherwise determined by a general meeting the qualification of every Director except a Director nominated by the Managing Agents shall be his holding not less than 100 shares either in his own name, or jointly with any other persons whether as beneficiary or as a Trustee for any company or persons or otherwise however. Shares held in the name of the Managing Agents' firm shall qualify any member or assistant of such firm appointed by the Managing Agents to act as a Director.

96. Such one of the members in Calcutta of the firm of Messrs..... ....., so long as that firm are the Managing Agents of the Company and such member is in Calcutta or in the absence from Calcutta of all members of that firm such assistants of theirs holding a power-of-attorney from the firm as shall from time to time be appointed by that firm in that behalf shall be one of the Directors and shall not be subject to retirement by rotation and shall not be taken into account in determining the rotation or retirement of Directors.

97. Until otherwise determined by a general meeting the Directors, including the member of the Managing Agents firm who is a Director, shall receive out of the funds of the Company by way of remuneration the sum of Rs..... for each meeting attended by them such sum to be divided between them equally.

98. If any Director, being willing, shall be called upon to perform extra services, or to make any special exertions in going or residing away from Calcutta for any of the purposes of the Company, or giving any special attendance to the business of the Company, the Company may remunerate the Director so doing either by a fixed sum, or by percentage on profits or otherwise as may be determined by the Directors and such remuneration may be either in addition to, or in substitution for, his share in the remuneration above provided for the Directors.

99. As in Table A, Art. 78.

100. As in Table A, Art. 79.

101. As in Table A, Art. 79.

102. Retiring Directors shall be eligible for re-election.

103. As in Table A, Art 83.

104. As in Table A, Art. 82.

105. The Company may by Extraordinary Resolution remove any Director other than the Directors appointed under Article 96 hereof before the expiration of his period of office and appoint another qualified person in his stead; the person so appointed shall hold office during such time only as the Director in whose place he is appointed would have held the same if he had not been removed.

106. If any casual vacancy occur in the Board of Directors it may be filled up by the Directors. Any person so chosen shall retain this office so long only as the vacating Director would have retained the same, if no vacancy had occurred. The continuing Directors may act notwithstanding any vacancy in their body, but so that if the number falls below the minimum above fixed the Directors shall not, except for the purpose of filling vacancies act so long as the number is below the minimum.

107. A shareholder, not being a retiring Director, shall not unless recommended by the Directors for election as a Director, be eligible to be elected as a Director at any general meeting unless he or some other member intending to propose him has at least seven clear days before the meeting left, at the office of the Company, a notice in writing duly signed signifying his candidature for the office or the intention of such member to propose him.

108. Every Director shall vacate his office on the happening of any of the events following, that is to say :—

(1) On his failing to obtain his qualifying shares within two months of the date of his appointment or at any time thereafter on his ceasing to hold his qualifying number of shares.

(2) On his becoming bankrupt or insolvent or suspending payment or compounding with his creditors.

(3) On his being found a lunatic or on his becoming of unsound mind.

(4) Table A Art. 77 (d).

(5) As in Table A, Arts. 77 (e), 77 (f), 77 (g), 77 (h), 77 (i).

(6) On his resigning office by notice in writing to the Company.

(7) On his being requested in writing by all his co-Directors to resign, but this shall not apply to any Directors appointed under Article 96.

108A. As in Table A Art. 86.

109. The Managing Agents and every Director, Officer or servant of the Company shall be indemnified out of its funds for all costs, charges, travelling or other expenses losses and liabilities incurred by them or him in the conduct of the Company's business or in the discharge of their or his duties and neither the Managing Agents nor any Director, Officer or servants of the Company shall be held liable for joining in any receipt or other act for conformity's sake or for any loss or expense happening to the Company by insufficiency or deficiency of any security on, in or upon which any of the moneys of the Company shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects shall be deposited or for any other loss or damage or misfortune whatsoever which shall happen in the execution of their or his office or in relation thereto unless the same shall happen through their or his wilful act or default.

110. The Managing Agents and Directors shall not be disqualified by their office from contracting with the Company either as vendor or purchaser or otherwise. nor shall any such contract or arrangement entered into by or on behalf of the Company with any Company or partnership or in which the Managing Agents or any member of the Managing Agents' firm or any Director shall be a member or otherwise interested be avoided nor shall the Managing Agents or any member of their firm or any Director so contracting or being such member or so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason only of the Managing Agents or such Directors holding that office or of the fiduciary relation thereby established, but the nature of their or his interest must be disclosed by them or him at the meeting of the Directors at which the contract or arrangement is determined on or approved if the interest then exists or in any other case at the first meeting of the Directors after the acquisition of the interest. Provided nevertheless that a general notice that the Managing Agents or any member of their firm or any Director is a member of any specified firm or Company, and is to be regarded as interested in any subsequent transaction with such firm or Company shall as regards any such transaction be a sufficient disclosure within the meaning of this Article and after such general notice it shall not be necessary to give any special notice relating to any particular transaction with such firm or Company and provided also that (except in case of a contract of indemnity against any loss that the Managing Agents or any one or more of the Directors may suffer by reason of becoming or being sureties or surety for the Company) no Director shall vote in respect of any contract or arrangement in which he is so interested and if he do so vote his vote shall not be counted. And any Director, who is a Solicitor, may act as the Solicitor of the Company, and shall not be liable to account to the Company for any profit realised for any professional work done by him or his firm for the Company.

(3) PROCEEDINGS OF DIRECTORS.

111. The Directors shall (as far as practicable) meet together once a month at least for the despatch of business, and may adjourn and otherwise regulate their meetings and proceedings as they think fit and may determine the quorum necessary for the transaction of business. Until otherwise determined any two

Directors shall be a quorum. The Managing Agents or any Director may at any time convene a meeting of the Directors. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the Chairman shall have a second or casting vote. It shall not be necessary to give any notice of any meeting of the Directors to any Director who is for the time being absent from.....

112. The representative of the firm of Messrs..... who shall for the time being be acting as a permanent Director under the provision of Article 96 hereof, shall, whenever present, take the Chair at all meetings of Directors and in the absence of of such Director the Directors present shall choose some one of their number to be Chairman.

113. The Directors may delegate any of their powers to Committees consisting of such members of their body as they think fit. Any such Committee shall in exercise of the powers so delegated conform to any regulations that may from time to time be imposed on them by the Directors.

114. The meetings and proceedings of any such Committee consisting of two or more members shall be governed by the provisions hereinbefore contained for regulating the meetings and proceedings of the Directors so far as the same are applicable thereto, and are not superseded by any regulations made by the Directors under the last preceding clause.

115. A resolution in writing signed by all the Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted.

116. All acts done by any meeting of the Directors or of any Committee of the Directors or by authority of the Directors or by any person acting as a Director or purporting to act under powers delegated by the Directors or these presents shall notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Directors, Committee or person acting as aforesaid or that they or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified to be a Director. Provided always that nothing in the Article shall be deemed to give validity to acts done by such Director, Committee or person acting as aforesaid after it has been shown that there was some defect in such appointment or that they or any of them were disqualified.

117. The Directors shall cause to be made in books provided for the purpose minutes of the proceedings of all meetings of the Directors and of the names of the Directors present at such meetings.

118. All such minutes shall be signed by the Chairman of the meeting at which the same are recorded or in case of the inability from any cause of such Chairman to sign the same then by the person who shall preside as Chairman at the next ensuing meeting and all minutes purporting to be so signed shall for all purposes whatever be *prima facie* evidence of the actual passing of the resolution recorded, and the actual and regular transaction or occurrence of the proceedings to be so recorded and of the regularity of the meeting at which the same shall appear to have taken place.

(4) RELATIONSHIP BETWEEN MANAGING AGENTS AND DIRECTORS.

119. All account-books, vouchers, contracts and other documents relating to the business of the Company shall be at all times open to the inspection of the Directors and the Managing Agents shall keep the Directors fully informed of all business undertaken by the Company.

120. The responsibility of the Managing Agents for the due and proper management of the Company's business shall not be lessened or abrogated by the existence of such Board of Directors.

VII—THE SEAL.

121. The Managing Agents shall provide for the safe custody of the seal. Every instrument to which the seal is affixed shall be signed by at least one Director or other officer appointed by the Directors for that purpose and countersigned by the Managing Agents provided that the signature of a Director shall not be required for use only in connection with any civil or criminal proceedings in which the Company is concerned or to documents, which the Managing Agents are hereby expressly authorised to sign, but it shall be sufficient if such documents are signed by the Managing Agents only.

VIII—ACCOUNTS AND DIVIDENDS.

(1) ACCOUNTS.

122. As in Table A, Art. 103.

123. As in Table A, Art. 104 and 105.

124. At the ordinary meeting in every year the Managing Agents shall lay before the Company a profit and loss account and balance-sheet containing a summary of the property and assets and capital and liabilities of the company in the form marked "F" in the Third Schedule to the Indian Companies Act, 1913, or as near thereto as circumstances will admit made up to as recent a date as practicable from the time when the last preceding account and balance-sheet were made up. Every such account and balance-sheet shall be signed by at least two Directors and by the Managing Agents.

124A. As in Table A, Art. 107.

125. Every such balance-sheet shall be accompanied by a report of the Managing Agents and Director as to the state and condition of the Company, and as to the amount which they recommended to be paid out of the profits by way of dividend or bonus to the members and the amounts (if any) which they propose to carry to the reserve, depreciation, or other special funds according to the provisions in that behalf herein before contained and every such report shall be signed by the Managing Agents.

126. A printed copy of such accounts balance-sheet and report shall fourteen days previously to such meeting be served on the registered holder of shares in the manner in which notices are hereinafter directed to be served and a copy thereof shall be deposited at the Registered Office of the Company for the inspection of members for a period of seven days at least before such meeting.

127. After such account, balance-sheet and report have been laid before the Company in general meeting a copy thereof signed by the Managing Agents shall be filed with the Registrar. If the general meeting before which such account, balance-sheet and report are laid does not adopt the balance-sheet a statement of that fact and the reasons therefor shall be annexed to the balance-sheet and a copy thereof filed with the Registrar.

(2) AUDITOR

128. Once at least in every year the accounts of the Company shall be examined and the correctness thereof and of the balance-sheet ascertained by one or more auditor or auditors.

129. The first auditors shall be appointed by the Directors and shall hold office until the first yearly general meeting in the year..... Subsequent auditors shall be appointed by the Company at the First ordinary meeting in each year. The remuneration of the first auditors shall be determined by the Directors and that of subsequent auditors shall be determined by the Company in general meeting. Any auditor quitting office shall be eligible for re-election.

130. If one auditor only be appointed all the provisions herein contained relating to auditors shall be applied to him.

131. The auditors shall be duly qualified under the provisions of sections 144 and 145 of the Indian Companies Act, 1913. They may be members of the Company, but no person shall be eligible as an auditor who is interested otherwise than as a member of the Company in any transaction thereof and no officer or partner or employee of an officer of the Company shall be eligible during such officer's continuance in office, and no person other than retiring auditor shall be eligible for appointment as auditor unless notice of an intention to nominate such person as auditor has been given by a member to the Company not less than 14 days before the meeting at which he is intended to the proposed and in such case the Managing Agents shall send a copy of such notice to the retiring auditors and shall give notice thereof to the members in the manner in which notices are hereinafter directed to be served at least 7 clear days before meeting provided that if after notice of the intention to nominate an auditor has been so given an ordinary general meeting of the Company is called for a date 14 days or less after the notice has been given the requirements of this Article as to time in respect of such notice shall be deemed to have been satisfied and the notice to be sent or given by the Managing Agents may instead of being sent or given within the time required by this section be sent or given at the same time as the notice of the ordinary general meeting.

132. If any casual vacancy occurs in the office of auditor the Directors may and shall forthwith fill up the same,

133. The auditors of the Company shall have a right of access at all times to the books, accounts and vouchers of the Company and shall be entitled to require from the Managing Agents, Directors and other officers of the Company such information and explanations as may be necessary for the performance of their duties as auditors.

The auditors shall make a report to the members of the Company on the accounts examined by them and on every balance-sheet laid before the Company in general meeting during their tenure of office and such report shall state—

(*a*) whether or not they have obtained all the information and explanations they have required, and

(*b*) whether in their opinion the balance-sheet referred in the report is drawn up in conformity with the law, and

(*c*) whether such balance-sheet exhibits a true and correct view of the state of the Company's affairs according to the best of their information and the explanations given to them and as shown by the books of the Company.

Such report shall be attached to the balance-sheet to which it refers or a reference thereto shall be inserted at the foot of such balance-sheet and shall be read before the Company in general meeting and shall be open to inspection by any member of the Company.

134. Every account of the Managing Agents when audited and approved by general meeting shall be conclusive except so far as regards any error discovered therein before or at the audit of the next account and whenever such error is

discovered within that period the account shall be forthwith corrected and thenceforth shall be conclusive.

(3) DIVIDEND

135. Subject to the rights of holders of Preference Shares and other shares, if any, issued upon special condition and to Clauses 57 and 58 hereof the net profits of the Company shall be divisible among the Ordinary Shareholders in proportion to the Ordinary Shares held by them respectively.

136. The Company in general meeting may declare a dividend to be paid to the members according to their rights and interests in the profits and for the purpose of the equalisation of dividends any sums from time to time in accordance with these presents carried to the reserve or other special funds may subject to due provision being made for actual loss or depreciation be applied in payment thereof.

137. Whenever in their opinion the profits of the Company permit the Managing Agents with the sanction of Directors may declare an interim dividend.

138. If and whenever any bonus on shares is declared out of profits and whether alone or in addition to any dividend thereon the bonus shall for all purposes whatsoever be deemed to be a dividend on the shares.

139. When any shareholder is indebted to the Company for calls or otherwise all dividends payable to him or a sufficient part thereof may be retained and applied by the Managing Agents in or towards satisfaction of the debt.

140. No dividend shall be payable except out of the net profits arising from the business of the Company and no larger dividend shall be declared than is recommended by the Directors and sanctioned as aforesaid.

141. Any general meeting declaring a dividend may authorise payment of such dividend wholly or in part by the distribution of specific assets and in particular of paid-up shares, debentures or debenture-stock of any other company or in any one or more of such ways, and the Managing Agents may with the sanction of the Directors give effect to such resolution, and where any difficulty arises in regard to the distribution may settle the same as they think expedient and in particular they may issue fractional certificates and may fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any member upon the footing of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees upon such trusts for the persons entitled to the dividend as they may deem expedient. Whenever requisite a proper contract shall be filed in accordance with section 104 of the Indian Companies Act, 1913, and the Directors may appoint any person to sign such contract on behalf of the persons entitled to the dividend and such appointment shall be effective.

142. In case two or more persons are registered as the joint-holders of any share any of such persons may give effectual receipts for all dividends in respect of such share.

143. Unless otherwise directed by the Company in general meeting any dividend may be paid by cheque or warrant sent through the post to the registered address of the member entitled or in the case of joint-holders to the registered address of that one whose name stands first on the register in respect of the joint-holding and every cheque so sent shall be made payable to the order of the person to whom it is sent.

144. All dividends on any share not having a legal registered owner entitled to require payment of or competent to give a valid receipt for the same shall remain in suspense until some competent person be registered as the holder of the share

provided that all dividends remaining for three years after declaration thereof unclaimed by some person entitled and competent to receive and give a valid receipt for the same shall at the end of that period be forfeited to the Company and cease to be payable and shall be carried to such fund of the Company as the Managing Agents with the sanction of the Directors may see fit, but the Managing Agents with the sanction of the Directors may remit the forfeiture whenever they may think proper.

145. Unpaid dividends shall never bear interest as against the Company, the Directors or the Managing Agents.

IX—NOTICES.

146. (1) A notice may be given by the Company to any member either personally or by sending it by post to him to his registered address or (if he has no registered address in British India) to the address, if any, within British India supplied by him to the Company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

147. If a member has no registered address in British India, and has not supplied to the Company an address within British India for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the Company shall be deemed to be duly given to him on the day on which the advertisement appears.

148. A notice may be given by the Company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

149. A notice may be given by the Company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed, to them by name, or by the title of representatives of the deceased, or assignee of the insolvent or by any like description, at the address (if any) in British 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 the same might have been given if the death or insolvency had not occurred.

150. Notice of every general Meeting shall be given in some manner hereinbefore authorised to (*a*) every member of the Company (including bearers of share-warrants) except those members who (having no registered address within British India) have not supplied to the Company an address within British India for the giving of notices to them and also to (*b*) every person entitled to a share in consequence of the death or insolvency of a member, who but for his death or insolvency would be entitled to receive, notice of the meeting.

X—WINDING UP.

151. If the Company shall be wound up and the assets shall be more than sufficient to repay the whole of paid up capital the excess shall be distributed among the members in proportion to the capital paid up or which ought to have been paid up on the ordinary shares held by them respectively at the commencement of the winding up and if the surplus assets shall be insufficient to repay the whole of the paid up capital such surplus assets shall be distributed so that as near as may be the losses shall be borne by the members in proportion to the capital paid up or which ought to have been paid upon the ordinary shares held by them respectively

at the commencement of the winding up, but this clause is to be without prejudice to the rights of the holders of shares issued upon special conditions.

152. If the Company shall be wound up whether voluntarily or otherwise the liquidators may with the sanction of an Extraordinary Resolution divide amongst the contributories in specie or kind any part of the assets of the Company and may with the sanction vest any part of the assets of the Company in trustees upon such trusts for the benefit of the contributories or any of them as the Liquidators with the like sanction shall think fit. In case any shares forming part of the assets to be divided as aforesaid involve a liability to calls or otherwise any person entitled under such division to any of the said shares may within ten days after the passing of the Extraordinary Resolution by notice in writing direct the Liquidator to sell his portion and pay him the net proceeds and the Liquidator shall if practicable act accordingly.

153. Any such Liquidator may irrespective of the powers conferred on him by the Indian Companies Act and as an additional power with the authority of a Special Resolution sell the undertaking of the Company or the whole or any part of its assets for shares fully or partly paid up or the obligations of or other interest in any other Company and may by the contract of sale agree for the allotment to the members direct of the proceeds of sale in proportion to their respective interest in the Company. Any such sale or arrangement or the Special Resolution confirming the same may subject to the provisions of Article 52 hereof provide for the distribution or appropriation of the shares or other benefits to be received in compensation otherwise than in accordance with the legal rights of the contributories of the Company and in particular any class may be given preferential or special rights or may be excluded altogether or in part and further by the contract a time may be limited at the expiration of which shares, obligations or other interests not accepted or required to be sold shall be deemed to have been refused and be at the disposal of the Liquidator or the purchasing Company.

Names, addresses and occupations of the subscribers.

Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber.	Name, address and description of Witness.
Total ..		

Dated..... 19 .

Form No. 6

(Form of Agreement for the sale of a business to a Company to be made when Incorporated) (*a*).

(Where the agreement is made between the vendors of the one part and the promoters or other person on behalf of the company to be incorporated of the other part).

An AGREEMENT made the day of 19 . Between & of & (hereinafter called "the Vendors") of the one part and of (hereinafter called "the Agent") of the other part. Whereas the vendors have for some time past carried on the business of in the said City of in partnership under style or name of and are the sole owners of the freehold of the premises whereon the same is carried on. And Whereas the Vendors are desirous of converting the business into a company limited by shares and have agreed with the Agent for the sale thereof to him on behalf of the said Company to be incorporated upon the terms hereinafter contained. Now it is Hereby agreed as follows :—

(1) The Agent shall forthwith proceed to form and procure incorporation of a company limited by shares under the Indian Companies Act, 1913, to be called " Company Limited", or such other name as may be agreed upon and the business shall be carried on at aforesaid or such other place or places as the Company may decide upon.

(2) The Company shall be registered as a Public Company with a nominal capital of Rs. divided into shares of rupees each The Company shall have power to increase or reduce such capital and to issue any part of such capital original or increased with or without any preference priority or special privilege or subject to any postponement or rights or to any conditions or restrictions and the object of the company shall be to acquire, take over and carry on the said business of and similar business as hitherto carried on by the vendors at aforesaid.

(3) The Vendors will sell and the agent will purchase the said business of the Vendors as a going concern as from the day of 19 . all the stock-in-trade, cash in hand, and at the Bank, book debts, good-will (tenant's fixtures of lease-hold premises) and benefit of subsisting contracts and all other assets of the business (with the exception of the book-debts) as on the day of 19 , including the following properties used in connection with the said business namely :—

(*a*) The free-hold yard offices and workshop known as aforesaid subject to a mortgage dated

(*b*) The leasehold yard and store sheds in This property is held on a lease for years from day of at the yearly rent of Rs. under an Indenture of Lease dated day of , subject to a mortgage dated day of 19 .

(4) The consideration of the said sale shall be the sum of Rs. which shall be satisfied by the payment of Rs. in cash to the Vendors of shares of Rs. each in the capital of the Company credited as fully paid up shares to be allotted as follows :—

To the said	shares of Rs.	each.
To the said	shares of Rs.	each.

(*a*) See Kelly's *Conveyancing Draftsman*, 6th Edition page 390.

(5) The Vendors will make all necessary arrangements for giving to the Agent on the company being incorporated possession of the said free-hold and lease-hold buildings and premises and for delivering to him the stock-in-trade, cash in hand and on current account at the Bank and all other the said assests of the said business (book debts excepted) on the day of 19 , upon the payment and allotment of shares to the Vendors as aforesaid.

(6) The Agent shall as from the day of 19 , complete and execute all contracts and orders then in course of completion or execution (pay all then existing debts and liabilities of the said business estimated to amount to Rs) and shall as from that day pay all salaries, wages, rents, rates, and taxes, expenses and outgoings thenceforth accruing or to be incurred in respect of the same respectively and indemnify the Vendors therefrom and from all liability in respect of the said contracts and orders (and debts and liabilities).

(7) Amongst the first Directors of the proposed company the Vendors shall be included and shall get a remuneration as provided by the Articles of Association of the proposed company and shall be entitled to be paid by way of further remuneration any such sum which the company in general meeting may direct,

(8) The sum of Rs shall be considered the value of stock-in-trade, cash in hand and on current account at the Bank, the sum of Rs. shall be considered the value of the good-will (tenant's fixtures of the said lease-hold premises) and benefits of contracts and the sum of Rs shall be considered the value of the encumbered free-hold and lease-hold premises including incumbrances.

(9) The sale and purchase shall be completed on the day of 19 , at the offices of the Vendors the said sum of Rs. in cash and the certificates for the said shares and the Vendors and all other necessary parties shall execute and do all such acts and things as may be necessary for effectualty vesting the said business and property in the Agent.

(10) The agent shall do his best to procure the adoption of this agreement by the Company within days after incorporation and upon such adoption the Agent shall be discharged from all liability to the Vendors in respect thereof and in the event of this agreement not being adopted by the Company on or before the day of next either party hereto may by notice in writing to the other or others rescind the same and upon such rescission neither party shall have any claim against the other or others in respect of anything contained herein or (a) connected therewith.

(a) The agreement is required to be stamped as an agreement and duty payable is as follows :—

Imperial	8 annas.
In Madras, Assam, United Province	12 annas.
In Bombay, Central Province, Punjab, Bengal ...	Re. 1.

As witness our hands this day of 19 .

Vendors..... Agent.....

Form No. 7.

(Form of Agreement adopting Agreement for purchase of a business by a Company after incorporation), (a).

An AGREEMENT made the day of 19 . Between the within named and (hereinafter called "the Vendors") of the first part, the within named (hereinafter called "the Agent") of the second part and Company Limited (hereinafter called "the Company") of the third part. Whereas

since the execution of the within written Agreement the Company has been incorporated and has agreed to adopt the purchase of the business of the Vendors in accordance with the intention in that behalf referred to in the within-written Agreement. Now It is Hereby Mutually Agreed as follows :—

(1) The within-written Agreement is hereby adopted by the Company and shall be binding on the Vendors and on the Company in the same manner and take effect in all respects as if the Company had been in existence at the date thereon and had by these presents ratified the same as made and signed by the Agent on their behalf.

(2) The Agent shall from henceforth be discharged from all liabilities whatsoever to the Vendors (or the Company) under or in respect of the within written Agreement as signing the same and party of the second part thereof.

In witness our hands and given under the Common Seal of the Company this day of 19 .

Common Seal

(1) Directors of The Company Ltd. } .....

(2) Vendors.. .....

(3) Agent.....

(a) See Kelly's *Conveyancing Draftsman* 6th Edition, page 394.

This agreement (Form No. 7) is required to be stamped under Article 23 (conveyance) of the Indian Stamp Act.

The stamp duty payable is as follows :—

	Imperial Art. 23	U. Prov. Bombay, C P	Bengal, Madras, Punjab, Assam
When the value of the consideration for such coveyance as set forth therein does not exceed Rs. 50	0 8 0	0 8 0	0 12 0
Where is exceeds Rs. 50 but does not exceed Rs 100	1 0 0	1 0 0	1 8 0
„ 100 „ 200			
„ 200 „ 300	2 0 0	2 0 0	3 0 0
	Imperial	U. Prov.	Bombay, C. Prov. Bengal, Madras, Punjab, Assam
„ 300 „ 400	3 0 0	3 8 0	4 8 0
„ 400 „ 500	4 0 0	4 14 0	6 0 0
„ 500 „ 600	5 0 0	6 4 0	7 8 0
„ 600 „ 700	6 0 0	7 10 0	9 0 0
„ 700 „ 800	7 0 0	9 0 0	10 8 0
„ 800 „ 900	8 0 0	10 6 0	12 0 0
„ 900 „ 1000	9 0 0	11 12 0	13 8 0
and for every Rs. 500 or part thereof in excess of Rs. 1000	10 0 0	13 2 0	15 0 0
	5 0 0	6 8 0	7 8 0

This agreement is required to be registered under section 17 of the Indian Registration Act' if it involves the transfer of immoveable property of the value of above Rs. 100.

Form No. 8.

Capital Issues (Continuance of Control) Act. 1947.

(Received the assent of the Governor-General on the 18th April, 1947)

Act No. XXIX of 1947.

An Act to provide for the continuance of control over issues of capital.

WHEREAS it is expedient to provide for the continuance of control over issues of capital ;

It is hereby enacted as follows :—

Short title, extent and duration.

1. (1) This Act may be called the Capital Issues (Continuance of Control) Act, 1947.

(2) It extends to the whole of British India and applies also to British subjects and servants of the Crown in any part of India and to British subjects who are domiciled in any part of India wherever they may be.

(3) It shall cease to have effect on the first day of April, 1950.

Definitions.

2. In this Act,

(a) "issue of capital" means the issuing of any securities whether for cash or otherwise ;

(b) "securities" means any of the following instruments issued, or to be issued, by or for the benefit of a company, whether incorporated in British India or not, namely :—

(i) shares, stocks and bonds ;

(ii) debentures ;

(iii) other instruments creating a charge or lien on the assets of the company ;

(iv) instruments acknowledging loan to or indebtedness of the company and guaranteed by a third party or entered into jointly with a third party.

Control over issues of capital.

3. (1) No company incorporated in British India shall, except with the consent of the Central Government, make an issue of capital outside British India.

(2) No company, whether incorporated in British India or not, shall except with the consent of the Central Government,—

(a) make an issue of capital in British India ;

(b) make in British India any public offer of securities for sale ;

(c) renew or postpone the date of maturity or repayment of any security maturing for payment in British India.

(3) The Central Government may on application make an order according recognition to an issue of capital made or to be made outside British India by a company not incorporated in British India.

(4) The Central Government may qualify any consent or recognition accorded by it under sub-section (2) or sub-section (3) with such conditions, whether for immediate or future fulfilment as it may think fit to impose ; and where a company acts in pursuance of such consent or recognition, it shall comply with the terms of any condition so imposed.

(5) Where an application for the consent or recognition of the Central Government under any of the provisions of this Section is refused, the Central Government shall, upon the request of the applicant, communicate to him in writing the reasons for such refusal.

4. No person shall issue in British India any prospectus or other document offering for subscription or publicly offering for sale any securities which does not include a statement that the consent or recognition, as the case may be, of the Central Government has been obtained to the issue or offer of the securities, and no person shall without the consent of the Central Government issue in British India any document publicly offering for sale any security issued with the consent or recognition of the Central Government if such issue was made by a private company or if the order according its consent or recognition contained a condition that the securities should be privately subscribed.

Control over prospectus and other advertisements.

5. (1) No person shall accept or give any consideration for any securities in respect of an issue of capital made or proposed to be made in British India or elsewhere unless the consent or recognition of the Central Government has been accorded to such issue of capital.

Purchase and sale of securities.

(2) No person shall sell or purchase or otherwise transfer or accept transfer of any securities issued by a company in respect of any issue of capital made after the 17th day of May 1943 in British India or elsewhere unless such issue has been made with the consent or recognition of the Central Government.

6. (1) The Central Government may, by general order which shall be notified in the official Gazette, provide for the granting of exemption from all or any of the provisions of Sections 3, 4 and 5.

Power to exempt and to condone contraventions.

(2) The Central Government may by order condone a contravention of any of the provisions of Section 3 or Section 4 and on the making of such order the provisions of this Act shall have effect as if an exemption had been granted under sub-section (1) of this section in respect of the thing done or omitted to be done in contravention of Section 3 or Section 4, as the case may be.

7. Any officer authorised in this behalf by the Central Government may, for the purpose of enquiring into the correctness of any statement made in an application for consent or recognition to an issue of capital or for the purpose of ascertaining whether or not the requirements of any condition attached to an order according such consent or recognition have been complied with, require any company, or any officer of a company, which has made such application or obtained such order to submit to him such accounts, books or other documents, or to furnish to him such information, as he may reasonably think necessary.

Power to call for information.

8. No person shall, when complying with any requisition under Section 7 or when making any application for consent or recognition to an issue of capital, give any information or make any statement which he knows or has reasonable cause to believe, to be false or not true in any material particular.

False Statement.

9. No person who obtains any information by virtue of this Act shall, otherwise than in connection with the execution of the provisions of this Act or of any order made in pursuance thereof, disclose that information to any other person except with the permission of the Central Government.

Prohibition against disclosing information.

10. The Central Government may by order direct that any power or duty which by or under any of the preceding provisions of this Act is conferred or imposed upon the Central Government shall, in such circumstances under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer subordinate to that Government.

Power to delegate function.

Committee to Advise Government.

11. The Central Government shall by notification in the official Gazette, constitute an Advisory Committee consisting of not more than five members, and may from time to time refer to it for advice any such matters arising out of the administration of this Act as the Central Government may think fit.

Power to make rules.

12. The Central Government may by notification in the official Gazette make rules for carrying out the purposes of this Act.

Penalties.

13. (1) Whoever contravenes, or attempts to contravene, any of the provisions of this Act or of any order made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(2) If the person committing an offence punishable under this section is a company or other body corporate, every director, manager, secretary or other officer thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

Burden of proof in a certain cases.

14. Where any person is prosecuted for contravening any provision of this Act or of any order made thereunder which prohibits him from doing an act without the consent or permission of any authority the burden of proving that he had the requisite consent or permission shall be on him.

Protection of action taken under Act.

15. No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done under this Act or any rule or order made thereunder.

Continuance of existing orders and savings.

16. (1) All orders made or deemed to be made under the provisions of the Capital Issues (Continuance of Control) Ordinance, 1947, and in force immediately before the commencement of this Act shall continue to be in force and be deemed to be orders made under the corresponding provisions of this Act.

(2) Section 6 of the General Clauses Act, 1897, shall apply upon the expiration of the said Ordinance as if it had then been repealed by this Act.

Form No. 8A.

(Form of Application to the Examiner of Capital Issues).

Control of Capital Issues.

GENERAL.

1. **Name** :—(Name or proposed name of Company).

2. **Incorporation** :—(Place of registration of Company and of Head Office and whether public or private)

3. **Previous applications** :—(Give particulars of any applications previously made to the Government of India in this connection by or on behalf of the same parties since 17.5.43).

4. **Business** ;—(a) (Proposed business of the Company with particular reference to the issue now proposed).

(*Note.*—Here reference to the objects stated in the Memorandum of Association is usually unacceptable).

(b) (The place where it is to be carried on). (Not the Company's Head Office).

5. **Directors** .—(Give names and addresses of Directors or in the case of New Companies, of promoters and proposed Directors). (Say whether proposed Directors have agreed in writing to serve).

5A. **Managing Agents** :—(Give name and address of Managing Agents, if any, appointed or to be appointed).

6. **Total amount of Issue** :—(Whether for cash or not for cash).

7. **Cash Issues (amount)** :—(Exact amount of shares, debentures and any other security which it is desired to issue at this stage for cash, distinguishing between Ordinary, Preference and Deferred Shares and giving the nominal value and issue price of each and describing the voting right of each class of shares. Premium and entrance fee to be included in issue price).

Cash Issues (Nature) :—(a) (Will the above cash issues be public or private, or if both to what extent of each kind).

(b) (If public, give proposed terms of the issue e.g. names of underwriters, amount of commission and how payable, issue of prespectuses or circulars, etc.)

(c) (If private, to whom to be issued).

8. **Cash expenditure (Objects)** :—(a) (The exact manner in which the proceeds of the cash issues will be expended, showing the amount to be allocated to the various items. For concerns undertaking various businesses expenditure for each business should be given separately).

(b) **Machinery and Plant** :—(State nature, amount and source). If from sources outside India state whether an application for registration has been made to the Chief Controller of Import and if so, whether registration has been accorded (Quote number and date of registration certificate).

(c) **Goods other than capital goods** :—(If the business of the concern will involve imports of raw materials or of goods in trade from sources outside India, give particulars).

9. **Issues not for cash** :—(a) (Give details as against question 7 of any securities which are to be issued for a consideration other than cash).

(b) (Details of such consideration).

(c) (Names of parties).

10. **Other Particulars** :—(a) (Any additional facts which you wish to adduce in support of your application)

(b) In the case of existing Companies, state date of incorporation and amounts of capital already subscribed and already paid up ; and forward copy of latest Balance Sheet (with certified translation in English, if not in that language).

(c) (In the case of issue of bonus shares, a proforma up to date statement of account should be added).

11. **Purchase of existing concerns** :—(If any existing concern or its assets are to be acquired give names of concern and owner and purchase price with details of valuation, and justify amount charged for goodwill if any).

Form No. 9

(Form of Application, when the Application money is to be sent to Company's Office.)

THE.....COMPANY LIMITED

No..... .....

(For office use only).

Dated, the.....19

To

The Directors,

The..... .....Company Limited.

Gentlemen,

I enclose herewith Cheque No. on The Bank Ld. (or I beg to send herewith in cash the sum of Rupees

being the required deposit of Rs. per share on shares in your Company, which I request you to allot to me and to register my name, upon the terms and conditions of the Prospectus, and I hereby agree to accept such allotment of the shares or any less number allotted to me subject to the Memorandum and Articles of Association of the Company.

Yours faithfully.

Witness :—

Name.....

Address.....

Name in full.....

Father's / Husband's Name.....

Permanent Address.....

Present Address.....

Occupation.....

Usual Signature. .....

Form No. 10

(Form of Application, when the application money is to be sent to Company's Bankers)

THE..... .....COMPANY LIMITED.

No.....

(For office use only).

Dated the,.....19 .

To

The Directors,

The..... .....Company Limited,

Gentlemen,

I have this day paid to your Bankers Messrs. The..... .....Bank Ld. the sum of Rupees.. .....being the required deposit of Rs.... .....per share on .....Shares in your Company, which I desire you to allot to me, and to register me as a member upon the terms and conditions of the Prospectus and I hereby agree to accept such allotment of shares subject to the Memorandum and Articles of Association of the Company. I agree to accept the above shares or any less number that is allotted to me.

Yours faithfully,

Name.....

Witness :—

Name... .....

Address.....

Father's / Husband's Name.....

Address in full.....

Occupation... .. ..

Usual Signature.....

No.

The Bank Limited.

Received this day of 19 , on account of The Company Limited, the sum of Rupees being a deposit of Rs. per share on shares of Rs. each.

For and on behalf of

The Bank Ltd.

Agent or Manager.

N.B.—This receipt must be preserved to be exchanged hereafter for Share Certificate.

Form No. 11.

(Form of Application Deposit. when the application money is remitted to the Company.)

The_____Co., Ltd.

Application Receipt.

No._____

Date_____19 .

Name _____

Address_____

No. of shares applied for_____

Deposited Rs._____

per share.

Total_____

Manager, etc.

The _____Company Limited.

No. Receipt for Application money.

Received this_____ day of_____19 .

from_____ of_____

the sum of Rs _____being application deposit

of Rs._____per share on_____shares of

Rs._____ each.

For and on behalf of

Total_____ The _____Company Limited.

Manager, Secretary or Managing Agents.

N. B. :— This receipt must be preserved to be exchanged hereafter for share certificate.

Form No. 12.

(Form of Application and Allotment Register)

List of Applications and Allotments with amounts returned.

No. of Application	Applicants'			No. of shares Applied for	Amount paid on Application deposit.	Date of payment	Total no. of Shares allotted.	Distinctive Numbers (inclusive)		Premium, if any.	Capital amount payable	Cash Received			Folio in Share Ledger or Register	Amount returned			Remarks
	Name	Address	Occupation					From	To			Date.	Folio.	Amount		Date	No. of letter	Amount	

Form No. 13

(Form of Letter of Regret).

The... ....Bank Limited.

Registered Office.....

No .... Dated the.. ....19 .

To

....Esqr.

.....

Sir, or Madam,

I regret to inform you that the Directors are unable to allot you any of the ordinary shares of this Company in compliance with your application of the 19 , for shares of the Company

I enclose herewith a Cheque for Rs. being the amount paid by you on the above mentioned application, and shall be glad if you will sign the form of receipt at the foot of the Cheque sent herewith and present the same for payment through your Banker

I am,
Yours faithfully,
Secretary

The Company Limited.

No.. ..... Date... 19

Pay to .. . . or order the sum of Rupees.....

For and on behalf of

Rs..... The..... ....Company Limited.

Secretary, Director

Endorsement on the back of the Cheque.

Received of The Company Limited, the sum of Rupees being the amount deposited by me on application for shares in the same.

Signature.

Form No. 14

(Form for Underwriting Agreement) (a)

To

The Directors,

The..... .....Company Limited.

Gentlemen,

For the consideration hereinafter mentioned, I the undersigned agree with you that on the publication of your Prospectus I will, on your request, apply in the form referred to in such Prospectus, for shares of Rs. each in your capital, and will pay thereon the amount payable on application and will accept the allotment of, and pay the allotment moneys due in respect of any shares allotted in response to such application

It is understood that to the extent to which applications are received from the public (through me) before the closing of the subscription list, I am to be relieved from my underwriting obligations rateably in proportion to the number of shares underwritten by me.

If shares are, within days after the first publication of the Prospectus aforesaid, allotted in respect of such public subscriptions, I am not to be liable to take up any of the shares hereby underwritten.

If I do not put in such application at the time aforesaid, you are to be at liberty, in my name and on my behalf, to put in such application and I will pay application and allotment money immediately after receiving notice of the allotment.

In the event of your proceeding to allotment, you are, within days after such allotment to pay me a commission in cash on the nominal amount of the shares underwritten by me, the same to be paid to me whether I am required to apply for or accept an allotment of any shares or not but if an allotment is made to me no commission shall be payable to me unless I pay the application and allotment moneys payable by me before or immediately after notice of allotment is given to me

If within days after the first general allotment, I effect any sales of shares in the company, either directly or indirectly, I am to forfeit my commission.

Any allotment pursuant to this agreement must be made not before days from the date hereof.

I assent to any modifications in the draft of the Prospectus before publication including any of the amount of the minimum subscription.

Any notice to me may be sent through the post to the following address and shall be deemed to be served on the day following that on which it is posted.

This agreement is signed in duplicate.

Dated, this day of 19 .

The above named Company accepts and adopts and agrees to the above.

Signature of the underwriter.
Name... ....
Address..... .....

For and on behalf of
The..... .....Company Ld.
.....Director.
.....Secretary.

(a) For stamp on such agreement see note of Form No. 6 in Appendix B, supra

Form No. 15

Two annas stamp.

(Form of the Letter of Allotment.)

The..... .....Company Limited.

Registered Office.....

No..... .....

Dated, the..... 19

ALLOTMENT LETTER.

Sir, or Madam,

I beg to inform you that, in pursuance of your application, the Directors have allotted to you... ..... . shares of Rs..... each in this Company, in terms of the Prospectus

I shall be glad, therefore, if you will kindly *pay the sum of Rupees.. .. .. being per share the amount due on allotment on or before the. . . . . 19 to the Company's Banker / Head Office (a)

Yours faithfully,

To

.. . . .Esq Manager or Secretary

(When the allotment money is intended to be remitted to the Company's Banker, the form of receipt as given below should be appended to the Allotment letter.)

The Bank... .. . .Ltd,

Address..... ....

Dated..... 19

Being..... .. ....Per share called up.

Received of..... .. ..the sum of Rupees..... ..... being ....per share due on allotment of.....shares of Rs..... ....each in The... ....Company Ld.

For and on behalf of

The..... ....Bank Limited.

Manager or Agent.

N. B.—This letter must be preserved to be exchanged hereafter for the Share Certificate.

---

*Strike out the word not required.

When the allotment money is intended to be remitted to the Company's Banker the following note should be made: This sheet must be presented entire to the Company's Banker with the amount payable. Cheques should be drawn to the 'order of the Banker.

Form No. 16

(Form of Letter of Allotment for fully or partly paid-up shares.)

Two annas stamp.

THE.....COMPANY LIMITED.

Registered Office.....

No..... Dated, the 19

To

.....Esqr.

....

Sir, or Madam,

I beg to inform you that the Directors, under provision of the Prospectus and Articles of Association, by a resolution, passed on the 19 , have allotted to you fully paid-up shares or, (shares paid upto on each share) of this Company, the distinctive numbers of which are to .

The formal contract, entered into between the Company and yourself to this effect has been filed with the Registrar of Joint Stock Companies.

Please communicate to us your acceptance of the shares

N. B—This letter must be preserved to be exchanged hereafter for the Share Certificate

Form No. 17.

(Contract for issue of fully paid-up shares.)

AGREEMENT made this day of 19 , between The Company Limited (hereafter called "the Company" of the one part, and of of the other part, whereby for good and valuable considerations (a) it is agreed that the company shall allot and issue to the said or his nominees shares in the capital of the Company (numbered to) of the nominal value of Rs. per share, the full amount whereof shall be deemed and taken as having been paid up, and all of the said shall for ever hereafter be considered and dealt with as fully paid-up accordingly. (b)

In witness our hand and given under the Common Seal of the Company this day of 19 .

Common seal of the Co.

Directors..... .....

.....

....Recipient of the shares.

(a) It is not essential to state the consideration in detail where it is evident that the consideration does exist It would be more advisable however to state the consideration in detail, *e. g.*, thus, "in consideration of goods etc., conveyed or agreed to be conveyed by the said to the Co." or "in cosideration of the agreement entered for service between the Company and the aforesaid dated the

(b) For stamp on such agreement see note of Form No. 6 Appendix B. Supra.

Form No. 18.

(Form of Receipt, when the Allotment money is to be paid at the Company's Head Office. Receipt, in that case, should not be appended to the allotment letter, but should be kept in the office in a Book Form with Counterfoils)

Counterfoil.

No._____

Date _____ 19 .

Received from _____

Address _____

for _____ shares,

at _____ per share on

allotment.

Letter No. _____

Manager or Secretary.

The _____ Company Limited.

(Registered Office _____)

Receipt for Allotment money.

Received this _____ day of _____ 19 .

from _____ the sum of

Rupees _____ being the amount due on allotment

of _____ shares of Rs. _____

each in the above Company.

Rs. _____

1-Anna Stamp.

For _____ Company Ltd.

Cashier. Secretary.

N. B. :—This receipt should be preserved to be exchanged hereafter for Share Certificate in due course.

Form No. 19

(Form of the Call Book)

CALL BOOK.

The_____Company Limited.

Allottee No.	Name	Address	Registered Folio	First Call Per Share ..			2nd Call.. .... Per Share			3rd. Call ... . Per Share			REMARKS
				No of Call	Date of payment.	Amount	No of Call.	Date of payment	Amount	No of Call.	Date of payment.	Amount	

N. B. :—Only three sets of columns have been provided in the form, but it can be increased according to necessity.

Note—For form No. 20, see p. 348.

Form No. 21.

(Form of the Register of Members

The_____

REGISTER OF

Allottee or Transferee No.	Date of entry (1)	No. of Shares (2)	Distinctive Numbers		Name	Father's or Husband's Name.	Address	Occupation.
			From	To				

1. Put here the actual date of entry in the Register, but not the date of passing
2. Put here the total number of shares subscribed.
3. Put here the date of actually ceasing to be member, when another has been

N. B. :—Only two columns of deposit have been shown in this form for calls but it ma

as required by Section 31 of the Act)

_____Company Limited.

MEMBERS.

Application Deposit.			Allotment Call.			Total Amount	Date of ceasing to be Member (3)	Remarks.
Date.	Cash or Journal Folio	Amount	Date.	Cash or Journal Folio.	Amount			

of the resolution if the entry was not made on that date.

registered.

be increased according to necessity thus :—1st Call, 2nd, and so on.

Form No. 22. (Form of

The _____

SHARE

Name _____

Address _____

Occupation _____

Dr. CASH ACCOUNT Cr

Date	Particulars	Amount called up per share	Folio of application or call registrar	Amount	Date	Particulars	Folio of Cash or Journal	Amount

Share Ledger)

_____ Company Limited.

LEDGER.

SHARE ACCOUNT.

Shares Acquired					Shares disposed of (Transferred).				Balance.	
Date	Regd Folio	Distinctive Nos From	To	No. of Shares	Date	Regd Folio	Distinctive Nos From	To	No. of Shares	No. of Shares

Form No. 23 (*Contd*).

(Back page of Share Certificate)

MEMORANDUM OF PAYMENT OF CALLS (WHEN THE SHARES ARE FULLY PAID UP).

Particulars of calls or instalments	Amount called on each share	Amount due	Amount paid.	Date of payment	Signature of Director or Managing Agent.

NOTE OF TRANSFER

Certification No.	Transfer Deed No.	Date of Transfer.	Name of Transferee.	No of shares transferred	Distinctive Numbers From	Distinctive Numbers To	Date of Meeting	Signature of Directors or Managing Agents.

Form No. 25.

(Form of the Stock Certificate)

The_____ Co. Ltd.

No._____

Date 19 .

Name_____

Address_____

Amount of Stock Rs _____

Date of Delivery

Secretary.

No Rs._____

The Company Limited.

(Incorporated under the Indian Companies Act, 1913)

Two annas Stamp.

This is to Certify that _____

of is the Registered holder of

rupees ordinary Stock in this Company subject to the Memorandum and Articles of Association of the said Company.

Given under the Common Seal of the Company this _____ day of _____ 19 .

Common Seal

_____ } Directors.

_____

_____ Secretary.

N B —This certificate must be surrendered to the Company before any transfer of the Stock can be registered.

Form No. 25 (*Contd.*)

(Form of the Back Page of Stock Certificate.)

NOTE OF TRANSFER.

Certification No.	Transfer No.	Date of Transfer Deed.	No. of Transfer Deed.	Name of Transferee.	Amount of stock transferred.	New Certificate No.	Passed by (Initial).

Form No. 24.

(Form of the Letter of Indemnity).

To

The Directors,

The..... ....Company Limited.

. . . .

Dear Sirs,

The letter of allotment issued to me for shares numbered to inclusive in your Company, having been lost or mislaid, I hereby undertake, in consideration of your handing me the Certificate for the said shares to indemnify you and save you harmless against any loss or detriment which you may suffer by reason of your so doing, and I hereby declare that I have not knowingly parted with the allotment letter in question and should the same hereafter come into my possession I undertake to deliver it up to you

I am,

Witness to the Signature — Yours faithfully,

Name . ... . Name. ... .

Address . . .. . Address..... . .. .

Occupation . . . . Occupation . ...

Form No. 27.

(Form of Call Letter).

The ... . .Company Limited.

Registered Office . . ..

Dated, the 19

Notice of .. . Call of . . per share making Rs . . .. .. per share called up.

Sir, or Madam,

I beg to give you notice that the call of per share has been this day made by the Board of Directors.

On the shares held by you in this Company, the call amounts to You are requested to remit this amount on or before the day of 19 , to the Company's Head Office / Banker (a)

To

Esqr

. . .. .

I am,

Yours faithfully,

Manager or Secretary.

(When the call money is intended to be remitted to the Company's Banker, the form of receipt as given below should be appended to the Call Letter)

The... . ... Bank Limited.

Address.. .. ..

No. ... . Dated, the. .... .19 .

Being..... .. .. .. per share called up.

Received of Esqr. the sum of Rupees being the amount due on shares for call in The Company Limited.

For and on behalf of The Bank Ltd.

Manager or Agent.

N B.—This receipt must be preserved by the share-holder to be exchanged hereafter for share certificate

(a) Strike out the word not required.

When the Call money is intended to be remitted to the Company's Banker the following note should be made :—

This sheet must be presented entire to the Company's Banker with the amount payable. Cheques should be drawn to the order of the Bank.

Form No. 26.

(Form of Share Warrant to Bearer).

COUNTERFOIL.

The ..... Co. Ltd

Share Warrant.

No. ..... of Rs. ..... each

No. .....

Distinctive Nos of

shares ..... to .....

(inclusive).

In exchange of certificate

No. ..... issued to

Name .....

Address .....

Regd. Folio .....

Dated ..... 19 .

Signature .....

Secretary

The ..... Company Limited.

(Incorporated under the Indian Companies Act, 1913)

Capital Rs .....

Divided into ..... Shares of Rs ..... each.

Share Warrant No ..... of Rs. ..... each, Rs. .....

This is to certify that the bearer of this Warrant is entitled to ..... fully paid shares of Rs ..... each numbered ..... to ..... (inclusive) in the above-named Company, in accordance with and subject to the Articles of Association and the conditions (a) endorsed hereon

Given under the Common Seal of the Company this ..... day of .....

Common Seal

..... } Directors.

..... Sectetary.

(a) For conditions consult Palmer's Company Precedents 11th Edition, page 1150.

Form No. 27

(Form of Voucher to be annexed with the Share Warrant.)

The _____ Company Limited.

On _____ day of _____ 19 , and at the expiration of each succeeding period of—say—ten years, the bearer, upon presentation of the appropriate voucher, will be entitled to a fresh sheet of coupons and a new voucher

Dated,

The 19 Secretary.

The _____ Company Limited.

Dividend Coupon No.

On shares included in the Share Warrant Numbered payable at the Company's office at time to be fixed by advertisement.

Share Warrant No	Dividend for half-year or year ending on	Rate of Dividend	Amount paid	Payee's Signature	Passed by.

Form No. 30

(Form for Registe

The _____

TRANSFER

Date of Transfer Lodged	Transfer Deed		No of certificate received	Transferor's			Shares Transferred			
	No.	Date		Ledger Folio	Name	Address	No of shares	Distinctive No of share From	To	Total Amount Received

of Transfer),

_____ Company Limited.

REGISTER.

No. of Certificates		Consideration	Transfer passed.		Transferee's.			Occupation.
To Transferee	To transferor for balance		Date.	Minute No	Ledg Folio	Name	Address	

Form No, 28.

(Form of Notice to the Transferor on the Lodging of Transfer).

The..... .....Company Limited.

URGENT.

Registered Office .....

No..... Dated the .....19 .

Re Transfer Deed No.....

Sir, or Madam,

I have to inform you that a Deed of Transfer purporting to be signed by you and executed in the name of as transferee, for.. ..... shares in the company has this day been deposited at this Office for registration by.....

Unless you reply by return of post, I shall assume the abovenamed transfer to be in order, and it will consequently be placed at the next meeting of the Board for order of registration

I am
Yours faithfully,
Manager or Secretary

To

Esq.

Form No. 29.

(Forms of Transfer Deed)

The Company Limited

SHARE TRANSFER FORM

I..... of

in consideration of the sum of Rupees ...paid to me by ..... (hereinafter called "the said transferee") do hereby transfer to the said transferee the shares numbered to inclusive, in the undertaking called The. Company Limited, to hold unto the said transferee his executors, administrators and assigns subject to the several conditions on which I held the same at the time of the execution thereof and I, the said transferee do hereby agree to take the said shares subject to the conditions aforesaid.

As witness our hands this day of 19

Witness to the signature of Transferor — Signature of Transferor

Name.....

Address.....

Name .....

Address.....

Witness to the signature of Transferee :— Signature of Transferee

Name.....

Address.....

Name.....

Address.....

Affix here the required stamp.

Form No. 31

(Form of Forfeiture Notice)

The..... ....Company Limited.

Registered Office.....
Dated, the.. .....19 .

Sir,

In my letter of the day of 19 , I gave you notice that at a meeting held by the Board of Directors you were called upon to pay a sum of Rs. due on the call of the shares in this Company on or before 19 , at the registered office of the Company and in default to pay interest at per cent per annum.

I am now instructed to inform you that the Directors require you on or before day of 19 , to pay the said sum of Rs together with interest thereon at per cent per annum from the said day of 19 , up to this day and that in the event of non-payment of the said call and interest on or before the said day of 19 , at the place aforesaid the shares in respect of which such call was made will be liable to be forfeited

I am,
Yours faithfully,

To

. . . Esqr Secretary.

.

Form No 32

(Specimen of the Notice of Statutory Meeting)

The . Company Limited

NOTICE is hereby given, that in compliance with the Indian Companies Act, 1913, Section 77 the Statutory Meeting of the Company will be held at .. . .on . ... day of 19 at .... o'clock (A M. or P M).

A copy of the Statutory Report, required to be sent to the members by the above-named Section, accompanies the notice

By order of the Board,

Registered Office.

... . Secretary

Dated 19

Form No. 33

(Specimen of the Notice of ordinary General Meeting)

The. .... .Company Limited.

NOTICE is hereby given that the .... Ordinary General Meeting of the Company will be held at .. . . .on .... day of..... ....19 , at .. . . . . o'clock (A M. or P.M.) for the purpose of passing the Directors' Report and accounts, to elect Directors and Auditors, to declare dividends, and for transacting any other ordinary business of the Company.

By order of the Board,

Registered Office,

.....
Dated.....19 . Secretary.

Form No. 34

(Specimen Form of Proxy)

The..... .....Company Limited.

I..... .. ...of..... . ...in the District of..... . . ... .being a member of The..... . . .. Company Limited, hereby appoint... ... .of..... ..... as my Proxy to vote for me and on my behalf at the (ordinary or extraordinary as the case may be) general meeting of the Company to be held on the..... .. .. .. day of ....19 , and at any adjournment thereof

Signed this. . . . . .day of ... ...

Signature .. . . Two annas Stamp

Holder of share Nos . .. to . ...

Witness :—

Name . . . .

Address. . . . .

Form No. 35

(Specimen form for Recording the Proceedings of the General Meeting)

The . . .. Company Limited

The .... General Meeting of the Company was held on .. .. .day of . . . . 19 at . ..... (A.M or P.M.) at . .

PRESENT —

(Here record the names of Shareholders present)

Mr .. . . .was voted to the Chair

(a) The Notice convening the meeting was read
(b) The Minutes of the last meeting were read and approved
(c) The Directors' Report and Accounts, duly certified by the Company's Auditor, were taken as read
(d) The Report of the Auditor was read

RESOLVED :—

1. That the Report and accounts, as audited and certified by the Company's Auditor, now before the meeting showing the position of the Company's affairs as on the.. ... .day of. . . . . .19 , (give the date of the Balance-sheet) be approved and adopted

Proposed by. . . . .

Seconded by .. ..

(Carried unanimously or with the dissent of. . ...)

2 That..... .....and..... .....be elected as Directors of the Company in place of. ....and..... .....retiring Directors.

Proposed by..... .....

Seconded by .. ..

(Carried unanimously or with the dissent of ....)

3. That the Dividends recommended to be paid by the Directors in their annual report, namely.. ....per cent on the..... .....shares, and.....per cent on the... .. ..shares for the year..... free of income-tax be approved and the dividend be paid to such persons as appear on the Register of Members on the closing of the Books on the .... 19 .

Proposed by ....

Seconded by. ....

(Carried unanimously or with the dissent of... . ...)

4 That Messrs. or Mr ... ..., the Government Certified Auditor or Chartered Accountant, be re-elected as the Auditor of the Company, and that their or his remuneration therefor be Rs .....

Proposed by.... ... .

Seconded by .. . .

(Carried unanimously or with the dissent of .. ..)

Chairman.

Form No. 36.

(Specimen of the Form of Notice for convening an Extraordinary General Meeting)

The. .... Company Limited

NOTICE is hereby given that an Extraordinary General Meeting of the above company will be held at . ..., on the .. ..day of ... . 19, at. .. .. o'clock (A M. or P M.) for the purpose of considering and, if thought fit, passing as an Extraordinary Resolution the sub-joined resolution —

"That it has been proved to the entire satisfaction of this meeting that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up voluntarily (and that . . be and he is hereby appointed liquidator for the purpose of such winding up")

By order of the Board,

Secretary

Reg Office..... .....

Date..... ....

Form No. 37.

(Specimen of the Notice of Extraordinary Resolution for filing with the Registrar of Companies)

[See Form VIII.]

Form No. 39.

(Specimen of the notice for convening Extraordinary General Meeting in passing a Special Resolution.]

The.....Company Limited.

NOTICE is hereby given that an Extraordinary General Meeting of the abovenamed Company will be held at on day of 19 , at o'clock (A. M. or P M.) for the purpose of

considering and, if thought fit, passing the sub-joined resolutions, as Special Resolutions.

(a) That the capital of the company be increased to by the creation of new shares of Rs. each.

(b) That the provisions of the Articles of Association do apply *mutatis mutandis* in regard to the above shares and the increased share capital.

Dated
The 19

By order of the Board,
Secretary.

Form No. 41.

(Specimen of the form for filing the Notice of the Special Resolution with the Registrar of Companies)
[See Form VIII]

Form No 42.

(Form of the Register of Directors)
[See Form XII]

Form No. 43

(Form of Record of Board Meeting)

BOARD MEETING

held on day of
19 at P M

PRESENT —
1
2
3
4
} Signatures of Directors

Signature of Secretary

IN ATTENDANCE —
1. .....Solicitor.
2. .....Auditor.

Form No. 44.

(Form of Recording Proceedings of Directors' Meetings).

The PROCEEDINGS of the meeting of the Board of Directors held at the registered office of the Company on (say) Friday, the..... October, 19 at.....P. M.

PRESENT :—
1.
2.
3.
4.
} (Here give the names of the Directors who attended the meeting and of the Secretary).

Mr..... .and Mr.. .....were in attendance (the names of the persons such as auditor, legal advisor or solicitor are required to be put in these spaces when they were requested to attend.

Mr..... was voted to the Chair. (Such a record is necessary when there is no permanent Chairman of the Board or such permanent Chairman does not attend the Board meeting).

The minutes of the last meeting of the Board, held on..... .....were read, approved as correct and signed.

RESOLVED.

(1) That.. . . . . .. (then follows the resolutions. The resolutions must be numbered consecutively).

Signature of the Chairman.

Form No. 45.

(Form of Power of Attorney from the Directors of a Company to the Manager etc., for General Management). (a)

Know All Men by these presents that we the Directors of The ... . Company Limited, pursuant to clause (b) . of the Articles of Association, hereby appoint. . of the attorney for the Company and for and on behalf of the Company to do the following acts and things —

1. To demand, sue for, enforce payment of, and receive and give effectual receipts and discharges for all monies securities for money, debts, legacies, goods and chattels, of or to which the Company is now or may hereafter become possessed or entitled or which are or may become due, owing payable or transferable to the Company from any person or persons whatsoever

2. To receive and sign and give effectual receipts and discharges for all and any monies which shall come to his hands by virtue of the powers herein contained, and such receipts shall exonerate the person or persons paying such monies from seeing to the application thereof, or being responsible for the loss or misapplication thereof.

3. Upon receipt of any monies which shall be paid to the said Manager by virtue of the premises, to pay or deposit the same in the name of the Company or otherwise, with any banker, broker or other agent, to draw out such monies from time to time and to apply the same for any of the purposes aforesaid or from time to time invest the same at the discretion of the said Manager in or upon, investments and from time to time vary, dispose of such investments, and to apply the purchase monies for any of the purposes aforesaid

4. Subject to the consent of the Directors to execute, sign, enter into, acknowledge, perfect, and do all such contracts, convevances, leases mortgages, transfers surrenders, releases, assurances, deeds, agreements, instruments, acts and things, as shall be requisite for or in relation to all or any of the purposes or matters aforesaid.

5. In the name and on behalf of the Company from time to time, purchase, take on lease or otherwise acquire and hold all such houses, offices, buildings, lands, chattels, and effects as the said Manager shall think necessary or expedient or in relation to any of the purposes or objects aforesaid.

(a) Stamp on such General Power of Attorney is as follows—Imperial Rs. 5; C. Prov., Madras, Assam, Rupees seven annas eight; Bengal, Bombay, Punjab, Rupees ten.

(b) Put here the number of the clause of the Articles of Association by which the Directors are empowered to delegate their powers to others.

6. From time to time, subject to the consent of the Directors, to sell, exchange, surrender, give up, mortgage, charge, pledge, demise, lease or dispose of any houses, offices, buildings, lands of any tenure, or any chattels or effects belonging to or held by the Company, and to procure the enfranchisement of any of the said properties, which may be copyhold or customary tenure, and to grant enfranchisements of any copyhold tenants belonging to the Company, and to transfer, release or otherwise deal with any mortgages, charges, or securities to which the Company may be entitled, and also to execute and enforce any powers of sale or other rights, powers or remedies incident to any such mortgages, charges or securities as aforesaid, and otherwise to realise and obtain the benefit thereof in such manner as the said Manager may think proper, and to assure or dispose of any estates which may be vested in the Company as a trustee or mortgagee

7. To borrow from time to time up to Rs... . .. upon such terms as the said Manager may think expedient for or in relation to any of the purposes or objects aforesaid.

8. To manage or superintend the management of all business and estates of whatever tenure of or to which the Company is or may become possessed or entitled, and to cut timber or underwood and work quarries, mines and minerals (whether now open or in working or not), upon any of the estates, and to erect and pull down, and repair houses or other buildings, fences, and erections and to drain, make roads on, or otherwise improve any of the premises, and to dedicate such roads when made to the public, and to ensure houses against loss or damage by fire.

9. To enter into agreements for yearly, monthly or weekly tenancies to take effect in possession, of all or any of the real or lease-hold properties of the Company, and to make allowances to and arrangements with all or any of the tenants and occupiers for the time being of the property and to accept surrender of leases and tenancies, and to demand sue for, collect and give effectual discharges for the rents and profits now due and henceforth to become due in respect of the same And to take and use all lawful proceedings and means by distress or action or otherwise, for recovering and receiving the said rents and for enforcing the performance of any covenants or agreements which the respective lessees or tenants may be liable to perform, and for ejecting recovering damages from tenants and occupiers making default in payment of such rents or in performance of such convenants or agreements, and for obtaining and retaining possession or all or any of the permises occupied by any lessee or tenants making such defaults.

10. To commence, prosecute or enforce, or to defend, answer or oppose all action or other legal proceedings and demands touching any of the matters aforesaid, or any other matters in which the company is or may hereafter be interested or concerned, and also subject to the consent of the Directors to compromise, refer to arbitration, abandon, submit to judgment, or become non suited in any such action or proceedings and to execute and sign deeds appointing such Lawyers

11. To adjust, settle, compromise or submit to arbitration any demands, disputes and matters touching any of the matters aforesaid, or any other matters which are now subsisting or may hereafter arise between the Company and any other person or persons or between the said Manager or any other person or persons.

12. To compound and accept part in lieu of and in satisfaction for the whole of, or compromise any debt or sum of money now or hereafter owing or payable to the Company or any other claim or demand which the Company have or may have against any person or persons, or to grant an extension of time for the payment or

satisfaction thereof, upon such terms as may be deemed proper, either with or without taking security for the same.

13. To vote at the meeting of any other company or companies and otherwise to act as the proxy or representative of this Company in respect of any shares now held, or which may hereafter be acquired by the company therein, and for that purpose to sign and execute any proxies or other instruments in the name and on behalf of the Company.

14. To appoint and employ any agents, officers, receivers, or other persons at such remuneration by way of salary, commission or otherwise, as the said manager may think proper, and the same from time to time to dismiss and discharge, and any other or others to appoint or employ in their stead.

15. And generally to act as attorney or agent of the Company in relation to the business or properties and all other matters in which the Company may be interested or concerned, and on behalf of the Company to execute and do all instruments, acts matters and things as fully and effectually in all respects as the Directors themselves could do.

16 In case the said Manager become incapable to act or be absent from the station, the Company hereby appoint.. .. of. ... .. . as substitute to be the attorney in place of the aforesaid Manager, with power to exercise all or any of the powers and authorities hereinbefore conferred on the said Manager in as full and ample a manner, in all respects as if the name of the said substitute had been hereinbefore throughout instead of the name of the said Manager.

In witness our hands given under the Common Seal of the Company. this..... .....day of.... .... .19 .

Common Seal

.. ..
... . } Directors

The .. .. Company Limited.

Form 46

(Form of Agreement upon engagement of a Manager, Managing Agent or such other officer by a Company without Power of Attorney.)

An Agreement made the day of 19 , between The Company Limited (hereinafter called the Company) on the one part and of (hereinafter called the Manager) of the other part as follows :—

1. The Company hereby agree to engage the Manager, who hereby agrees to become and continue to work as Manager to the Company for the term of years from the day of 19 . or until the earlier determination of the said employment at any time during the said term by either party giving to the other calendar months' notice in writing of an intention to do it.

2. The Manager will devote his whole time attention abilities and energies during office hours (subject to the usual and reasonable holidays) exclusively to the said work and will not absent himself therefrom without the consent of the Directors.

3. The Manager will not wilfully cancel, obliterate, injure, embezzle, waste or make away with any of the books, deeds, papers, writings or other property of the company nor without the leave of the Directors lend the same to others.

4. The Manager shall not at any time hereafter without the consent in writing of the Directors divulge or make known any of the trusts, secrets, accounts, matters or transactions of or relating to the business of the company, but will keep with inviolable secrecy all matters entrusted to him and faithfully and diligently serve the company and shall neither take nor give any gratuity or reward in any case without the express consent of the Directors.

5. The Manager will be faithful to the Company in all matters, dealings and transactions whatsoever and will give to the Directors a just and true account of the same at all times when the same shall be required of him.

6. The Manager shall not during the continuance of this agreement (or within one year after the determination thereof) without the previous written consent of the Directors either join or be engaged as principal, partner, servant, agent or shareholder in any business identical with the business of this Company in any part of this country.

7. The Company will monthly or every month during the time the Manager shall remain in the Company's employ under these presents pay or cause to be paid to the Manager on the last day of each calendar month the clear monthly salary of Rs (subject to the deduction of Income Tax and such other taxes) and a bonus of % on the net yearly profit of the Company The first monthly payment thereof to be made on the day of 19 (and the payment of the proportion on the net yearly profit to be made on the same day of the subsquent week after the adoption of the balance-sheet of the Company in General Meeting) and a proportionate part of the current monthly payment up to the date of termination of the said employment to be made in case the same should be determined by death, notice or otherwise on any other than the last day of the calendar month.

8. In case the Manager shall commit any breach of this agreement or neglect his duties or any of them or shall become bankrupt or make any arrangement with his creditors or be guilty of any such misconduct, it shall not be necessary for the Company to give the Manager any notice whatsoever of their intention to determine his said employment but the Directors shall have power to dismiss him forthwith paying such a proportion of his salary only as shall be due in respect of the then current month up to the date of such dismissal together with arrears (if any).

9. Subject to the stipulations contained herein and to any directions or orders from time to time given by the Directors, the Manager shall have the general control of the business and of the persons from time to time employed therein including engaging and dismissal of any such persons.

In witness our hands and given under the Common Seal of the Company day of 19 .

Manager, Managing Agent or Managing Director.	Common Seal of the Company	} Directors

The..... .....Company Limited.

Form No. 47

(Form of Common Seal Book)

The . Company Limited

SEAL BOOK

Serial No.	Date of Authentication of Seal	Resolution No	Date of Sealing	No of Documents Sealed	Particulars of Documents Sealed	Signature of Persons who signed the documents on Sealing.	
						Director	Secretary or Manager

Form No. 48.

(Form of the

The . . . . . .

DIVIDEND

(Declared at the General

No. of Warrant	Allottee No or Transferee No.	Name	Address	Ledger Folio	Description of Shares. Number.	Value

Dividend Regi-ter)

. . . . **Company Limited.**

REGISTER.

Meeting held on . . . . 19 .

Composition of Warrant			Date of payment	Remarks
Dividend at.. ./.	Less Income Tax	Amount of Warrant		

Form No. 51.

(Form of Debenture Register.)

DEBENTURE REGISTER.

The _____ Company Limited.

Name _____

Address _____

Description _____

DEBENTURE BONDS DISPOSED OF						DEBENTURE BONDS ACQUIRED.				
Date of Transfer.	Transfer Deed No.	Particulars of Bonds			Total Value.	Date of entry	No. of Allotment or Transfer	Particulars of Bonds.			Total Value.
		Transferee's Name.	No. of Bonds.	Distinctive Numbers of Bonds				If by Transfer Transferor's Name	No. of Bonds	Distinctive Numbers of Bonds.	

Form No. 49.

(Form of Income-Tax Certificate to be attached to Dividend Warrant).

The..... . ...Company Limited.

Address of Company..... .....

Date..... .....

WARRANT for Rs being dividend (*a*) of Rs per share for the (*b*) ending on the day of 19 , (*c*) on (*d*) Shares in this Company, registered in the name of . The dividend was declared at the (*e*) meeting held on the (*f*) 19

I/We hereby certify that income-tax ~~on the entire~~ on such part as is liable to be charged to Indian Income-Tax of the profits and gains of the Company, of which this dividend forms a part, has been, or will be, duly paid by me/us to the Government of India

Signature .. ..

Designation . ...

(To be signed by the claimant)

I hereby certify that the dividend above-mentioned relates to shares which were my own property at the time when the dividend was declared and were in the possession of

Signature . .. .

Date .. . .

(a) Or dividend and bonus
(b) Year or half-year, as the case may be
(c) Here enter whether free of income-tax or not
(d) Here enter number and description of share.
(e) Here specify number and nature of meeting
(f) Here enter date

Form No. 50.

(Debenture Issued to Registered-holder)

The..... . . . . Company Limited

Rs. 50. No 1.

Issue of Rs 50,000 Debentures, in 1000 Debentures of Rs. 50 each

Bearing interest at. . .....per cent. per annum.

1. The Company Limited (hereinafter called the Company) will on the day of , or on such earlier day as the principal moneys hereby secured become payable, in accordance with the conditions indorsed hereon, pay to of or other registered holder for the time being hereof the sum of Rupees Fifty only

2. The Company will in the meantime pay to such registered holder interest thereon at the rate of per cent per annum by equal half yearly payments on every day of and day of in each year, the first of such half yearly payments to be made on the day of .

3. The Company hereby charges with such payments its undertaking and all its property whatsoever and wheresoever, both present and future, including its uncalled capital for the time being

4 This Debenture is issued subject to the conditions indorsed hereon.

Given under the Common Seal of the Company this day of 19

Common seal.

For and on behalf of
The . . . . Company Limited
. . ..Director.
. ... .Secretary

The conditions within referred to —

1 This debenture is one of a series of debentures of the Company for securing principal sums not exceeding, in the whole at any one time Rs The debentures of the said series, whether original or not, are all to rank *pari passu* as a first charge on the property hereby charged without any preference or priority one over another and such charge is to be a floating security, but so that the Company is not to be at liberty to create any mortgage or charge on his freehold and lease-hold land in priority to the said debentures

2 A register of the debentures will be kept by the Company at the registered office, wherein there will be entered the names, addresses, and descriptions of the holders and particulars of the debentures held by them respectively, and such register will at all reasonable times during business hours be open to the inspection of the registered holder or his legal personal representative and any person authorised in writing by him or them

3. Save as in these conditions otherwise provided, the registered holder will be regarded as exclusively entitled to the benefit of the debentures, and all persons may act accordingly, and the Company shall not be bound to enter in the register notice of any trust, or, save as herein provided and except as by some Court of competent jurisdiction ordered, to recognise any right of any other person save as herein provided

4. Every transfer of this debenture must be in writing under the hand of the registered holder or his legal personal representative The transfer must be delivered at the registered office of the Company with a fee of and such evidence of identity or title as the Company may reasonably require, and thereupon, if this debenture remains registered in the name of the transferor, the transferee will be recognised as having become entitled to the benefit of this debenture free from any equities set off, or cross claims which, but for this provision, the Company would be entitled to act up against the transferor, and the transfer will be registered, and a note of such registration will be indorsed hereon The Company shall be entitled to retain the transfer

5 In case of joint registered holders the principal moneys and interest hereby secured will be deemed to be owing to them upon a joint account

6. No transfer will be registered during the seven days immediately preceding the days by this debenture fixed for payment of interest

7. The principal moneys and interest hereby secured will be paid and such moneys are to be transferable as aforesaid free from and without regard to any equities between the Company and the original or any intermediate holder hereof on any set-off or cross claims, and the receipt of the registered holder for such principal moneys shall be a good discharge to the Company.

8. The Company may at any time give notice in writing to the registered holder hereof, his executors or administrators, of its intention to pay off this debenture, and upon the expiration of six calendar months from such notice being given the principal moneys hereby secured shall become payable.

9 The principal moneys hereby secured shall immediately become payable (a) if the Company makes default for a period of six calendar months in the payment of any interest hereby secured, and the registered holder hereof before such interest is paid by notice in writing to the Company calls in such principal moneys ; or (b) if an order is made, or an effective resolution is passed for the winding up of the Company

10. The principal money and interest hereby secured will be paid at The Bank Limited No Street or at the registered office of the Company.

11 A notice may be served by the Company upon the holder of this debenture by sending it through the post in a prepaid letter addressed to such person at his registered address

12. Any notice served by post shall be deemed to have been served at the expiration of twenty-four hours after it is posted and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office

Form No. 52

(Form of Satisfaction of Mortgage etc.)

[See Form XXVIII]

Form No. 53

(Form of Gazette Notice of Special Resolution to Wind up)

In the matter of The ... . Co. Ltd.

(In the matter of the Indian Companies Act, 1913)

At an extraordinary general meeting of the above-named Company duly convened, and held at. . on the day of. . . .., the following resolution, was passed as a special resolution, viz —"The..... ....etc" (set it out)

(If the resolution purport to appoint liquidators, add —And at such meeting .. .. , of ..was appointed liquidator for the purposes of the winding up)

Dated... . ... etc . ...Chairman.

Form No. 54

(Gazette notice of Extraordinary Resolution to Wind up).

In the matter of The. . . ..Co. Ltd.

(In the matter of the Indian Companies Act, 1913).

At any extraordinary general meeting of the members of the abovenamed Company, duly convened, and held at .. ....on the ..... day of..... ..... the following extraordinary resolution was duly passed :—

"That it has been proved, etc . and at the same meeting..... .....of ....., was appointed liquidator for the purposes of such winding-up."

.....Chairman

Dated this.....day of..... ....

Form No. 55

(Form of Liquidator's Statement of Account)

See Calcutta High Court Rules, Form No. 33.

Form No. 56

(Form of Prospectus.)

———

(This Prospectus has been duly filed with the Registrar of Joint Stock Companies)

PROSPECTUS

of

The ... .Company Limited

Authorised Capital (a) Rs . . .. divided into .... Ordinary shares of the value of Rs. . .... each . . Preference shares carrying a cumulative dividend of 6 per cent. per annum and . . .Deferred shares of Rs. ... ...each.

Of the preference shares ...shares are redeemable on or before (date) Or on six months notice

The preference shares carry a fixed preferential cumulative dividend of 6 per cent. per annum on the capital for the time being paid up thereon and rank in priority to ordinary and deferred shares both as regards dividends and capital (b) but without any further right to participate in further profits

The deferred shares are issued with the following rights (Here state the rights attached to Deferred shares) (c)

[State any restrictions on the rights of voting of any class of share-holders].

Shares of the value of Rs have been already subscribed shares of the value of Rs. are to be issued as paid up. And the remaining shares are now offered for public subscription payable as follow :—

Rs .. ..per share with application

Rs ....per share on allotment

[Rs.....per share on.....

Rs ..... per share on .....]

(Or where the time for the calls is not fixed),

[The balance according to calls to be made by the Directors, provided that the amount of each call shall not exceed Rs. and calls are not to be made at intervals of less than months' nor with less than days previous notice to the shareholders]

(a) If the Prospectus is issued by a Company already carrying on business, it must also state under this the amount of subscribed Capital and paid-up Capital.

(b) If preference shares have preference in respect of Capital they are entitled to be paid up in full in winding up before the ordinary shares.

(c) If there are any special incidents of the various classes of shares with regard to votes they should be stated.

(Where a portion of the Capital is not to be called up)
[It is not proposed to call the balance for the present]

DIRECTORS.

(Names, description and addresses)

MANAGING AGENTS.

(Names, descriptions and addresses)

BANKERS.

(Names and addresses)

AUDITORS

(Names, descriptions and addresses)

SOLICITORS

(Names and addresses) (a)

PROSPECTUS

This Company has been started for the purposes specified in the Memorandum of Association which is annexed hereto and forms a part of this prospectus. (b)

It is proposed immediately to start a tannery for the manufacture of chrome and bark-tanned leather and leather-goods at

The Company has purchased acres of land on the river-side within easy reach of the railway station The site is admirably suited for the business being in the centre of the hide market and within easy reach of the market for finished goods
The vendor is of and the terms of the sale are (here state the material terms)

The aforesaid property is part of the property purchased by the vendors on (date) for a total value of Rs , the proportionate purchase price of the area acquired by the Company being Rs

Under the terms of the Memorandum of Association the Company propose to take over the business of X Y & Co the well-known tanners and leather-goods manufacturers of (give address) and preliminary agreements for taking over the business have already been entered into

The terms on which the business of X Y & Co has been contracted to be taken over are as follows —

(Here give the material particulars of the agreement;
Distinguish between value of assets and goodwill).

The assets of the aforesaid X. Y & Co. have been valued by P Q the well-known expert on tanning machinery who has also given a report on the prospect of the business from which the following extracts are made :—

(Here give the material portions of the report of the expert).

A statement of the profits of the aforesaid business during the years (*three years*) so far as they appear from its books as well as a balance sheet of the business is annexed hereto.

It will appear from the above that there are very good prospects before the business and after making every allowance the Company expects to pay a handsome return for the capital invested.

(a) Name of Secretary, and of Brokers, if any, may also be given.

(b) The whole of the Memorandum together with the names of the signatories and the number of shares subscribed by each should be given. The Memorandum is not to be annexed to copies of Prospectus published in newspaper.

The QUALIFICATION for the office of a Director is the holding of not less than shares.

The MINIMUM SUBSCRIPTION on which the Directors may proceed to allotment is shares of the value of Rs , Rs being the value of the properties purchased, Rs the preliminary expenses and Rs the working capital

The Company is to issue fully paid up shares to in consideration of

Shares of the value of Rs now issued for subscription have been underwritten by A B for a commission of per cent to be paid by the Company and in the opinion of the Directors the resources of the underwriters are sufficient to discharge their underwriting obligation.

THE PRELIMINARY EXPENSES of the Company are not likely to exceed Rs out of which Rs is to be paid by the Company to for his services in the promotion of the Company.

Of the Directors Mr is a member of the firm of X Y Co (here state any other interest which any Director has with X Y & Co., set out above)

The following CONTRACTS have been made by the Company

(Here set out any other material contracts with the names of parties)

The provision in the articles with regard to the appointment and remuneration of Managing Agents [or manager] are as follows :

[Here set out the relevant articles].

Application for shares should be made in the form accompanying this prospectus and sent to the Company's Bankers together with a remittance of the amount of the deposit

If no allotment is made the deposit will be returned in full and where the number of shares allotted is less than the number of shares applied for the balance of the deposit will be applied towards the payment of future calls

The report of the expert above referred to as well as the contracts herein referred to can be inspected in the office of the Company between the hours of and

[The provision of sec 93 sub sections 1A to 1C must be complied with where they are applicable.]

Form No. 57.

(Form of Articles of Association of a Private Company)

Private Company Limited by Shares

ARTICLES OF ASSOCIATION

of

The... ... ... Company Limited

(The Indian Companies Act of 1913)

The regulations contained in Table A in the First Schedule to the Indian Companies Act of 1913 shall not apply to this Company and in lieu thereof the following shall be the Articles of the Company

2 The Company shall be a Private Company, and (1) no invitation shall be issued to the public to subscribe to its shares and debentures or debenture-stock of

*If there have been any previous issue of shares within two preceding years, state particulars in sec. 93 (h).

of the Company, and (ii) the number of members of the Company shall not exceed fifty, provided that the joint-holders of one or more shares shall be considered for the purpose of this clause as one member.

3 The shares of members of the Company shall not be transferable except subject to restrictions hereinafter specified.

4—11. (Here the Provisions of Table A, Art 3, 4 and 6—11 may be incorporated serially in respective order)

12 The Directors may, subject to the provisions of these articles, from time to time, make such calls upon the members in respect of all monies unpaid on their shares as they think fit, provided that 14 days notice at least is given of each call and each member shall be liable to pay the amount of every call so made upon him to the persons, by instalments (if any), and at the time and the place appointed by the Directors

13—21. (Here the provisions of Table A. Art 13—21 may be incorporated serially in respective order)

22. The Executor or Administrator of a deceased shareholder where there is one or the heir where there is no Will and no Letters of Administration have been taken out shall be entitled to be recognised by the Company as having any title to the shares of the deceased share-holder upon satisfactory proof of his title by producing either a Probate or Letters of Administration, or a Succession Certificate or a Certificate of the Administrator-General.

23. Any share may be transferred at any time by a member to his or her lineal descendants or to his or her father or mother, or to any lineal descendant of such father or mother, or to his or her wife or husband, and to such person as mentioned in article 22 above

24. Save as hereby otherwise provided no share shall be transferred to any person who is not a member of the Company so long as any member is willing to purchase the same at the fair value which shall be determined by the Directors.

25 In order to ascertain whether any member is willing to purchase a share at the fair value, the person, proposing to transfer the same (hereinafter called 'the retiring member") shall give a notice in writing (hereinafter described as a 'sale notice') to the Company that he desires to sell the same. Every sale notice shall specify the denoting number of the shares which the retiring member offers for sale and the fair value thereof shall be determined by the Directors provided that where there is a *bonafide* purchaser outside the members of the Company who has made a binding offer to pay the shares at a specified price, the price fixed by the Directors as a fair value of the shares shall not be less than the price so offered. No sale notice shall be withdrawn except with the sanction of the Directors

26. The Company shall within 28 days after the service of a sale notice find a member willing to purchase the shares comprised therein (hereinafter described as purchasing member) and shall give notice thereof to the retiring member ; the retiring member shall be bound upon payment of the value to transfer the shares to such purchasing member who shall be bound to complete the purchase within seven days from the service of such notice.

27. In the event of the retiring member failing to carry out the sale of any shares which he shall have become bound to transfer as aforesaid, the Directors may execute a transfer in his name and may give a good receipt for the purchase price of such shares and may register the purchasing member as holder thereof and issue to him a certificate for the same and thereupon the purchasing member shall become indefeasibly entitled thereto. The retiring member, in such case,

shall be bound to deliver up his certificate for the said shares, and on such delivery shall be entitled to receive the said purchase price without interest and if certificate shall comprise any shares which he has not become bound to transfer as aforesaid, the Company shall issue to him a certificate for such shares.

28. If the Directors cannot, within the space of 28 days after service of a sale notice, find a purchasing member of all or any of the shares comprised therein and give notice accordingly, or if, through no default of the retiring member, the purchase of any shares in respect of which such last mentioned notice shall be given shall not be completed within 21 days from the service of such notice, the retiring member shall at any time within six months thereafter, be at liberty subject to article 29 hereof, to sell and transfer the shares comprised in his sale notice (or such of them as shall not have been sold to a purchasing member) to any person and at a price not less than that determined by the Directors to be the fair value.

29. The Directors may, in their discretion, refuse to register the transfer of any share to any person whom it shall in their opinion be undesirable in the interest of the Company to admit to membership, but such right of refusal shall not be exerciseable in the case of any transfer made pursuant to article 23, except for the purpose of ensuring that the number of members does not exceed the limit prescribed by article 2 The Directors may refuse to register any transfer of shares on which the Company has a lien

30—38 (Here the provisions of Table A, Art 22—30, may be incorporated serially in respective order)

ALTERATIONS OF CAPITAL.

39 The Company may alter the conditions of its Memorandum of Association regarding its capital by ordinary resolution —

(*a*) to increase the share capital of the company.

(*b*) to consolidate and divide its capital into shares, or

(*c*) to cancel any shares not taken or agreed to be taken by any person and by special resolution —

(*d*) to divide its capital or any part thereof into shares of smaller amount than is fixed by its Memorandum of Association by sub division of its existing shares or any of them, subject nevertheless to the provisions of the statutes, and so that as between the holders of the resulting shares one or more of such shares may by the resolution by which such sub-division is effected be given any preference or advantage as regards dividend, capital, voting or otherwise over the others or any other of such shares, or.

(*e*) to reduce its capital in any manner authorised and subject to any conditions prescribed by the statutes.

40—44. (Here the povisions of Table A, Art. 45—49. may be incorporated serially in respective order.)

45. All business shall be deemed special, that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting shall also be deemed special with the exception of sanctioning dividend, the consideration of the Accounts and the Balance-Sheets and ordinary reports of the Auditors and Directors and the fixing of the remuneration of the Directors and Auditors.

46. 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, and two members personally present shall be a quorum.

47—62 (Here the provisions of Table A, Art. 52—67 may be incorporated serially in respective order.)

63. Unless otherwise determined by the Company in a general meeting the maximum number of Directors shall be and minimum
The first Directors of the Company shall be the subscribers to the Memorandum of Association.

64—67. (Here the provision of Table A, Art. 69—72 may be incorporated serially in respective order.)

68. The amount for the time being, remaining undischarged of monies borrowed or raised by the Directors for the purposes of the Company (otherwise than by the issue of the share capital) shall not at any time exceed Rs.
without the sanction of the Company in general meeting

69—82. (Here the provisions of Table A, Art 74—87, may be incorporated serially in respective order.)

83. The quorum necessary for the transaction of business of the Directors may be fixed by the Directors, and unless fixed shall (when the number of Directors exceeds 2) be two.

84—105. (Here the provisions of Table A, Art 89—110, may be incorporated serially in respective order.)

106. Once at least in every year the account of the Company shall be examined and the correctness of the statement and balance-sheet ascertained by one or more auditors who shall be appointed in the annual general meeting of the Company except in the case of the first auditors who shall be appointed by the Directors.

107—111 (Here the provisions of Table A, Art. 112—116 may be incorporated serially in respective order.)

Form No. 58

Schedule of Depreciation Allowance

The allowance under section 10(2) (vi) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be at percentage of the written down value or original cost, as the case may be, *equal to one-twelfth the number* shown in the corresponding entry in the second column of the following statement :—

Provided that if the buildings, machinery, plant or furniture have been used by the assessee in his business for not less than two months during the previous year, the percentage shall be increased proportionately according to the number of complete months of user by the assessee

Provided further that in the case of a seasonal factory worked by the assessee during all the working seasons of the previous years, the percentage shall be increased as if the buildings, machinery, plant or furniture had been in use throughout the period the assessee was the owner thereof during the previous year.

Class of Asset	Rate Number on the basis of which the percentage is to be calculated on the written down value, except where otherwise indicated in the case of ocean-going steamers	Remarks.
1. Buildings :—		
(1) First class substantial buildings of selected materials	2 5	
(2) Second class buildings of less substantial construction	5	Double these numbers will be taken for factory buildings excluding offices, godowns, officers' and employees' quarters
(3) Third class buildings of construction inferior to that of second class buildings but not including purely temporary erections	7 5	
(4) Purely temporary erection such as wooden structures	—	No rate is prescribed, renewals will be allowed as revenue expenditure
2. Furniture and fittings —		
(1) General	6	
(2) Rate for furniture and fittings used in hotels and boarding houses	9	
3 Machinery and Plant —		
(1) General rate	7	An extra allowance up to a maximum of 50 per cent of the normal allowance will be allowed by the Income-tax Officer where a concern claims such allowance on account of double or multiple shift working and satisfies the Income-tax Officer that the concern has actually worked double or multiple shifts. This extra allowance will be proportionate to

Class of Asset.	Rate	Remarks,
		the number of days during which double or multiple shifts are worked. For the purpose of granting this extra allowance the normal number of working days throughout the year will be taken as 300 and if for example a concern has worked double or multiple shifts for 100 days the extra allowance will be ⅓ of 50 per cent of the normal allowance for the whole year. This applies to all concerns whether the general rate or any special rate applies to them but does not apply to an item of machinery or plant specifically excepted by the letters "N.E.S.A." † being shown against it.
(2) Special rates to be applied to the whole of the machinery and plant used in the following concerns —		The special rates specified hereinafter may be adopted at the option of the assessee for electrical machinery, air-conditioning machinery, locomotives, rolling stock, tramways and railways, weighing machines, calculating machines,

† Letters N.E.S.A. are a contraction of the expression "No extra-shift allowance."

	Class of Asset.	Rate	Remarks.
			typewriters, Neopost, Franking machines, accounting machines, other office machinery, refrigeration plant, containers, etc, and motor vehicles used in these concern
A. (i)	Flour Mills*	9	
(ii)	Rice Mills		
(iii)	Bone Mills		
(iv)	Sugar Works*		
(v)	Distilleries		
(vi)	Ice Factories		
(vii)	Aerating Gas Factories		
(viii)	Match Factories		
(ix)	Tea Factories		
(x)	Shoe and other leather goods factories		
(xi)	Starch factories		
(xii)	Coffee manufacturing concerns		
B (i)	Paper Mills	10	
(ii)	Straw Board Mills		
(iii)	Ship building and Engineering Works		
(iv)	Iron and Brass Foundries		
(v)	Aluminium Factories		
(vi)	Electrical Engineering Works		
(vii)	Motor car repairing works		
(viii)	Internal combustion Engines repairing works		
(ix)	Galvanizing works		
(x)	Patent stone works		
(xi)	Oil extraction factories		
(xii)	Chemical works		
(xiii)	Soap and candle works		
(xiv)	Lime works		
(xv)	Saw Mills		
(xvi)	Tin and can making works		
(xvii)	Dyeing and bleaching works		
(xviii)	Cement works using rotary kilns		
(xix)	Rod Mills		
(xx)	Hydraulic Presses		
(xxi)	Brick manufacture		
(xxii)	Tile making industry		
(xxiii)	The manufacture of vegetable ghee		
(xxiv)	The manufacture of optical instruments		
(xxv)	Coke manufacture		

* Replacements of Rollers will be allowed as revenue expenditure.

Class of Asset.	Rate	Remarks.
(xxvi) The manufacture of concrete pipes (xxvii) Glass manufacture and the manufacture of vacuum tubes and vacuum bulbs (xxviii) Telephone operating concerns (xxix) Wire and nail making Mills (xxx) Iron and steel industry (Blast furnace plant, steel-making plant, steel-rolling plant, forges, generators, boilers and sheet mills) (xxxi) Tanneries (xxxii) Battery manufacture (xxxiii) The manufacture of Healds and Reeds (knitting, reed-making, varnishing doubling, winding and polishing machines) (xxxiv) The manufacture of confectionery including biscuits and peppermints	10	
C (i) Rubber goods factories— (a) General machinery and plant (b) Moulds (N E S A)	12 40	
D. (i) Silk manufacturing— Weaving machinery worked by electric motors including winding machines, twisting frames, doubling machines, pirn winding machines, warping machines, looms stentering machines and hydro-extractors	12	
(3) Special rates to be applied to other machinery and plant—		
A Ropeway structures (N E S A) (i) Trestle and Station steel work (ii) Driving and tension gearing (iii) arriers (iv) Ropeway ropes and trestle sheaves and connected parts	6 10 12 30	
B. Salt works— (i) Machinery, plant, locomotives, wagons and rolling stock (ii) Barges and floating plant (N.E.S.A.) (iii) General plant and machinery used in Engineering shops (iv) Reservoirs, condensers, salt pans, delivery channels and piers, if constructed of masonry, concrete cement, asphalt or similar materials (N. E. S. A.)	15 10 10 6	
Note.—Repairs to similar works made of earth will be allowed as revenue expenditure.		
(v) Piers, quays, and jetties constructed entirely or mainly of steel (N.E.S.A)	7.5	

Class of Asset.	Rate	Remarks.
(vi) Piers, quays and jetties constructed entirely or mainly of wood (N.E.S.A.)	12	
(vii) Pipe lines for conveying brine if constructed of masonry, concrete cement, asphalt or similar materials (N.E.S.A.)	12	
C Electrical machinery—		
(i) Batteries	20	
(ii) Other electrical machinery including electrical generators and motors (other than tramway motors)	10	
(iii) Switchgear and instruments, transformers and other stationery plant and wiring and fittings of electric light and fan installations (N.E.S.A.)	10	
(iv) Underground cables and wires (N.E.S.A.)	7.5	
(v) Overhead cables and wires (N.E.S.A.)	5	
(vi) X-Ray and Electro therapeutic apparatus and accessories thereto (N.E.S.A.)	20	
D Machinery used in the production and exhibition of cinematograph films (N.E.S.A.)		
(i) Recording equipment, reproducing equipment, developing machines, printing machines, editing machines, synchronisers and studio lights *	20	
(ii) Protecting equipment of film exhibiting concerns	20	
Distribution—		
1 Returnable packages	—	Cost of packages actually used up will be allowed as revenue expenditure.
2 Kerbside pumps including underground tanks and fittings.	15	
E. Electric supply undertakings—		
(i) Electric plant, machinery, boilers.	10	
(ii) Hydro-electric concerns—hydraulic works, pipe lines and sluices (N.E.S.A.)	2.5	
F. Electric tramways—		
(i) Permanent way (N.E.S.A.)		
(a) Not exceeding 50,000 car miles per mile of track per annum.	9	

* Renewals of bulbs of studio lights will be allowed as revenue expenditure.

Class of Asset.	Rate	Remarks.
(b) Exceeding 50,000 and not exceeding 75,000 car miles per mile of track per annum ;	10	
(c) Exceeding 75,000 and not exceeding 125,000 car miles per mile of track per annum.	12	
(d) Exceeding 125,000 car miles per mile of track per annum.	15	
(ii) Cars—car trucks, car bodies, electrical equipment and motors (N.E S A)	10	
(iii) General plant, machinary and tools.	9	
G ' Tramways run by internal combustion engines (N.E.S.A)	The same numbers as have been prescribed for the permanent way of electric tramways	
(i) Permanent way		
(ii) Tram cars including engines and gears.	10	
H. Mineral oil concerns (N E.S,A)		
Refineries—		
1. Boilers	10	
2. Prime movers	10	
3 Process plant	12	
Field operations—		
1. Boilers	10	
2. Prime movers	10	
3. Process plant	12	
Except for the following items—		
1 Below ground	100	
2 Above ground—		
(a) Portable boilers, drilling tools, well-head tanks, rigs, etc	30	
(b) Storage tanks	10	
(c) Pipe lines—		
(i) Fixed boilers	10	
(ii) Prime movers	12	
(iii) Pipe line	10	
I Ships (N.E.S.A.)		
(i) Ocean—		
(a) Steamers and motor vessels	5	The allowance is to be calculated on the original cost For (1) the increased rate of depreciation on ocean-going steamers and motor vessels due to war-time condi-

Class of Assets.	Rate	Remarks,
		tions. (2) the rate of depreciation on second-hand ocean-going steamers and motor vessels and (3) the rate of depreciation on additions to ocean-going steamers and motor vessels
(b) Sail or tug	4	
(ii) In land—		
(a) Steamers and motor vessels	10	
(b) Tug boats	12 5	
(c) Iron or steel flats for cargo	10	
(d) Wooden cargo boats upto 50 tons capacity	10	
(e) Wooden cargo boats over 50 tons capacity	10	
(f) Motor launches	12 5	
• (g) Speed boats	20	
J Mines and quarries (N E S A.)		
(i) Machinery—		
(a) Surface and underground machinery (except electrical machinery), head gear, moving parts and rails	15	
(b) Boilers and head gears (excluding moving parts)	8	
(ii) Coal tubs, winding ropes haulage ropes and sand stowing pipes.		Renewals will be allowed as revenue expenditure
(iii) Shafts and inclines	7	
(iv) Portable underground machinery	25	
(v) Safety lamps		Cost of lamps actually used up will be allowed as revenue expenditure
(vi) Tramways on the surface	10	
K. Aeroplanes (N E S.A.)—		
(i) Aircraft	30	
(ii) Aero-engines	40	
(iii) Aerial photographic apparatus	25	
L. (i) Textile machinery excluding silk manufacturing machinery—		
(a) Cotton	10	
(b) Jute excluding generating plant	9	

• "Speed Boat" means a motor-driven boat by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 15 miles per hour in still water and so designed that when running at speed it will plane, *i.e.*, its bow will rise from the water.

	Class of Assets.	Rate	Remarks.
	(c) Woollen and worsted	10	
	(d) Carpet	10	
	(ii) Ginning and pressing machinery	9	
M.	(i) Air compressers and pneumatic machinery,		
	(ii) Electro-plating and electro-welding plant		
	(iii) Newspaper production plant and machinery	10	
	(iv) Air-conditioning machinery		
	(v) Locomotives, rolling stock, tramways, and railways used by concerns excluding railway concerns (N.E S A)		
N	(i) Tube well boring plant		
	(ii) Concrete pile driving machines		
	(iii) Weighing machines (N.E S A)		
	(iv) Works instruments	12	
	(v) Automatic and semi-automatic machine tools		
	(vi) Precision machine tools *e g* grinding machines		
O	(i) Calculating machines (N E S A)		
	(ii) Typewriters (N E S A)		
	(iii) Neo-Post Franking machines (N.E S A)		
	(iv) Accounting machines (N E S A)		
	(v) Other office machinery (N.E S A)		
	(vi) Sewing and knitting machines employed in the manufacture of hosiery and woollen goods		
	(vii) Sewing and stitching machines for canvas or leather		
	(viii) Hand or automatic embroidery machines and their accessories (N E.S.A)	15	
	(ix) Refrigeration plan, containers, etc (N E S A)		
	(x) Road making plant and machinery		
	(xi) Artificial silk manufacturing machinery *		
	(xii) Surgical instruments (N E S.A.)		
	(xiii) Wireless apparatus and gear, wireless appliances and accessories (N.E S A.)		
	(xiv) Building contractors machinery (N E S A)		

* Replacement of wooden parts of plant and machinery will be allowed as revenue expenditure

	Class of Asset.	Rate	Remarks.
P.	(i) Indigenous sugar cane crushers (Kohlus and Belans) (N.E.S.A.)	18	
Q.	(i) Motor cars (N.E.S.A.)	20	
	(ii) Cycles (N.E.S.A)	20	
R.	(i) Moulds used in the manufacture of concrete pipes (N.E.S.A)	25	
	(ii) Motor taxis, motor lorries, motor buses and motor tractors. (N.E.S,A)	25	
S.	(i) Railway sidings (N.E S A.)	7	

Form No. 59

Form of Return of Total Income

(Form showing Income, Profits, or Gains from Business, Trade and Commerce)

Form of return of total income and total world income for individuals, Hindu, Undivided Families, companies local authorities, firms and other Associations of persons under Sub-section (1) or (2) of Section 22 of the Indian Income-tax Act 1922—See note 1

Income-tax year 19 —19

Name. ... ...

*Status.. ... .

Address... ... ...

PART I

Statement of total income and total world income during the previous year ended .. .. See note 2.

Sources of Income —*See note 3* 1	Amount of Income, Profits or Gains 2	Tax already charged or deducted at source.— *See note 5.* 3
	Rs.	Rs. As
SECTION A—**Income which accrued, arose, or was received or is deemed to have accrued, arisen or been received in British India** (and unless the assessee is not resident in British India, Income arising abroad excluding income accruing or arising in an Indian State from a business controlled in, or a profession or vocation set up in India, including Indian States).		
1. **Salaries.**—(The value of rent-free quarters and contributions by your employee: to a recognised Provident Fund with interest on such contributions and on accumulations thereof should be shown separately).—See note 6.		
2. **Interest on securities.**—See note 7.		
Interest from which tax has been deducted		
Interest which is tax-free		
3. **Property.**—See note 8.		
Total amount as detailed in PART VI of this Return.		

*Please state here whether the assessee is Individual, Hindu Undivided Family, Firm, Company. Local authority or an Association of persons.

Sources of Income.—*See note 3.* 1	Amount of income, Profits or Gains. 2	Tax already charged or deducted at source.—*See note 5.* 3
	Rs.	Rs. As.
4 **Business, Profession or vocation.**—See note 9		
(a) Profits and gains as detailed in PART IV of this Return		
(b) Share of profits in a registered firm		
(c) Share of profits in an unregistered firm.		
5 **Other sources**		
Dividends from companies (gross amount) —See note 10		
Interest on Mortgages, Loans, Fixed Deposits, Current Accounts, etc		
Ground Rents.		
Sources other than those mentioned above (give details).— See note 11		
Total of Section A		
SECTION B—**Income not included in Section 'A' which accrued or arose outside British India and was brought into British India During the previous year.**		
(Persons not resident in British India should write "not applicable" in this section)		
1 Out of income which accrued or arose during such previous year (give details)—		
(a) In an Indian State		
(b) Elsewhere		
2. Out of income which accrued or arose prior to such previous year but after 1st April, 1933 (give details) excluding such part of it as has suffered tax after the commencement of the Income-tax Amendment Act, 1939.—See note 13		
3 Out of income accruing or arising in an Indian State which has been included as part of the total income in any preceding assessment but not actually charged to tax.		
(Not to be included in the total at the foot of the page)		
SECTION C—**Income which accrued or arose outside British India during the previous year and is not included in section 'A' or 'B'**—See note 13.		
(a) Non-residents should show the full amount in column 2		
(b) Persons resident and ordinarily resident should show here their income accruing or arising abroad other than that in an Indian State (give details).		

Sources of Income —*See note 3.* 1	Amount of income, Profits or Gains. 2	Tax already charged or deducted at source.— *See note 5* 3
	Rs.	Rs. As
(c) Income accruing or arising in an Indian State from a business controlled in or a profession or vocation set up in India including Indian States. [Applicable to persons resident whether ordinarily resident or not]		
(d) Income accruing or arising in an Indian State not included in (c) above [Not applicable to persons resident but not ordinarily resident]		
Notes —For deduction of Rs 4,500 under the third proviso to section 4 (1)(c) —See note 9		
Income under (c) and (d) is to be included in 'total income' but is exempt from tax for any assessment for 1942-43 and subsequent years		
SECTION D—**Capital gains on sale exchange or transfer of capital assets**—See note 17A		
(a) Income which accrued or arose or was received or is deemed to have accrued or arisen or been received in British India —[applicable to all persons]		
(b) Income which accrued or arose outside British India including an Indian State [applicable to persons resident and ordinarily resident only In the case of non residents foreign capital gains are not included in Total World income]		
Note —For deduction of Rs 4 500 under the third proviso to section 4(1)(c) —See note 9		
(c) Income which accrued or arose outside British India after the 31st March, 1946 and is brought into British India in the previous year [applicable to persons resident but not ordinarily resident]		
Total of Section D		
Total of Sections A, B C and D —See note 12 Rs.		

PART II

Statement of sums included in total income in respect of which income-tax is not payable—See note 14.

	Rs.
1 Sums deducted from salary payable by the Crown and to which the proviso to Sub-section (1) of Section 7 of the Act applies. See note 15	

		Rs
2	Sums paid to effect an insurance on the life of the assessee or on the life of his wife, or her husband or in respect of a contract for a deferred annuity; or in the case of a Hindu Undivided Family, to effect an insurance on the life of any male member or his wife. (The original receipt or certificate from the insurance company must be attached)	
3.	Contributions to (a) any provident fund to which the Provident Funds Act, 1925, applies (b) a recognised provident fund or (c) an approved superannuation fund, and (d) interest on contributions to a recognised provident fund and acculations thereof which is exempt from Income-tax—See note 16	
4	Share in the income of an unregistered firm or an association of persons where the tax has already been paid or is payable on the income by the firm or association (give details)	
5	Interest on tax-free securities	
6.	Income accruing or arising in an Indian State which is exempt [Items (c) and (d) in Section C of Part I]	
7	Earned income allowance	
	Total Rs.	

PART III

Particulars required under Sub-section 5 of Section 22 of the Income-tax Act, 1922

(a) To be completed in the case of all persons engaged in a business, profession or vocation. In the case of a firm this section should be completed on the firm's return and not on the individual partner's returns

Name in which the business, profession or vocation is carried on, or, in the case of a firm's name

Principal place of the business, profession or vocation.

Location and style of each branch

1.

2

(b) To be completed in the case of firms only

Name of each partner.	Address	Extent of share including interest on capital, salary, commission or other remuneration, if any, (Give details)

(c) To be completed in cases where the assessee is a partner in a firm or firms.

Name and address of the firm.	Name of each partner including the assessee.	Address of each partner.	Share of each partner including interest on capital, salary, commission or other remuneration, if any. (Give details.)

PART IV.

Particulars of Income from Business, Profession or Vocation.

(1) In the case of a firm this part is to be completed in the firm's Return and not in the partner's individual returns.

(2) If the accounts are kept on the mercantile accountancy or book profit system a copy of the Profit and Loss Account and Balance Sheet must be attached to this Return. If the accounts are kept on any other system, the name or description of the system is to be stated and a copy of any statement which corresponds to the Profit and Loss Account in the mercantile accountancy system must be attached to this Return In the case of a Company a copy of the Auditor's Report and certificate must also be attached

	Rs	Rs
Profit or Loss as per Profit and Loss Account (or statement corresponding to the Profit and Loss Account) for the year ended. 19		
Add—(Deduct if the above figure is a loss)		
Any profits or gains not included in arriving at the above-figure of profit		
Reserve for Bad Debts		
Sums carried to reserve for provident or other funds		
Interest credited to reserves or other funds		
Expenditure of the nature of charity or presents		
Expenditure of the nature of capital		
Income-tax or Super-tax		
Drawings of proprietor or partners		
Salaries and commission paid or credited to the proprietor or partners—See note 17(a)		
Interest allowed to proprietor or partners on capital or loan accounts—See note 17(a).		
Rental value of the property owned and occupied		

	Rs.	Rs.
Cost of additions to or alterations, extensions or improvements to any of the assets of the business		
Losses sustaind in former years and charged in arriving at the figure of profit (or loss) shown above		
Depreciation of any of the assets of the business		
Private or personal expenses		
Any other expenditure not incurred wholly and exclusively for the purpose of the business, profession or vocation (Give details)		
Any other expenditure which is not allowable under the provisions of Section 10 of the Income-tax Act, 1922—See note 17(b) (Give details)		
Deduct—		
Any profit or gains, capital sums or other items credited in arriving at the above figure of profit which are not taxable or upon which tax has already been paid (Give details)		
Interest on securities tax-free		
Depreciation allowable as shown in Part V of this Return—See note 17(d)		
Scientific Research Expenditure (if not charged in arriving at the above figure of profit)		
(i) Any expenditure (not in the nature of capital expenditure) laid out or expended on scientific research related to the business—See note 17(c) (Give details)		
(ii) Any sum paid to an approved scientific research association or an approved university, college or other institution for such scientific research—See note 17(c) (Give details)		
(iii) Any expenditure of a capital nature on scientific research related to the business admissible under Section 10(2) (xiv) of the Act—See note 17(c) (Give details)		
Any other allowable expense which has not been charged in arriving at the above figure of profit. (Give details)		
Net profit (or loss—See note 9)—carried to Part I of this Return Rs.		

N.B.—The above particulars should be given for each separate and distinct business, profession or vocation

PART V.—DEPRECIATION.

[See notes 17(d) and 17(e)]

Statement of particulars prescribed under proviso (a) of Section 10 (2) (vi) of the Income-tax Act, 1922, and of the amount of depreciation allowable.

Description of buildings, machinery, plant or furniture.	*Written down value as at the beginning of the accounting period. See note 17(d)	†Capital expenditure during the year for additions, alterations, improvements and extensions.	Date from which the additions, etc referred to in col (3) are used for the purposes of the business, profession or vocation	If a plant or machinery has been sold or discarded during the year show in this column the *written down value as at the beginning of the accounting period and the value for which it is actually sold or its scrap value	Amount on which depreciation is now allowable.	Prescribed rate per cent.	Depreciation allowable.	Remarks.
1	2	3	4	5	6	7	8	9

Notes :—1. In the case of ocean-going ships, particulars of "original cost" instead of those of the "written down value" should be furnished.

2. For the assessment year 1939-40 the figures to be furnished are those of "original cost" instead of those of "written down value".

3 Capital expenditure on new machinery or plant or new buildings erected should be shown separately and in the Remarks column against each such entry, should be indicated that initial depreciation is claimed.

PART VI.—INCOME FROM PROPERTY.

1	Serial Number.
2	Name of village or town where the property is situated.
3	Name of Street and Number of property
4	When the property is situated in a Municipality, the name of the person in whose name the property stands in the municipal registers
5	Whether the property is occupied by the owner or let.
6	If you are a part owner of the property state the amount of your share and the names of the other part owners and their shares
7	Annual Municipal valuation of the property.
8	Full annual rent payable by the tenant if the property is let.
9	Tenant's burdens (including rates) borne by owner — details
10	Owner's burdens (including rates) borne by tenants — Give details
11	Annual letting value after adjusting for cols 9 and 10.
12	One-sixth of the annual letting value as in col 11
13	Premium paid to insure the property against damage or destruction
14	Interest on a mortgage or charge, or any annual charge on the property or interest on capital borrowed for acquiring constructing repairing renewing or reconstructing property
15	Ground Rent paid for the property.
16	Land Revenue paid for the property.
17	Collection charges paid.
18	Amount claimed on account of the property remaining vacant
19	Period during which the property remained vacant.
20	Total of cols. 12 to 18.
21	Net annual value assessable after deducting col. 20 from col. 11.

Adjustments to arrive at annual letting value

Deductions from annual letting value to arrive at net annual value.

Total Income from property
Less :- (i) Claim for unrecoverable rent (give details separately i.e. income from property erected during the period 1st April 1946 to 31st March 1948
(ii)
Net income from property carried to Part I of this return

PART VII

Particulars of income from capital gains—See Notes 17A.

Note. Separate statements should be attached showing in detail—

1 All capital assets owned by the assessee (including capital assets transferred to the wife or a minor child) as at the beginning of the previous year in three parts—

(A) Capital assets included in the Balance Sheet as at the close of the immediately preceding previous year. This statement should also show as regards depreciable assets the value against each item as included in the Balance Sheet and as regards non-depreciable assets the cost thereof

(B) Capital assets consisting of house property included in Part VI of the Return with cost thereof against each item

(C) Capital assets not included in statements under (A) and (B) with cost thereof against each item

2 All capital assets acquired during the previous year with cost of acquisition against each item. This statement should also include capital assets used for the purposes of the business which are included in Part V of the Return and on which depreciation is claimed.

3 All capital assets sold during the year with sale price against each item. The total of the sale price should be taken to the appropriate column of the tabular statement under this part

	Immovable property Rs	Machinery and plant Rs	Others Rs.	Total Rs
Full value of the consideration for which the sale, exchange or transfer of capital assets is made				
Deductions				
1. Actual cost of the capital assets sold [See Note 17A (iv)] (Give details separately)				
2 Expenditure of a capital nature incurred and borne by the assessee in making any additions or alterations (Give details separately)				
3 Expenditure incurred solely in connection with the sale, exchange or transfer.				
Less Any option or other money received and retained by the assessee on any previous occasion.				
Total of cost and other deductions admissible				
Amount of capital gains				
Deduct Loss sustained in the previous years. [See Note 17A (v)]				

	Immovable property Rs.	Machinery and plant. Rs	Others Rs.	Total Rs.
Cost of any new asset purchased for the same purpose as the asset sold, exchanged or transferred was being put to. (To be filled in only when an election is made in the circumstances set out in section 12B (4) of the Income-tax Act, 1922)				
Net amount of capital gains carried to Part I of the Return				

I declare that to the best of my knowledge and belief the information given in the above statements in Parts I, II, III IV, V, VI and VII of this Return is correct and complete, that the amounts of total income and total world income and other particulars shown are truly stated and relate to the year ended . . ..

and that no other income accrued or arose or was received by *me / the firm / the family / the association / the company / the local authority

during the said year and that *I / the firm / the family / the association / the company / the local authority had during the said year no other sources of income

I further declare that *I / the firm / the family / the association / the company was resident and ordinarily resident / resident but not ordinarily resident / not resident in British India during the previous year for which the Return is made

Date Signature . . ..

†Status. .. ..

*Note 1.—The alternatives which are not required in the declaration should be scored out.

†Note 2.—The declaration shall be signed—

(a) in the case of an individual by the individual himself ;
(b) in the case of a Hindu Undivided Family by the Manager or *Karta* ,
(c) in the case of a company or local authority by the principal officer ;
(d) in the case of a firm by a partner ; and
(e) in the case of any other association by a member of the association.

Form No. 60.

(Form showing the names of persons drawing Rs. 2000

List of persons to whom salaries, pensions, annuities, gratuities, commissions, bonuses, or have been paid during the month ended 19 with particulars of the

Name of employer—

Name of person responsible for paying the salary, etc. (if not the employer))

Name of employee	Amount of salary (or wages) paid during the month.	Leave salary or allowance paid outside British India.	Date of payment.	Period for which the salary (or wages) was paid.	House-rent allowance paid.	Value of rent-free quarters.	Bonus gratuity fees, commissions, perquisites or other allowances, profits in lieu of or in addition to salary payments from an unrecognised Provident Fund, advances of salary etc and all other sums paid which are chargeable to income-tax (full details showing amount, date of payment, period for which due, etc are to be given for each item separately)	Salary, bonus and all other sums, which were due to be paid during the month but were not actually paid (full details showing the amount due date, period for which the amount was payable to be given for each separately)	Total of columns 2,3,6,7,8 and 9		Estimated total yearly income under the head "Salaries".	Average rate of		Amount paid or deducted in respect of Provident Superannuation or other fund	
									For the month.	Up to and including the month.		Income-tax.	Super-tax	For the month.	Up to and including the month
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
	Rs.	Rs.			Rs.	Rs.	Rs	Rs	Rs	Rs	Rs.	Pies per Re.	Pies per Rs.	R. a.	R a

I being the person responsible for paying the above salaries, etc.,

Notes—1. Columns 11, 16, 18, 20, 22, 24, 26 and 28. The total amount of salaries received, the premiums and the amounts of tax deducted from the beginning of the financial employer should be shown.

2. In the case of an employee who has left the service of the employer progressive month of the year.

3. The address of the former employer of a new employee & the address of the new

per annum or over) (See Rule 17).

any other sums chargeable to income-tax under section 7 of the Income-tax Act 1922, amounts paid, the amounts due but not paid, and the income-tax and super-tax deducted

Address—

Address—

Amount paid or deducted in respect of insurance premiums.		Net amount on which tax has been deducted		Amount of tax deducted.								Date on which tax deducted has been paid to the credit of Government.	REMARKS.
				Income-tax		Surcharge on income-tax		Super-tax		Surcharge on super-tax.			
For the month.	Up to and including the month.	For the month.	Up to and including the month	During the month	Up to and including the month	During the month	Up to and including the month	During the month	Up to and including the month.	During the month.	Up to and including the month.		
17	18	19	20	21	22	23	24	25	26	27	28	29	30
R. a.	R. a	R a	R a	R a	R a.	R a	R a	R. a.	R. a.	R a.	R a.		
			Total										

do hereby declare that the above particulars are correct.

Signature—

Date—

amounts paid or deducted in respect of Provident, Superannuation or other funds, insurance

year or from such month after the 1st April as the employee entered the service of the

totals of the amounts paid, rebate allowed and tax deducted should be shown up to the last

employer of an outgoing employee should be given in the remarks col. wherever practicable.

Form No. 61

Return under section 19A of the Indian Income-tax Act, 1922, for the year 1st April 19 .

Name of Company... ... ...

Address of Company .. ..

(1) Resident Shareholders ... .
Non-Resident Shareholders

Serial number.	Name of shareholder	Address of shareholder	Date of declaration of dividends	(2) Amount of dividends.	
				Net	Gross.
1	2	3	4	5	6

Dated . . . ..19 Signature .. . . . .

Form No 62.

Agreement for Avoidance of Double Taxation in India and Pakistan.

(Notification No 28 dated the 10th December, 1947)

In exercise of the powers conferred by Section 49AA of the Indian Income-tax Act, 1922 (XI of 1922), Section 11A of the Excess Profits Tax Act, 1940 (XV of 1940) and Section 18A of the Business Profits Tax Act, 1947 (XXI of 1947), as adapted by the India (Adaption of Income Tax, Profits Tax and Revenue Recovery Acts) Order, 1947, the Central Government is pleased to direct that all provisions of the annexed Agreement for the avoidance of double taxation of income, profits and gains under the said Acts which has been concluded between India and Pakistan shall be given effect to in the Dominion of India.

Agreement for the avoidance of Double Taxation of income between the Government of the Dominion of India and the Government of the Dominion of Pakistan.

Whereas the Government of the Dominion of India and the Government of the Dominion of Pakistan desire to conclude an agreement for the avoidance of double taxation of income chargeable in the two Dominions in accordance with their respective laws :

Now, *therefore*, the said two Governments do hereby agree as follows :—

Article I.—The taxes which are the subject of the present Agreement are the taxes imposed in the Dominions of India and Pakistan by the Indian Income-tax Act, 1922 (XI of 1922), the Excess Profits Tax Act, 1940 (XV of 1940), and the Business Profits Tax Act, 1947 (XXI of 1947), as adapted in the respective Dominions.

Article II.—Subject to the provisions of Article IX this Agreement shall continue in force so long as the basis of residence and the scope of the charging provisions in the aforesaid Acts as adapted remain unaltered in both the Dominions, and shall apply to the following assessments made under the said Acts in the two Dominions—

(i) Assessments made on or after the 15th day of August, 1947, for the assessment year 1947-48 (or for the corresponding chargeable accounting period)

(ii) All other assessments made on or after the 1st day of April 1948, excepting excess profits tax assessments for chargeable accounting periods for which provisional assessments have been made before 1st April 1948

Article III.—Save under the provisions of Section 34 of the Income-tax Act, 1922, and Section 15 of the Excess Profits Tax Act, 1940, as adapted neither Dominion shall charge to tax any income of a person, whose assessments (whether regular or provisional) including such income had been completed before the 15th day of August 1947 or 1st day of April 1948 as the case may be by an Income-tax Officer or Excess Profits tax Officer functioning respectively under the Indian Income-tax Act, 1922 or the Excess Profits Tax Act, 1940, or under those Acts as adapted and applied to any Areas or to either Dominion

Article IV.—Each Dominion shall make assessment in the ordinary way under its own laws; and, where either Dominion under the operation of its laws charges any income from the sources or categories of transactions specified in column 1 of the schedule to this Agreement (hereinafter referred to as the Schedule) in excess of the amount calculated according to the percentage specified in columns 2 and 3 thereof, that Dominion shall allow an abatement equal to the lower amount of tax payable on such excess in their Dominion as provided for in Article VI

Article V—Where any income accruing or arising without the territories of the Dominions is chargeable to tax in both the Dominions, each Dominion shall allow an abatement equal to one half of the lower amount of tax payable in either Dominion on such doubly taxed income

Article VI.—(a) For the purposes of the abatement to be allowed under Article IV or V, the tax payable in each Dominion on the excess or the doubly taxed income, as the case may be, shall be such proportion of the tax payable in each Dominion as the excess or the doubly taxed income bears to the total income of the assessee in each Dominion.

(b) Where at the time of assessment in one Dominion, the tax payable on the total income in the other Dominion is not known, the first Dominion shall make a demand without allowing the abatement, but shall hold in abeyance for a period of one year (or such longer period as may be allowed by the Income-tax Officer in his discretion) the collection of a portion of the demand equal to the estimated abatement If the assessee produces a certificate of assessment in the other Dominion within the period of one year or any longer period allowed by the Income-tax Officer, the uncollected portion of the demand will be adjusted against the abatement allowable under this Agreement; if no such certificate is produced, the abatement shall cease to be operative and the outstanding demand shall be collected forthwith

Article VII.—(a) Nothing in this Agreement shall be construed as modifying or interpreting in any manner the provisions of relevant Taxation laws in force in either Dominion

(b) If any question arises as to whether any income falls within any one of the items specified in the schedule and if so under which item the question shall

be decided without any reference to the treatment of such income in the assessment made by the other Dominion.

Article VIII.—The Schedule to this Agreement may be modified from time to time by agreement between the Central Boards of Revenue of the two Dominions and references to the Schedule in the foregoing Articles shall be read as reference to the Schedule, as modified

Article IX.—Either of the Contracting Parties may, six months before the beginning of any financial year (beginning on the 1st day of April) give to the other Contracting Party through diplomatic channels, notice of termination, and in such event this Agreement shall cease to have effect in relation to any assessment to income-tax for the financial year beginning with the first day of April next following and in relation to assessments to any other tax on the income of the corresponding chargeable accounting period.

THE SCHEDULE.

(See Article IV)

Source of income or nature of transaction from which income is derived	Percentage of income which each Dominion is entitled to charge, under the Agreement		Remarks
1.	2.	3	4
1 (a) Salaries paid by employers other than Government.	100 per cent by the Dominion in which the salary is earned by service	Nil by the other	
(b) Salaries paid by Government	100 per cent by the Dominion which pays the salary	Nil by the other	
2 (a) Interest on Government Securities.	100 per cent by the Dominion where the securities are enfaced for payment of interest and principal	Nil by the other	
(b) Interest on securities other than Government Securities.	100 per cent by the Dominion in which the investment is used.	Nil by the other	
3. Income from property.	100 per cent by the Dominion in which the property is situated.	Nil by the other	
4. Income from profession or vocation.	100 per cent by the Dominion in which professional service is rendered,	Nil by the other	

Source of income or nature of transaction from which income is derived.	Percentage of income which each Dominion is entitled to charge, under the Agreement.		Remarks
1	2	3	4
5. Income from "business" or "other sources"			
(a) Rent or royalty from lease renting or hire of property.	100 per cent by the Dominion in which the property is situated.	Nil by the other	
(b) Rent or royalty or licence fees or any like consideration from rights conceded in respect of property			
(c) Rent or royalty or any like consideration from any interest of property			
(d) Profits or gains from dealings in property growing out of the ownership or use of or interest in such property	100 per cent by the Dominion in which the property is situated	Nil by other	
(e) Rent or royalty for the use of or for the privilege of using patents, copyrights goodwill, trade marks and other like property	100 per cent by the Dominion in which the asset is used.	Nil by the other	
(f) income derived from any money lent at interest and brought into a Dominion in cash or in kind.	100 per cent by the Dominion in which the money is brought.	Nil by the other	
(g) Transport Ships, Air, Road.	100 per cent by the Dominion in which the traffic originates.	Nil by the other	
6. Capital gains :—			
(a) From sale, exchange or transfer of an immovable capital asset and any rights pertaining thereto.	100 per cent by the Dominion in which the capital asset is situated.	Nil by the other	
(b) From the sale, exchange or transfer of othe assets.	100 per cent by the Dominion in which the sale exchange or transfer take place.	Nil by the other	

Source of income of nature of transaction from which income is derived.	Percentage of income which each Dominion is entitled to chage, under the Agreement.		Remarks.
1	2	3	4
7. (a) Goods purchased in one Dominion and sold in the other in the same condition without any manufacturing process so as to change the identity of the goods	10 per cent of the profits by the Dominion in which goods are purchased provided there is a branch or regular purchasing agency in the Dominion	90 per cent by the other	If there is no regular purchasing agency, 100 per sent shall be chargeable by the Dominion in which goods are sold and Nil by the other.
(b) Goods, merchandise or commodities manufactured in one Dominion and delivered by the manufacturer to a buyer in the same Dominion	100 per cent by the Dominion in which the goods are manufactured	Nil by the other	
(c) Goods, merchandise or commodities manufactured in one Dominion and sold by the manufacturer in the other without any further process and without having a selling establishment or regular agency in the latter Dominion	75 per cent by the Dominion in which goods are manufactured	25 p c. by the Dominion in which goods are sold	
(d) Goods, merchandise or commodities manufactured in one Dominion and sold by the manufacturer in the other through a selling establishment or a regular agency	50 per cent by the Dominion in which goods are manufactured	50 p.c. by the Dominion in which goods are sold	
(e) Goods, merchandise or commodities manufactured by the assessees partly in one Dominion and partly in the other	50 per cent of the profits by each Dominion	50 p,c. of the profits by each Dominion	
(f) Metal ores, minerals, and mineral oils and forest produce extracted in one Dominion and delivered by the extractor or to a buyer in the same Dominion	100 per cent by the Dominion in which the minerals are extracted	Nil by the other	

Source of income or nature of transaction from which income is derived.	Percentage of income which each Dominion is entitled to charge, under the Agreement.		Remarks.
1	2	3	4
(g) Metal ores, minerals, mineral oils and forest product extracted in one Dominion and sold in the other without any further manufacturing process and without selling establishment or regular agency.	75 per cent of the profits by the Dominion in which minerals are extracted	25 p.c. by the Dominion in which goods are sold	
(h) as above but sold in the other Dominion through a branch or selling establishment or regular agency	50 per cent of the profits by the Dominion in which minerals are extracted	50 p.c. of the profits by the Dominion in which goods are sold	
8. Dividends	By each Dominion proportion to the profits of the company chargeable by each Dominion under this Agreement	(As in preceding column).	Relief in respect of any excess income-tax deemed to be paid by the share-holder shall be allowed by each Dominion in proportion to the profit of the company chargeable by each under this agreement.
9. Any income derived from a source or category of transactions not mentioned in any of the foregoing items of this Schedule	100 per cent by the Dominion in which the income actually accrues or arises.	Nil by the other	

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INDIAN COMPANY MANUAL

BY

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BANKING COMPANIES ACT SUPPLEMENT

BANKING COMPANIES

Banking companies are governed like all other companies by the provisions of the Indian Companies Act But they are further subject to the provisons of the Banking Companies Act of 1949 which have replaced the provisions of sections 277 (F) to 277 (N). While the Banking Companies Act has substantially reproduced the provisions of the above section of the Companies Act with modifications it has added several new provisions.

Under section 2 of that Act the Provisions of the Act are *in addition to and not*, save as provided in the Act, *in derogation of the Indian Companies Act* and any other law for the time being in force.

Suspension of the operation of the Act.

By section 4 of the Act, power is given to the Central Government *on a representation made by the Reserve Bank* by notification of the official Gazette to suspend for a period not exceeding *sixty days* all or any of the provisions of the Act either *generally* or with regard to any *particular Banking Company*. Further, in an emergency, the *Governor* of the Reserve Bank or in his absence, a Deputy Governor can exercise the power of suspension given to the Central Government for a more limited period *not exceeding thirty days* and to report the fact to the Central Government. The Central Government may also extend the period of suspension from time to time for a period not exceeding sixty days at any one time.

The definition of Banking Company under section 5 clause (c) is as follows:—

"Banking Company means any company which transacts the business of banking in any province of India."

Banking Company

The business of banking is defined in clause (b) of that section which says "Banking means accepting for the purpose of lending or investment, of deposit of money from the public repayable on demand or otherwise and withdrawable by cheques, drafts or otherwise." These two clauses between them correspond to section 277(F) of the Companies Act.

Under the English Law "Banker" is defined as "partnership or Corporation whose sole or predominating business is banking,

that is, receipt of money on current deposit account and demand and collection of cheques drawn up or paid for by the customer".

The effect of this change in the law is that under the new definition the essence of a banking company is *the receiving of deposit for investment* withdrawable by cheques, drafts *or otherwise* though under section 6 and 7 certain limited function are permitted to such companies.

It is to be noted that this definition differs from the English definition which was substantially the same as section 277F of the Companies Act in so far as (1) the English law requires the receiving of deposits to be the *predominating business* and (2) that in English law banking implies receving deposits on *current account* only, which is operated only by cheques, while the present Act extends the definition also to companies *who do not receive current deposits* but only time deposits which may be withdrawn not only by cheques or drafts but also otherwise,

By an explanation to clause (c) however it is stated that a trading company does not become a banking company merely by receiving deposits *for the purpose of financing its business.*

Forms of Business Permitted to Banking Companies

The provisions of section 277 (F) about the kinds of business which could be transacted by a Banking Company are practically reproduced in section 6 and 7 of the Banking Companies Act as businesses permited with certain variations

Sections 6 and 7 are as follows:—

6 *Forms of business in which banking companies may engage*

(1) In addition to the business of Banking a Banking company may engage in any one or more of the following forms of business namely,—

(a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting buying selling, collecting and dealing in bills of exchange hoondees promissory notes, coupons, drafts, bills of lading, railway receipts, warrants debentures, certificates, scrips and other instruments and securities whether transferable or negotiable or not the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign Bank notes; the acquiring, holding, issuing on commission underwriting and dealing in stock, funds, shares, debentures, debenture stock bonds obligations securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances, the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities

(b) acting as agents for any Government or local authority or any other person or persons, the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and other-

wise acting as an attorney on behalf of customers, but excluding the business of a managing agents of a company ;

(c) contracting for public and private loans and negotiating and issuing the same ;

(d) the effecting insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, or state, municipal or other loans or of shares stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue ·

(e) carrying on and transacting every kind of guarantee and indemnity business ;

(f) managing, selling and realising any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims ,

(g) acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security

(h) undertaking and executing trusts ,

(i) undertaking the administration of estates as executor, trustee or otherwise

(j) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons · granting pensions and allowances and making payments towards insurance, subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object

(k) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purpose of the company.

(l) selling, improving, managing, developing exchanging leasing mortgaging disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company.

(m) acquiring and undertaking the whole or any part of the business of any person or company when such business is of a nature enumerated or described in this sub section ,

(n) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company

(o) any other form of business which the Central Government may, by notification in the official Gazette, specify as a form of business in which it is lawful for a banking company to engage,

(2) No banking company shall engage in any form of business other than those referred to in sub-section (1)

7. Use of words 'bank' 'banker', 'banking'— After the expiry of two years from the commencement of this Act no company, other than a banking company, shall use as part of its name any of the words 'bank' 'banker', or 'banking' and no company shall carry on the business of banking in any Province of India, unless it uses as part of its name at least one of such words.

Provided that nothing in this section shall apply to any association of banks formed for the protection of their mutual interests and registered under section 26 of the Indian Companies Act, 1913 (VII of 1913).

Prohibition of Trading

Section 8 of the Banking Companies Act prohibits altogether the buying or selling or bartering of goods, except in connection with the realisation of security and also in trading in goods otherwise than in connection with the bills of exchange received for collection or negotiation or with such other business as is referred to clause i of sub-section 1 of section 6. But this section gives one year's time from the commencement of the Act to enable the existing Bank carrying on trade to complete that business, after which no such trade can be carried on by Banking Companies.

Section 9 similarly prohibits the acquisition or holding of *any immovable property* except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of this Act

PRINCIPAL FEATURES OF THE ACT

The most important features of the new Banking Companies Act are

I. Regulation of the capital structure for banking companies,

II Stringent restriction of the personnel for management

III. Reserve fund.

IV. Control and supervision by the Reserve Bank

V. Important new provisions about winding up, arrangement and amalgamation of Banking Companies.

I. Regulation of Capital Structure

The capital structure and reserve of the banking companies are regulated by section 11 and 12 of the Act. These sections require that no company should carry on banking business unless it has in cash or approved securities, paid-up capital and reserve of an amount which varies according as:-

(1) whether it is a foreign company or an Indian company,

(2) whether it operates in Calcutta or Bombay or not,

(3) whether it operates within one province or several provinces and,

(4) the number of branch offices that it has except in the case of foreign companies where the amount of the capital and reserve is required to be 20 lakhs of rupees, the maximum amount required in the case of banks operating in Calcutta or Bombay or both is Rs. 10 lakhs while in the case of other companies the maximum is Rs.5 lakhs

The foreign companies are required *to deposit* the total amount required for capital and reserve in the *Reserved Bank* and this is to be regarded as an asset of the company bearing first charge in favour of the creditors of the company in that province The value of the paid-up capital and the reserves are to be *determined by the Reserve Bank* whose decision is final.

Ratio of authorised Subscribed & paid-up Capital —

Further provision is made in section 11 with regard to the capital structure and it is required that

(1) the subscribed capital must not be less than half of the authorised capital and the paid-up capital not less than half of the subscribed capital.

(2) there shall be no other share except ordinary share issued after the first of July,1944

(3) The voting rights of the shareholders shall be strictly proportionate to the value of their shares.

(4) The total voting right of any one shareholder should not exceed 5 per cent of the total votes. These provisions are not to apply to companies which are incorporated before the 15th January 1937.

The provisions of sections 11 and 12 are as follows:

11 *Requirement as to minimum paid-up capital and reserves*

(1) Notwithstanding anything contained in section 103 of the Indian Companies Act 1913 (VII of 1913) no banking company in existence on the commencement of this Act, shall after the expiry of three years from such commencement or of such further period not exceeding one year as the Reserve Bank, having regard to the interests of the depositors of the company may think fit in any particular case to allow carry on business in any Province of India and no other banking company shall after the commencement of this Act, commence or carry on business in any Province of India, unless it has paid-up capital and reserves of such aggregate value as is hereinafter required by this section

(2) In the case of a banking company incorporated elsewhere than in a Province of India the aggregate value of its paid-up capital and reserves shall not be less than fifteen lakhs of rupees and if it has a place or places of business in the City of Bombay or Calcutta or both, twenty lakhs of rupees.

Provided that no such banking company shall be deemed to have complied with the provisions of this sub-section unless it deposits and keeps deposited with the Reserve Bank an amount not less than the minimum required by this sub-section either in cash or in unencumbered approved securities or partly in cash and partly in such securities

(3) In the case of any banking company to which the provisions of sub-section (2) do not apply the aggregate value of its paid-up capital and reserves shall not be less than –

(i) If it has places of business in more than one Province five lakhs of rupees and if any such places of business is or are situated in the City of Bombay or Calcutta or both ten lakhs of rupees ;

(ii) if it has all its places of business in one Province none of which is situated in the City of Bombay or Calcutta, one lakh of rupees in respect of its principal place of business, plus ten thousand rupees in respect of each of its other places of business situated in the same district in which it has its principal place of business, plus twentyfive thousand rupees in respect of each place of business situated elsewhere in the province otherwise than in the same district

Provided that no banking company to which this clause applied shall be required to have paid-up capital and reserves exceeding an aggregate value of five lakhs of rupees

Provided further that no banking company to which this clause applies and which has only one place of business shall be required to have paid up capital and reserves exceeding an aggergate value of fifty thousand rupees

(iii) if it has all its places of business in one province, one or more of which is or are situated in the City of Bombay or Calcutta five lakhs of rupees plus twentyfive thousand rupees in respect of each place of business situated outside the City of Bombay or Calcutta as the case may be

Provided that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of ten lakhs of Rupees

Explanation —For the purposes of this sub section a place of business situated in a Province other than that in which the principal place of business of the banking company is situated shall if it is not more than twentyfive miles distant from such principal place of business be deemed to be situated within the same province as such principal place of business

4) Any amount deposited and kept deposited with the Reserve Bank under the proviso to sub section (2) by any banking company incorporated elsewhere than in a province of India shall in the event of the company ceasing for any reason to carry on banking business in the province of India be an asset of the company on which the claims of all the creditors of the company in the provinces of India shall be a first charge.

(5) For the purpose of this section 'value' means the real or exchangeable value and not the nominal value which may be shown in the books of the banking company concerned

(6) If any dispute arises in computing the aggregate value of the paid-up capital and reserves of any banking company, a determination thereof by the Reserve Bank shall be final for the purposes of this section

12. *Regulation of paid-up capital, subscribed capital and authorised capital, and voting rights of shareholders* :

No Banking company shall carry on business in any province of India unless it satisfies the following conditions namely ,--

(i) that the subscribed capital of the company is not less than one half of the authorised capital and the paid-up capital is not less than one half of the subscribed capital and that if the capital is increased it complies with the conditions prescribed in this clause within such period not exceeding two years as the Reserve Bank may allow ;

(ii) that, the capital of the company consist of ordinary shares only or o ordinary shares only or of ordinary shares and such preference shares as may have been issued prior to the 1st day of July 1944,

(iii) that, subject to the provisions contained in clause (iv) hereof; the voting rights of any one shareholder, whether a preference shareholder or an ordinary shareholder, are strictly proportionate to the contribution made by him to the paid-up capital of the company

(iv) that the voting rights of any one shareholder do not exceed five per cent of the total voting rights of all the shareholder.

Provided that nothing contained in this section shall apply to any banking company incorporated before the 15th day of January 1937.

Preference shares forbidden

It is to be noted that there are to be no preference or deferred shares in a banking company issued after 1st July, 1944. Preference shares issued before that date would continue but voting rights of preference shareholders would equally with ordinary shareholders be strictly proportionate to the value of their shares It is not clear however whether this implies that if there are in force any preference shares *without voting rights* at all they would acquire voting rights under clause (iii).

II. Personnel of the managements

Section 10 practically reproduces the provisions of section 277 (H) prohibiting the employment of or management by *managing agent* and, in addition, prohibits the employment of any person (1) who is *or at any time has been adjudicated insolvent* or has suspended payment or has compounded with his creditors, or has been *convicted by a criminal Court* of an offence involving moral turpitude, or (2) whose *remuneration* or part of whose remuneration takes the *form of commission* or of a share in the profits of the company, or (3) whose remuneration is *disproportionate to the resources* of the company.

The decision as to whether the remuneration of an official is disproportionate to the resources of the company is *to be made by Reserve Bank* whose decision shall be final.

The section also prohibits the management of a Banking Company by any person (1) who is a *director of any other company* not being a subsidiary company of the banking company, (2) or who is *engaged in any other business* or vocation, or (3) who has a *contract* with the company for its management *for a period exceeding five years* at any one time. It is provided that a contract for management for five years may be renewed from time to time for a further period not exceeding five years at a time

Under section 16, banking companies cannot have as a Director any person who is a Director of another *banking company* There is no prohibition against his being a Director of any other kind of company.

III. Reserve Fund

Section 17 like section 277 (K) of the Companies Act provides for a reserve fund and directs the transfer of 20 *per cent* of the profits to the reserve fund.

Section 18 corresponding to section 277 (L) of the Companies Act provides for a *cash reserve* which is required to be a sum equivalent to two per cent of its time liabilities and 5 per cent of its demand liabilities.

IV. Control of Investment

By Section 19 Banking companies are prohibited from having *any subsidiary company*, so that no part of its capital can be employed in such a subsidiary company except in a subsidiary company for undertaking the *execution of trust or administration* of an estate as executor, trustee or otherwise, for providing *safe deposit vaults* and, with the sanction of the Reserve Bank, such other purposes as are *incidental to the business of banking*.

Banking companies are also forbiden to *hold any shares* in any other company of an amount *exceeding 30 per cent* of the paid-up capital of that company or 30 per cent of its own share capital or reserve, whichever is less, except with the special permission of the Reserve Bank which can sanction the holding of a larger amount of shares for a limited time.

Section 20 prohibits loans or advances on the *security of its own shares* as well as *unsecured loans* on such security or *unsecured loans* to any of its *directors or firm or private companies* in which any of its directors is interested.

Similarly a banking company cannot hold any *immovable property* except for its own use

Further restrictions on banking companies are to be found in sections 13, 14 and 15 by which banking companies are forbidden to pay any *commission, broberage* or *discount* or other remuneration in respect of issue of shares or to create any *charge upon unpaid capital* of the company or to *pay any dividend until all its capitalised expenses* including other items of expenditure not represented by any tangible assets have been *completely written off*.

V. Control and supervision by the Reserve Bank

Strict control and supervision by the Reserve Bank is the most important feature of the new provisions of the law. The following provisions have been made in this respect

(1) With regard to provisions of section 11 disputes about value of the *capital and reserve* which is required to be kept by bank with the Reserve Bank is to be determined by the Reserve Bank whose decision is final. (See sub-section 2, 6)

(2) By section 11 sub-section 1 the existing banking companies are allowed three years from the commencement of this Act to bring its capital structure within the provisions of this law. But the Reserve Bank is given the *power to extend the time*.

Similarly under section 12, the existing companies are required to bring their capital structure in conformity with the provisions of section 12 *within such period not exceeding two years* as is *allowed by the Reserve Bank*.

(3) To enable supervision to be exercised over the maintenance

of reserve fund as required by sections 17 and 18, every banking company is *required to file with the Reserve Bank* before the the 15th day of every month 3 copies of *statement of the amount held as reserve* on the Friday of each week of the preceding month with particulars of its time on demand liability of each Friday.

(4) The Reserve Bank is given the power to allow a bank *temporarily to hold larger amount of share* in other companies than is permitted in section 19 provided that the banking companies reduce its holding to the limits of that section within such period not exceeding two years as the Reserve Bank may think fit to allow.

(5) To ensure that provision of section 20 with regard to investment are complied with the banking company is required *to make a return to the Reserve Bank* showing all *unsecured loans and advances* and the Reserve Bank is given the power upon examination of the report *to prohibit by an order in writing the granting of any such loan* and advance and directing it to secure payment of such advances.

(6) Opening of *new places of business* or *changing* the *existing places of business* are made subject to the prior permission of the Reserve Bank. (Sec 23).

(7) Section 21 gives much powers to the Reserve Bank to *determine the policy* to be followed by banking companies *in respect of advances* either in respect of such companies generally or to a particular company and such directions are binding on all banking companies. In particular, the Reserve Bank has power *to give directions* either generally to all companies or to specific companies as to the (a) *purposes* for which advance may or may not be made, (b) the *margins* to be maintained in respect of secured advances and (c) the *rates of interest* to be charged on advances.

(8) By section 22 banking companies are disqualified from carrying on any business in any State of India without obtaining a *licence from the Reserve Bank*. Six months' time is allowed to the existing companies to apply for such licence. Within these six months they can carry on business unless and until the Reserve Bank intimates that such licences will not be given. But the Reserve Bank can not give such notice that licences will not be granted before three years.

Section 22 also lays down the conditions with regard to the granting of a licence by the Reserve Bank.

(9) Section 24 provides that after the expiry of two years from the commencement of this Act, every banking company is required to hold in *cash, gold* or unencumbered *approved securities* not less than 20 per cent of the total of its time liabilities and demand liabilities *within the States of India*; and for this purpose every banking company is required to make a *return to the Reserve Bank* not later than fifteen days after the end of the month showing *particulars of the assets maintained in accordance with section* 24.

(10) Similarly while section 25 requires a banking company to keep not less than 75 *per cent of its time and demand liabilities in a State* in assets of that State. The banking companies are also required to make a *return of such assets to the Reserve Bank.*

(11) Under section 26 every banking company is required to make a *return to the Reserve Bank* of all *dead accounts*, that is, accounts which have not been operated for more than 10 years.

(12) Section 27 requires banking companies to submit *return showing the assets and liabilities in the* States of India at the close of business on the last Friday of every month and the Reserve Bank may require a banking company by *notices to furnish it within the* time specified therein or such further time as the Reserve Bank may allow, *with statements and information relating to the business of such banking company*, may call for information every half year regarding the *classification of advance* and *investment of banking* companies in respect of *industry, commerce and agriculture*.

(13) Under section 28 the Reserve Bank may if it thinks fit publish the information obtained by it

(14) Section 35 gives the Reserve Bank power to make an *inspection of banking companies* on its own initiative and is bound to do so on being ordered by the Union Government. The report of the inspection may be *sent to the Union Government* if the inspection has been made by the Reserve Bank on its own initiative. And it *must be sent if the inspection was made under* order of the *Union Government* And the Union Government is given the power after giving opportunity to the banking company to make a representation in connection with the report to make such orders as the Union Govt. considers reasonable.

(15) Further, under section 36 the Reserve Bank is authorised—

(a) to caution or prohibit banking companies generally or any particular company from entering into any particular transaction or class of transactions and, generally, give advice to any banking company ·

(b) assist banking companies in the matter of proposals for amalgamation .

(c) to assist banking companies by granting loans.

(d) to give certain directions to banking companies as a result of an inspection held under section 35.

(16) Under section 37 corresponding to section 277 (1) of the Indian Companies Act the court may stay the commencement or continuance of action and proceedings against the company for a fixed period of time Such application is now required to be accompanied by *the report of the Reserve Bank* indicating that in the opinion of the Reserve Bank the banking company will be able to pay its dues if the application is granted.

Accounts and Balance sheet and Profit and Loss account

Sections 29 to 34 make special provisions with regard to accounts and balance sheets of Banking companies. Such balance sheets are required under section 29 to be in the form given in the Third Schedule to the Indian Companies Act.

That section also makes specific provision for the signature of the balance sheet.

(a) in the case of a banking company incorporated in a State of India, by the manager or the principal officer and at least by three directors, unless the total number of directors is less than three in which case it is required to be signed by all the directors.

(b) in the case of a banking company incorporated outside India by the Manager or Agent of the Principal office. These special provisions are *in additions to* those of the Indian Companies Act and all the provision of the Indian Companies Act with regard to the balance sheet so far as they are not inconsistent that this Act also apply

Audit.

Section 30 provides for the audit of the balance sheet of profit and loss account. The auditor is required to be a person duly qualified under any law in force in the State where it is incorporated and in the case of companies incorporated outside the State by an auditor who is qualified in the country or the province where the company is incorporated Sub-section 2 of section 30 provides for certain further statement to be made by the auditor in addition to those required by the Indian Companies Act. He is to state

(a) whether or not the information and explanations required by him have been *found to be satisfactory*,

(b) whether or not the transactions of the company which have come to his notice *have been within the powers* of the company,

(c) whether or not the returns received from branch offices of the company *have been found adequate* for the purpose of his audit,

(d) whether the profit and loss account *shows a true account of profit and loss* for the period coverd by such account,

(e) any other matter which he considers should be brought to the notice of the shareholders of the company,

So that auditors of Banking companies are now required to include in their report all these particulars which were hitherto often the made subject of a separate confidential report to the share holders, and some of which did not come within the ordinary duties of an auditor for other companies For instance certification of the account of profit and loss would seem to imply an enquiry by the auditor into the value of stocks and other assets which are often accepted by the *auditor on the certificate of the management*.

The balance sheet and profit and loss account of all banking companies have to be furnished to the *Reserve Bank* within three months from the end of the period of account. Under section 32 when the balance sheet is submitted to the Reserve Bank by a public company, it *may be* submitted *also to the Registrar* as under the Companies Act. Private companies however are bound to submit three copies of the balance sheet and account and of the auditor's report to the Registrar under section32.

In the case of foreign companies they are required to display their audited balance sheet and profit and loss account in a

conspicuous place in its principal office and in every branch office in the States of India under section 33.

WINDING UP

In addition to the powers of the Court to make a winding up order under the Companies Act, under section 38 of this Act the court is required to wind up a company which is unable to pay its debts and the court *is bound* to make the winding up order *if the Reserve Bank applies* to the court.

The *Reserve Bank is to be appointed the official liquidator* of the banking companies under section 39.

A banking company is to be deemed to be unable to pay its debts not only when conditions prescribed in sec, 163 of the Indian Companies Act exist but also where the bank has refused to pay within *two* or *five* working days, according as the demand for payment is made where the Reserve Bank has or has not an Office, *and* if the Reserve Bank certifies in writing that the bank is unable to pay its debts.

An important provision is made by section 40. It *limits the powers* of the court to order *stay of proceedings* by requiring that no such order shall be made by the court unless the court is satisfied that *an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.* The effect of this is to shut out stay of proceedings on account of arrangements between banking companies and creditors *involving a reduction of the debts due* to the depositors.

Section 41 also makes an important provision for the benefit of depositors. The Reserve Bank as liquidator is required by this section to submit a *preliminary report within two months* from the date of the order and, upon that report, the court can declare an *interim dividend if* sufficient assets are available.

Under section 42 the court is authorised to *dispense with meetings of creditors* or a committee of inspection as required in the case of creditors winding up under the Companies Act.

Section 44 also introduces a provision *forbidding the voluntary winding up* of the banking companies unless the *Reserve Bank certifies* in writing that the company is able *to pay in full all its debts to its creditors as they accrue,* subject to the power of the court *on the application of the Reserve Bank* to order winding up of the company if, after this order the bank is unable to pay its dues as they accrue.

Amalgamation of Banking Companies

Section 44A of the Act provides a new procedure for the amalgamation of the banking companies in supersession of the provisions of the Indian Companies Act.

Under that Section a resolution has to be passed *by each of the companies* by a majority in number representing two-thirds of the value of the share-holders of each of the companies present either in person or by proxy at a meeting called for the purpose as under section 153 of the Companies Act.

After such a resolution is passed by each of the Banking Companies after due notice as prescribed by sub-section (2), the scheme of amalgamation has to be *sent to the Reserve Bank* for their approval and if the Reserve Bank sanctions the scheme by an order in writing it will forthwith become binding on the Banking Companies concerned *without the intervention of the court* such as is required under sec. 153 on the Companies Act.

Upon the sanctioning of such amalgamation, by the Reserve Bank the property of all the banking companies shall vest in the amalgamated company and the liabilities of the several banking companies shall also be the liabilities of the amalgamated company.

Dissident Shareholder

Provision is made on the lines of the Indian Companies Act for the payment to dissident shareholders of the value of their shares, with this difference that the dissident shareholder has to give notice of this dissent at the meeting or by notice in writing and secondly, the value of the shares which he would be entitled to receive would be *determined finally by the Reserve Bank* when sanctioning the scheme.

Special provision for winding up

Part III (A) which has been added by the Act 20 of 1950 provides certain special rules of procedure in respect of winding up of banking companies

All such proceedings have to be made in the High Court within whose jurisdiction *the registered office* (or the principal office in the case of foreign Companies) is situated

Section 45 places a restriction upon the *amalgamation of companies* and requires a *certificate of the* Reserve *bank* to the effect that a compromise or arrangement proposed is not detrimental to the interests of the depositors of the bank.

The *special features* of this Part are—

(1) Under section 45B the court is given the fullest power *to decide all claims* made by or against Banking Companies,—such orders being in the nature of decrees which are appealable

(2) Under section 45C the court in winding up has been empowered *to try summarily all offences* committed by any person who has taken part in the formation or promotion of banking company which is being wound up or any past or present Director, Manager or any officer thereof, where the offence is one which is not punishable with imprisonment for more than 2 years or with fine exceeding one thousand rupees. A special procedure for such summary trial is provided in sub-sections 2, 3 and 4 of section 45(C) with a view to expediting the trial of offences in respect of banking companies being wound up.

(3) Under section 45D where any person other than the Reserve Bank has been appointed the liquidator the Reserve Bank is entitled to tender advice if they so directed by the court and for that purpose to examine all records of any such proceeding.

(4) District Magistrates are required to give assistance to the official liquidator in taking possession of the property of the bank in liquidation by section 45E.

Limitation

Section 45F provides for a special rule of limitation and says that in computing the period of limitation for any suit or application by a banking company, a period of one year before the winding up order shall be excluded so that, although the period of limitation for recovery of a debt or a property may have expired at any time less than one year before the winding up order, a suit may nevertheless be instituted by the liquidator after the winding up order.

Execution

All orders made by the court during winding up in any civil proceeding can be executed in the manner prescribed for the execution of decrees of such court.

Private Companies

The exemptions allowed to Private Companies under section 17, 77, 83B, 86H, 91B and 91D of the Indian Companies Act are made inapplicable to Private Banking Companies, so that in respect of matters dealt with under those sections Private Banking Companies have been placed on the same footing as Public Companies

BANKING COMPANIES ACT, 1949.

Act X of 1949

(*As amended by Act XX of 1950*)

An Act to consolidate and amend the law relating to banking companies

WHEREAS it is expedient to consolidate and amend the law relating to banking companies;

It is hereby enacted as follows –

PART I
PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Banking Companies Act, 1949.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette appoint in this behalf.

2 Application of other laws not barred.—The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the Indian Companies Act, 1913 (VII of 1913), and any other law for the time being in force

3. *Act not to apply to co-operative banks.*—Nothing in this Act shall apply to a co-operative bank registered under the Co-operative Societies Act, 1912 (II of 1912, or any other law for the time being in force in any part of India relating to co-operative societies.

4. Power to suspend operation of Act.—(1) The Central Government if on a representation made by the Reserve Bank in this behalf is satisfied that it is expedient so to do, may by notification in the official Gazette suspend for such period not exceeding sixty days, as may be specified in the notification, the operation of all or any of the provisions of this Act, either generally or in relation to any specified company.

(2) In a case of special emergency, the Governor of the Reserve Bank, or in his absence a Deputy Governor of the Reserve Bank nominated by him in his behalf may, by order in writing exercise the powers of the Central Government under sub section (1) so however that the period of suspension shall not exceed thirty days, and where the Governor or the Deputy Governor, as the case may be, does so, he shall report the matter to the Central Government forthwith, and the order shall, as soon as may be, be published in the Gazette of India.

(3) The Central Government may by notification in the official Gazette, extend from time to time the period of any suspension ordered under sub-section (1) or sub section (2) for such period, not exceeding sixty days at any one time, as it thinks fit so however that the total period does not exceed one year

(4) A copy of any notification issued under sub-section (3) shall be laid on the table of the Parliament as soon as may be after it is issued.

5. *Interpretation.*—(1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "approved securities" means securities in which a trustee may invest money under clause (a), clause (b), clause (bb), clause (c) or clause (d) of section 20 of the Indian Trusts Act, 1882 (11 of 1882), and such securities of, or fully guaranteed by, Acceding States as the Reserve Bank may be authorised to purchase under clause (8) of section 17 of the Reserve Bank of India Act, 1934 (11 of 1934);

(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;

(c) "banking company" means any company which transacts the business of banking in any Province of India;

Explanation.—Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

(d) "company" means any company which may be wound up under the Indian Companies Act, 1913 (VII of 1913);

(e) "Court" means the Court having jurisdiction under the Indian Companies Act, 1913.

(f) "demand liabilities" means liabilities which must be met on demand, and "time liabilities" means liabilities which are not demand liabilities;

(g) "gold" includes gold in the from of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not;

(gg) "India" means the States to which this Act extends;

(h) "managing agent" means a person, firm or company entitled to the management of the whole affairs of a banking company by virtue of an agreement with the company or by virtue of the memorandum or articles of association relating thereto, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, memorandum or articles of association, and includes any person, firm or company occupying such position by whatever name called;

Explanation.—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be deemed to be a managing agent for the purposes of this Act;

(i) "private company" has the same meaning as in the Indian Companies Act, 1913;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "registrar" has the same meaning as in the Indian Companies Act, 1913;

(l) "Reserve Bank" means the Reserve Bank of India;

(m) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934; and

(n) "secured loan or advance" means a loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance, and "unsecured loan or advance" means a loan or advance not so secured.

(2) In the application of this Act to Acceding states all references to the States of India shall be construed as including references to the Acceding States to which this Act extends

PART II

BUSINESS OF BANKING COMPANIES

6. *Forms of business in which banking companies may engage.*—(1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely—

(a) the borrowing, raising or taking up of money, the lending or advancing of money either upon or without security, the drawing making, accepting, discounting, buying, selling collecting and dealing in bills of exchange hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes, the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes, the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debenture stock, bonds, obligations, securities and investments of all kinds, the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise, the providing of safe deposit vaults, the collecting and transmitting of money and securities;

(b) acting as agents for any Government or local authority or any other person or persons, the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a managing agent of a company;

(c) contracting for public and private loans and negotiating and issuing the same;

(d) the effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(e) carrying on and transacting every kind of guarantee and indemnity business;

(f) managing, selling and realising any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(g) acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may from the security or part of the security for any loans or advances or which may be connected with any such security;

(h) undertaking and executing trusts;

(i) undertaking the adminstration of estates as executor, trustee or otherwise;

(j) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the campany or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public general or useful object,

(k) the acquision, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company,

(l) selling improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company,

(m) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this sub-section;

(n) doing all such other things as are incidental or conducive to the promotion or advaneement of the business of the company.

(o) any other form of business which the Central Government may by notification in the official Gazette, specify as a form of business in which it is lawful for a banking company to engage.

(2) No banking company shall engage in any form of business other than those referred to in sub-section (1).

7. *Use of words 'bank', "banker", "banking".*—After the expiry of two years from the commencement of the Act no company, other than a banking company, shall use as part of its name any of the words "bank", "banker" or "banking" and no company shall carry on the business of banking in any Province of India, unless it uses as part of its name at least one of such words:

Provided that nothing in this section shall apply to any association of banks formed for the protection of their mutual interests and registered under section 26 of the Indian Companies Act, 1913 (VII of 1913).

8. *Prohibition of trading.*—Notwithstanding anything contained in section 6 or in any contract, no banking company, shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realisation of security given to or held by it, or engage in any trade or buy, sell or barter goods for others otherwise than in connection with bills of exchange received for collection or negotiation or with such of its business as is referred to in clause (i) of sub-section (1) of section 6:

Provided that this section shall not apply to any such business as aforesaid which was in the course of being transacted on the

commencement of this Act, so however, that the said business shall be completed before the expiry of one year from such commencement.

Explanation.—For the purposes of this section, "goods" means every kind of movable property, other than actionable claims, stocks, shares, money, bullion and specie, and all instruments referred to in clause (a) of sub-section (I) of section 6.

9. *Disposal of non-banking assets.*—Notwithstanding anything contained in section 6, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of this Act, whichever is later or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be :

Provided that the banking company may, within the period of seven years as aforesaid deal or trade in any such property for the purpose of facilitating the disposal thereof :

Provided further that the Reserve Bank may in any particular case extend the aforesaid period of seven years by such period not exceeding five years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

10 *Prohibition of employment of managing agents and restriction on certain forms of employment.*—(I) No banking company—

(a) shall employ or be managed by a managing agent, or

(b) shall employ any person—

(i) who is or at any time has been adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is or has been convicted by criminal Court of an offence involving moral turpitude ; or

(ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profit of the company ; or

(iii) whose remuneration is, according to the normal standards prevailing in banking business, on a scale disproportionate to the resources of the company , or

(c) shall be managed by any person—

(i) who is a director of any other company, not being a subsidiary company of the banking company , or

(ii) who is engaged in any other business or vocation ; or

(iii) who has a contract with the company for its management for a period exceeding five years at any one time ,

Provided that the said period of five years shall, in relation to contracts subsisting on the 1st day of July, 1944, be computed from that date :

Provided further that any contract with the company for its management may be renewed or extended for a further period not exceeding five years at a time if and so often as the directors so decide.

"(2) If any question arises in any particular case whether the remuneration is according to the normal standards prevailing in banking business, on a scale disproportionate to the resources of the company for the purpose of sub-clause (iii) of clause (b) of sub-section (1), the decision of the Reserve Bank thereon shall be final for all purposes.

11. *Requirement as to minimum paid-up capital and reserves*.—(1) Not-withstanding anything contained in section 103 of the Indian Companies Act, 1913 (VII of 1913), no banking company in existence on the commencement of this Act, shall, after the expiry of three years from such commencement or of such further period not exceeding one year as the Reserve Bank, having regard to the interests of the depositors of the company, may think fit in any particular case to allow, carry on business in India, and no other banking company shall, after the commencement of this Act, commence or carry on business in India, unless it has paid-up capital and reserves of such aggregate value as is hereinafter required by this section.

(2) In the case of a banking company incorporated outside India, the aggregate value of its paid-up capital and reserves shall not be less than fifteen lakhs of rupees, and, if it has a place or places of business in the City of Bombay or Calcutta or both, twenty lakhs of rupees:

Provided that no such banking company shall be deemed to have complied with the provisions of this sub-section, unless it deposits and keeps deposited with the Reserve Bank an amount not less than the minimum required by this sub-section, either in cash or in unencumbered approved securities or partly in cash and partly in such securities.

(3) In the case of any banking company to which the provisions of sub-section (2) do not apply the aggregate value of its paid-up capital and reserves shall not be less than—

(i) if it has places of business in more than one state, five lakhs of rupees, and if any such place or places of business is or are situated in the City of Bombay or Calcutta or both, ten lakhs of rupees;

(ii) if it has all its places of business in one state none of which is situated in the City of Bombay or Calcutta, one lakh of rupees in respect of its principal place of business, *plus* ten thousand rupees in respect of each of its other places of business situated in the same district in which it has its principal place of business, *plus* twenty-five thousand rupees in respect of each place of business situated elsewhere in the state otherwise than in the same district:

Provided that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of five lakhs of rupees:

Provided further that no banking company to which this clause applies and which has only one place of business shall be required to have paid-up capital and reserves exceeding an aggregate value of fifty thousand rupees;

(iii) if it has all its places of business in one state, one or more of which is or are situated in the City of Bombay or Calcutta, five lakhs of rupees, *plus* twenty-five thousand rupees in respect of each place of business situated outside the City of Bombay or Calcutta, as the case may be;

Provided that no banking company to which this clause applied shall be required to have paid-up capital and reserves exceeding an aggregate value of ten lakhs of rupees.

Explanation.—For the purposes of this sub-section, a place of business situated in a State other than that in which the principal place of business of the banking company is situated shall, if it is not more than twentyfive miles distant from such principal place of business, be deemed to be situated within the same State as such principal place of business.

(4) Any amount deposited and kept deposited with the Reserve Bank under the proviso to sub-section (2) by any banking company incorporated in India shall, in the event of the company ceasing for any reason to carry on banking business in India, be an asset of the company on which the claims of all the creditors of the company in India shall be a first charge.

(5) For the purposes of this section "value" means the real or exchangeable value, and not the normal value which may be shown in the books of the banking company concerned.

(6) If any dispute arises in computing the aggregate value of the paidup capital and reserves of any banking company, a determination thereof by the Reserve Bank shall be final for the purposes of this section.

12. *Regulation of paid-up capital, subscribed capital and authorised capital, and voting rights of shareholders.*—No banking company shall carry on business in India, unless it satisfies the following conditions, namely :—

(i) that the subscribed capital of the company is not less than one half of the authorised capital, and the paid-up capital is not less than one half of the subscribed capital and that, if the capital is increased, it complies with the conditions prescribed in this clause within such period not exceeding two years as the Reserve Bank may allow;

(ii) that the capital of the company consists of ordinary shares only or of ordinary shares and such preference shares as may have been issued prior to the 1st day of July, 1944;

(iii) that, subject to the provisions contained in clause (iv) hereof, the voting rights of any one shareholder whether a preference shareholder or an ordinary shareholder, are strictly proportionate to the contribution made by him to the paid-up capital of the company;

(iv) that the voting rights of an any shareholder do not exceed five per cent of the total voting rights of all the shareholder :

Provided that nothing contained in this section shall apply to any banking company incorporated before the 15th day of January, 1937.

13. *Restriction on commission, brokerage, discount, etc., on sale of shares.*—Notwithstanding anything to the contrary contained in section 105 and 105A of the Indian Companies Act, 1913 (VII of 1913), no banking company shall pay out directly or indirectly by way of commission, brokerage, discount or remuneration in any form in respect of any share issued by it, any amount exceeding in the aggregate two and one half per cent. of the paid up value of the said shares.

14. *Prohibition of charge on unpaid capital*.—No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

15. *Restriction as to payment of dividend*.—No banking company shall pay any dividend on its shares until all its capitalised expenses (including preliminary expenses, organisation expenses, share-selling commission, brokerage, amount of losses incurred and any other item of expenditure not represented by tangible assets) have been completely written off.

16. *Prohibition of common directors*.—No banking company incorporated in a Province of India shall have as a director any person who is a director of another banking company

17. *Reserve fund*.—Every banking company incorporated in India shall maintain a reserve fund, and shall, out of the net profits of each year and before any dividend is declared, transfer a sum equivalent to not less than twenty per cent. of such profits to the reserve fund until the amount of the said fund is equal to the paid-up capital

Explanation.—For the purposes of this section, the expression "net profits" shall have the meaning assigned to it in sub-section (3) of section 87C of the Indian Companies Act, 1913 (VII of 1913).

18. *Cash reserve*.—Every banking company not being a scheduled bank shall maintain by way of cash reserve in cash with itself, or in an account opened with the Reserve Bank, or partly in cash with itself and partly in such account a sum equivalent to at least two per cent of its time liabilities and five per cent of its demand liabilities and shall file with the Reserve Bank before the fifteenth day of every month three copies of a statement of the amount so held on Friday of each week of the preceding month with particulars of its time and demand liabilities on each Friday

19. *Restriction on nature of subsidiary companies*.—(1) A banking company shall not form any subsidiary company except a subsidiary company formed for one or more of the following purposes, namely, the undertaking and executing of trusts, the undertaking of the administration of estates as executor, trustee or otherwise, the providing of safe deposit vaults, or with the previous permission in writing of the Reserve Bank, such other purposes as are incidental to the business of banking.

(2) Save as provided in sub-section (1), no banking company shall hold shares in any company, whether as pledgee, mortgagee or absolute owner, of an amount exceeding thirty per cent. of the paid-up share capital of that company or thirty per cent of its own paid up share capital and reserves, whichever is less.

Provided that any banking company which is on the date of the commencement of this Act holding any shares in contravention of the provisions of this sub-section shall not be liable to any penalty therefor if it reports the matter without delay to the Reserve Bank and if it brings its holding of shares into conformity with the said provisions within such period not exceeding two years, as the Reserve Bank may think fit to allow.

(3) Save as provided in sub-section (1) and notwithstanding anything contained in sub-section (2), a banking company shall not, after

the expiry of one year from the date of the commencement of this Act, hold shares, whether as pledgee, mortgagee, or absolute owner, in any company in the management of which any managing director or manager of the banking company is in any manner concerned or interested.

20. *Restriction on loans and advances.*—(1) Notwithstandig any thing to the contrary contaied in section 54A of the Indian Companies Act, 1913 (VII of 1913), no banking compay shall make any loans or advances on the security of its own shares, or grant unsecured loans or advances to any of its directors or to firms or private companies in which it or any of its directors is interested as partner or managing agent or to any individuals, firms or private companies in cases where any of the directors is a guarantor

(2) Every banking company shall, before the close of the month succeeding that to which the return relates, submit to the Reserve Bank a return in the prescribed fodbm and manner, showing all unsecured loans and idvances granteary it to companies in which it or any of its directors is interested director or managing agent or guarantor.

(3) If on examination of any return submitted under sub-section (2) it appears to the Reserve Bank that any loans or advances referred to in that sub-section are being granted to the detriment of the interests of the depositors of the banking company, the Reserve Bank may, by order in writing, prohibit the banking company from granting loans or advances or impose such restrictions on the grant thereof as it thinks fit, and may by like order direct the banking company to secure the repayment of any such loan or advance within such time as may be specified in the order.

21. *Power of Reserve Bank to control advances by banking companies.*—(1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may, shall be bound to follow the policy as so determined

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub section (1) the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to the purposes for which advances may or may not be made, the margins to be maintained in respct of secured advances and the rates of interest to be charged on advances, and each banking company shall be bound to comply with any directions as so given.

22. *Licensing of banking companies*—(1) Save as hereinafter provided no company shall carry on banking business in any Province of India unless it holds a licence granted by the Reserve Bank in such behalf.

(2) Every banking company in existence on the commencement of this Act, before the expiry of six month from such commencement, an devery other company before commencing banking business in

India, shall apply in writing to the Reserve Bank for a licence under this section:

Provided that in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a licence in pursuance of sub-section (2) or is by notice in writing infromed by the Reserve Bank that a licence cannot be granted to it:

Provided further that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of section 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.

(3) Before granting any licence under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that all or any of the following conditions are fulfilled namely :-

(a) that the company is in a position to pay its dipositors in full as their claims accrue ;

(b) that the affairs of the company are not being conducted to the detriment of the interests of its depositors

(c) in the case of a company incorporated outside India that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act, applicable to banking companies incorporated outside India

(4) The Reserve Bank may

(a) cancel any licence granted under this section where any of the said conditions set out in sub-section (3), on the fulfilment of which it required to be satisfied when granting the licence, ceases to be fulfilled or if the company ceases to carry on banking business in the Provinces of India or goes into liquidation ;

(b) at any time after granting a licence under this section require that any of the said conditions, on the fulfilment of which it did not require to be satisfied when granting the licence, shall be fulfilled to its satisfaction within such time as it may specify and, if the condition is not so fulfilled, cancel the licence.

(5) Any banking company aggrieved by the cancellation of its licence under sub-section (4) may appeal to the Central Government, and the decision of the Central Government on such appeal shall be final.

23. *Restrictions on opening of new, and transfer of existing places of business.* - no banking company shall open new place of business in any part of India or change, otherwise than within the same city, town or village, the location of an existing place of business situated in any part of India and no banking company incorporated in India shall open a new place of business outside India or change, otherwise than within the same city, town or village in any country or area outside India, the location of an existing place of business situated in that country or area without first obtaining the prior permission in writing of the

Reserve Bank; and before giving any such permission the Reserve Bank may require to be satisfied by an inspection under section 35 or otherwise as to the financial condition and history of the company, the general character of its management, the adequacy of its capital structure and earning prospects and that public interest will be served by the opening or, as the case may be, change of the place of business:

Provided that nothing in this section shall apply to the opening for a period not exceeding one month of a temporary place of business within a city, town or village or the environs there of within which the banking company, already has a place of business for the purpose of affording banking facilities to the public on the occasion of an exhibition, conference or *mela*

Explanation.—for the purposes of this section "place of business" includes any sub-office, pay-office, sub-pay-office and any place of business at which deposits are received, cheques cashed or moneys lent.

24. *Maintenance of a percentage of assets* – (1) After the expiry of two years from the commencement of this Act, every banking company shall maintain in cash, gold or unencumbered approved securities, valued at a price not exceeding the current market price, an amount which shall not at the close of business on any day be less than twenty per cent of the total of its time and demand liabilities in India.

Explanation—For the purposes of this section liabilities shall not include the paid-up capital or the reserves or any credit balance in the profit and *loss* account of the company or the amount of any loan taken from the Reserve Bank.

(2) In computing the amount for the purposes of sub section (1), the deposit required under the proviso to sub-section (2) of section 11 to be made with the Reserve Bank by a banking company incorporated elsewhere than in a Province of India and any balance maintained by a banking company with the Reserve Bank or its agent or both, including in the case of a scheduled bank, the balance required under sub-section (1) of section 42 of the Reserve Bank of India Act, 1934 (II of 1934), to be so maintained, shall be deemed to be cash maintained.

(3) For the purpose of ensuring compliance with the provisions of this section, every banking company shall, not later than fifteen days after the end of the month to which it relates, furnish to the Reserve Bank in the prescribed form and manner a monthly return showing particulars of its assets maintained in accordance with this section, and its time and demand liabilities at the close of business on each Friday during the month, or if any Friday is a public holiday under the Negotiable Instruments Act., 1881 (XVI of 1881), at the close of business on the preceding working day.

25. *Assets in India*—(1) The assets in India of every banking company at the close of last working day of every quarter shall not be less than seventy-five per cent, of its demand and time liabilities therein.

(2) Every banking company shall, within one month from the end of every quarter, submit to the Reserve Bank a return in the prescribed from and manner of the assets and liabilities referred to in sub-section (1) as at the close of the last working day of the previous quarter.

For the purpose this section,—

(a) "assets in India" shall be deemed to include export bills drawn in, and import bills drawn on and payable in, India and expressed in such currencies as the Reserve Bank may from time to time approve in this behalf and also such securities as the Reserve Bank may approve in this behalf notwithstanding that all or any of the said bills or securities are held outside India."

(b "quarter" means the period of three months ending on the last day of March, June, September, or December.

26. *Return of unclaimed deposits*.—Every banking company shall, within thirty days after the close of each calender year, submit a return in the prescribed from and manner to the Reserve Bank as to end of such calendar year account in India wich have not been operated upon for ten years, giving particulars of the deposits standing to the credit of each such account,

Provided that in the case of money deposited for a fixed period the said term of ten years shall be reckoned from the date of the expiry of such fixed period.

27. *Monthly returns and power to call for other returns and information*.—(1) Every banking company shall before the close of the month succeeding that to which it relates submit to the Reserve Bank a return in the prescribed form and manner showing its assets and liabilities in India as at the close of businesss on the last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (XVI of 1881), at the close of business on the preceding working day.

(2) The Reserve Bank may at any time by notice in writing require a banking company to furnish it within the time specified therein or such further time as Reserve Bank may allow with statements and information relating to the business of such banking company, and without prejudice to the generality of the foregoing power, may call for information every halfyear regarding the classification of advances and investment of banking companies in respecet of industry, commerce and agriculture.

28. *Power to publish information*.—The Reserve Bank, if it considers it in the public interest so to do, may publish any information obtained by it under section 27 in such consolidated form as it thinks fit.

29. *Accounts and balance-sheet*.—(1) At expiration of such calender year every banking company incorporated in India, in respect of all business transacted by it, and every banking company incorporated outside India, in respect of all business transacted through its branceh es in India, shall prepare with reference to that year, a balance-sheet and profit and loss account as on last working day of the year in the Forms set out in the Third Schedule or as near thereto as circumstances admit.

Provided that in case of a banking company incorporated outside India, the profit and loss account may be prepared as on a date not earlier than two months before the last working day of the year.

(2) The balance-sheet and profit and loss account shall be signed--

(a) in the case of a banking company incorporated in India, by the manager or the principal officer of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three directors, by all the directors, and

(b) in the case of a banking company incorporated outside India by the manager or agent of the principal office of the company in India.

(3) Notwithstanding that the balance-sheet of a banking company is under Sub-section (1) required to be prepared in a form other than the form marked F in the Third Schedule to the Indian Companies Act, 1913 (VII of 1913), the requirments of that Act relating to the balance-sheet and profit and loss account of a company shall, in so far as they are not inconsistent with this Act, apply to the balance-sheet or profit and loss account, as the case may be, of a banking company.

(4) The Central Government, after giving not less than three months notice of its intention so to do by a notification in the official Gazette, may from time to time by a like notification amend the Forms set out in the Third Schedule.

30. *Audit.*—(1) The balance-sheet and profit and loss account prepared in accordance with section 29 shall be audited

(a) in the case of a banking company incorporated in India, by a person duly qualified under any law for the time being in force to be an auditor of companies.

(b) in the case of a banking company incorporated outside India, either by such an auditor as aforesaid, or by a person duly qualified to be an auditor under the law of the country in which the company is incorporated.

(2) The auditor shall have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the Indian Companies Act, 1913 (VII of 1913).

(3) In addition to the matters which under the aforesaid Act the auditor is required to state in his report, he shall, in the case of a banking company incorporated in a Province of India, state in his report,—

(a) whether or not the information and explanations required by him have been found to be satisfactory,

(b) whether or not the transactions of the company which have come to his notice have been within the powers of the company;

(c) whether or not the returns received from the branch offices of the company have been found adequate for the purposes of his audit;

(d) whether the profit and loss account shows a true balance of profit and loss for the period covered by such account;

(e) any other matter which he considers should be brought to the notice of the shareholders of the company.

31. *Submission of returns.*—The accounts and balance-sheet referred to in section 29 together with the auditor's report shall be published in the prescribed manner and three copies thereof shall be furnished as returns to the Reserve Bank within three months from the end of the period to which they refer :

Provided that the Reserve Bank may in any case extend the said period of three months for the furnishing of such returns by a further period not exceeding three months.

32. *Copies of balance-sheet and accounts to be sent to registrar.*—(1) Where a banking company in any year furnishes its balance-sheet and accounts in accordance with the Provisions of section 31 it may, or when it is a private company, shall, at the same time send to the registrar three of such balance-sheet and accounts and of the auditor's report, and where such copies are so sent, it shall not be necessary for the company, to file copies of the balance-sheet and accounts with the registrar as required by sub-section (1) of section 134 of the Indian Companies Act, 1913 (VII of 1913) and such copies so sent shall be chargeable with the same fees and shall be dealt with in all respects as if they were filed in accordance with that section.

(2) When in pursuance of sub-section (2) of section 27 the Reserve Bank requires any additional statement or information in connection with the balance-sheet and accounts furnished under section 31 the banking company shall, when supplying such statement or information, send a copy thereof to the registrar.

33. *Display of audited balance-sheet by companies incorporated outside India.*—Every banking company incorporated outside India shall, not later than the first Monday in August of any year in which it carries on business, display in a conspicuous place in its principal office and in every branch office in India a copy of its last audited balance-sheet and profit and loss account prepared under section 29, and shall keep the copy so displayed until replaced by a copy of the subsequent balance-sheet and profit and loss account so prepared, and every such banking company shall display in like manner copies of its complete audited balance sheet and profit and loss account relating to its banking business as soon as they are available, and shall keep the copies so displayed until copies of such subsequent accounts are available.

34. *Accounting provisions of this Act not retrospective.*—Nothing in this Act shall apply to the preparation of accounts by a banking company and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.

35. *Inspection.*—(1) Notwithstanding anything to the contrary contained in section 138 of the Indian Companies Act, 1913 (VII of 1913), the Reserve Bank at any time may, and on being directed so to do by the Central Government shall cause an inspection to be made by one or more of its officers of any banking company and its books and accounts; and the Reserve Bank shall supply to the banking company a copy of its report on such inspection.

(2) It shall be the duty of every director or other officer of the banking company to produce to any officer making an inspection under sub-section (1) all such books, accounts and other documents in his custody or power and to furnish him with any statements and information relating to the affairs of the banking company as the said officer may require of him within such time as the said officer may specify.

(3) Any person making an inspection under sub-section (1) may examine on oath any director or other officer of the banking company in relation to its business, and may administer an oath accordingly.

(4) The Reserve Bank shall, if it has been directed by the Central Government to cause an inspection to be made, and may, in any other case, report to the Central Government on any inspection made under this section, and the Central Government, if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, may, after giving such opportunity to the banking company to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable, by order in writing-

(a) prohibit the banking company from receiving fresh deposits;

(b) direct the Reserve Bank to apply under section 38 for the winding up of the banking company :

Provided that the Central Government may defer, for such period as it may think fit, the passing of an order under this sub-section, or cancel or modify any such order, upon such terms and conditions as it may think fit to impose.

(5) The Central Government may, after giving reasonable notice to the banking company, publish the report submitted by the Reserve Bank or such portion thereof as may appear necessary.

36. *Further powers and functions of Reserve Bank.*—(1) The Reserve Bank may-

(a) caution or prohibit banking companies generally or any banking company in particular against entering into any particular transaction or class of transactions, and generally give advice to any banking company;

(b) on a request by the companies concerned and subject to the provisions of section 45, assist, as intermediary or otherwise, in proposals for the amalgamation of such banking companies.

(c) give assistance to any banking company by means of the grant of a loan or advance to it under clause (3) of sub-section (1) of section 18 of the Reserve Bank of India Act, 1934 (11 of 1934);

(d) during the course, or after the completion, of any inspection of a banking company under section 35, by order in writing, require the company -

(i) to call a meeting of its directors for the purpose of considering any matter arising in the course of or out of such inspection or of meeting an officer of the Reserve Bank to discuss any such matter;

(ii) to make, within such time as may be specified in the order, such change in its management as the Reserve Bank may consider necessary in consequence of the state of affairs disclosed during or by the inspection.

(2) The Reserve Bank shall make an annual report to the Central Government on the trend and progress of banking in the country, with particular reference to its activities under clause (2) of section 17 of the Reserve Bank of India Act, 1934, including in such report its suggestions, if any, for the strengthening of banking business throughout the country.

(3) The Reserve Bank may appoint such staff at such places as it considers necessary for the security of the returns, statements and information furnished by banking companies under this Act, and generally to ensure the efficient performance of its functions under this Act.

37. *Suspension of business.*—The court may on the application of a banking company which is temporarily unable to meet its obligations make an order (a copy of which it shall cause to be forwarded to the Reserve Bank) staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.

(2) No such application shall be maintainable unless it is accompanied by a report of the Reserve Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts if the application is granted :

Provided that the Court may, for sufficient reasons, grant relief under this section even if the application is not accompanied by such report, and where such relief is granted, the Court shall call for a report from the Reserve Bank on the affairs of the banking company, on receipt of which it may either rescind any order already passed or pass such further orders thereon as may be just and proper in the circumstances.

38. *Winding up by Court.*—(1) Without prejudice to the provisions contained in section 162 or section 271 of the Indian Companies Act, 1913 (VII of 1913), and without prejudice to its powers under section 37, the Court shall order the winding up of a banking company if it is unable to pay its debts and the Court shall also order the winding up of a banking company if the Reserve Bank applies in this behalf to the Court.

(2) The Reserve Bank may make an application under this section only if it is directed so to do by order under clause (b) of sub-section (4) of section 35 or if the banking company has failed to comply within due time with the demand contained in a notice under sub-section (5) of section 46.

(3) Without prejudice to the provisions contained in section 163 of the Indian Companies Act, 1913 (VII of 1913) a banking company shall be deemed to be unable to pay its debts if it has refused to meet

any lawful demand for payment made at any of its offices or branches within two working days, if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within five working days, if such demand is made elsewhere and if the Reserve Bank certifies in writing that the banking company is unable to pay its debts.

(4) A copy of every application by the Reserve Bank under sub section (1) shall be sent by the Reserve Bank to the Registrar.

39. *Reserve Bank to be official liquidator.*—Notwithstanding anything contained in section 175 of the Indian Companies Act, 1913 (VII of 1913), where in any proceeding for the winding up by the Court of a Banking company, an application is made by the Reserve Bank in this behalf, the Reserve Bank shall be appointed as the official liquidator of the banking company in such proceeding.

40. *Stay of proceedings.*—Notwithstanding anything to the contrary contained in section 173 of the Indian Companies Act, 1913 (VII of 1913), the Court shall not make any order staying the proceedings in relation to the winding up of a banking company, unless the Court is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

41. *Report of liquidator.*—Notwithstanding anything to the contrary contained in section 177B of the Indian Companies Act, 1913 (VII of 1913), where a winding up order is made in respect of a banking company, the official liquidator shall submit a preliminary report to the Court within two months from the date of the order giving the information required by that section so far as it is available to him, to enable the Court to order the payment of a preliminary dividend if sufficient assets are available.

42. *Power to dispense with meetings of creditors, etc.*—Notwithstanding anything to the contrary contained in section 178A and 183 of the Indian Companies Act, 1913 (VII of 1913), the Court may, in the proceedings for winding up a banking company, dispense with any meetings of creditors or contributories or with the appointment of a committee of inspection if it considers that no object will be secured thereby sufficient to justify the delay and expense.

43. *Booked depositors' credits to be deemed proved.*—Notwithstanding anything to the contrary contained in section 191 of the Indian Companies Act, 1913 (VII of 1913), the Court shall presume that the amounts shown in the books of a banking company as standing to the credit of depositors are proved without requiring further proof from the depositors concerned unless the official liquidator shows that there is reason for doubting any particular entry.

44. *Restriction on voluntary winding up.*—Notwithstanding anything to the contrary contained in section 203 of the Indian Companies Act, 1913 (VII of 1913), no banking company which holds a licence granted under section 22 may be voluntarily wound up unless the Reserve Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue, and

without prejudice to the provisions contained in section 218 and 220 of that Act, the Court shall, on the application of the Reserve Bank, order the winding up of the company by the Court if at any stage during the voluntary winding up proceedings the company is not able to meet such debts as they accrue.

44A. *Procedure for amalgamation of banking companies* (1) Notwithstanding anything contained in any law for the time being in force, no banking company shall be amalgamated with another banking company, unless a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of the banking companies concerned separately, and approved by a resolution passed by a majority in number representing two third in value of the shareholders of each of the said companies, present either in person or by proxy at a meeting called for the purpose.

(2) Notice of every such meeting as is referred to in sub section (1) shall be given to every shareholder of each of banking companies concerned in accordance with the relevant articles of association indicating the time, place and object of the meeting, and shall also be published at least once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the banking companies concerned are situated, one of such newspapers being in a language commonly understood in the locality or localities.

(3) Any shareholder, who has voted against the scheme of amalgamation at the meeting or has given notice in writing at or prior to the company concerned or to the scheme of amalgamation, shall be entitled, in the event of the scheme being sanction by the Reserve Bank, to claim from the banking company concerned, in respect of the shares held by him in that company, their value as determined by the Reserve Bank when sanctioning the scheme and such determination by the Reserve Bank as to the value of the shares to be paid to the dissenting shareholder shall be final for all purposes

(4) If the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of this section, it shall be submitted to the Reserve Bank for sanction and shall, if sanctioned by the Rererve Bank by an order in writing passed this behalf, be binding on the banking companies concerned and also on all the shareholders therof.

(5) Where a scheme of amalgamation is sanctioned by the Reserve Bank under the provisions of this section, the Reserve Bank shall transmit a copy of the order sanctioning the scheme to the registrar before whom the banking companies concerned have been registered, and the registrar shall, on receipt of any such order, strike off the name of the company (hereinafter in this section referred to as the amalgamated banking company) which by reason of the amalgamation will cease to function.

(6) On the sanctioning of amalgamation by the Reserve Bank, the property of the amalgamated banking company shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said Company shall, by virtue of the said order be transferred to and become the liabilities of, the banking Company which under scheme

of amalgamation is to acquire the business of the amalgamated banking company; subject in all cases to the terms of the order sanctioning the scheme.

45. *Restriction on compromise or arrangement between banking company and creditors.*—Notwithstanding anything contained in any law for the time being in force no court shall sanction a compromise between a banking company and its creditors or any class of them or between such company and its members or any class of them, unless the compromise or arrangement is certified by the Reserve Bank as not being detrimental to the interests of depositors of such company.

PART IIIA

SPECIAL PROVISIONS FOR SPEEDY DISPOSAL OF WINDING UP PROCEEDINGS.

45A. *Court: defined.*—In this Part and in Part III, "Court" means the High Court exercising jurisdiction in the place where the registered office of the banking company which is being wound up is situated or, in the case of a banking company incorporated outside India which is being wound up, where its principal place of business is situated, and notwithstanding anything to the contrary contained in the Indian Companies Act 1913 (VII of 1913), or in any notification order or direction issued thereunder or in any other law for the time being in force, no other court shall have jurisdiction to entertain any matter relating to or arising out of the winding up of a banking company.*

45B. *Power of Court to decide all claims by or against banking companies.* (1) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913) or in any other law for the time being in force, the Court shall have full power to decide all claims made by or against any banking company (including claims by or against any of its branches in India) and all questions of priorities and all other questions whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of the banking company coming within the cognizance of the Court.

(2) There shall be a right of appeal from every order or decision made under this section which so far as regards the Court expressing it, conclusively determines the rights of the parties with respect to any matter in controversy, and the Court may make rules prescribing the manner in which and the conditions subject to which any such appeal may be filed and heard.

(3) Subject to the provisions of sub-sections (2) and notwithstanding anything contained in any other law for the time being in force, every such order or decision shall be final and binding for all purposes as between, on the one hand, the banking company and, on the other hand, all persons who are parties thereto and all persons claiming through or under them or any of them.

45C. *Special provisions for punishing offences in relation to com-*

* Sec 92 of Act XX of 1953 provides that winding up proceedings pending at the date of the passing of that Act in any other Court shall stand transferred to the Court having jurisdiction under this section.

ranies being wound up –(1) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913) the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law for the time being in force, the Court may, if it thinks fit, take cognizance of and try in a summary way any offence alleged to have been committed by any person who has taken part in the formation or promotion of the banking company which is being wound up or any past or present director, manager or officer thereof :

Provided that the offence is one punishable under the Indian Companies Act, 1913 (VII of 1913) with imprisonment for a term which does not exceed two years, or with fine which does not exceed one thousand rupees.

(2) In every case tried summarily under sub-section (1), the Court-

(a) need not summon any witness, if it is satisfied that the evidence of such witness will not be material,

(b) shall not be bound to djourn a trial for any purpose unless such adjournment is in ahe opinion of the Court, necessary in the interests of justice;

(c) shall, before passing sentence, record judgment embodying the substance of the evidence and also the particulars specified in section 263 of the Code of Criminal Procedure, 1898 (Act V of 1898) so far as that section may be applicable,

and nothing contained in sub-section (2) of section 262 of the the Code of Criminal Procedure, 1898, shall apply to any such trial

(3) All offences in relation to winding up alleged to have been committed by any person specified in sub-section (1) which are punishable under the Indian Companies Act, 1913 (VII of 1913), and which are not tried in a summary way under sub section (1) shall, notwithstanding anything to the contrary contained in that Act or the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law for the time being in force, be taken cognizance of and tried by a Judge of the Court other than the Judge for the time being dealing with the proceeding for the winding up of the banking company.

(4) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Court shall take cognizance of any offence under this section without the accused being committed to it for trial and all such trials shall be without the aid of a jury.

45D. *Reserve Bank may tender advice in winding up Proceedings*— Where in any proceeding for the winding up of a banking company in which any person other than the Reserve Bank has been appointed as the official liquidator the Court has directed the official liquidator to obtain the advice of the Reserve Bank on any matter (which it is hereby empowered to do), it shall be lawful for the Reserve Bank to examine the records of any such proceeding and tender such advice on the matter as it may think fit.

45E. *District magistrate to assist official liquidator in taking charge of property of banking company being wound up*

(1) For the purpose of enabling the official liquidator to take into his custody or under his control, all property, effects and actionable claims to which a banking company, which has been ordered to be wound up, is or appears to be entitled, the official liquidator may request in writing to the district magistrate, within whose jurisdictihn any property, books of account or other document of such banking company may be situate or is to be found, to take possession thereof, and the district magistrate shall, on such request being made to him, take possession of such property, books of account or other documents and forward them to the official liquidator.

(2) For the purpose of securing compliance with the provisions of sub-section (1), 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.

45F. *Special period of limitation*-Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908), for any other law for the time being in force, in computing the period of limitation prescribed for any suit or application by a banking company the period of one year immediately preceding the date of the order for the winding up of the banking company shall be excluded.

45G. *Power of Court to make rules*-The Court may make rules consistent with this Act concerning the mode of proceedings to be had for the decision of all claims or questions and all other proceedings, whether civil or criminal, which are to be decided pursuant to the provisions of Part III or Part IIIA and concerning all other matters for which provision has to be made for enabling the Court to effectively exercise its functions under the said provisions.

45H *Power of Court to enforce orders*-All orders made in any civil proceeding by a Court exercising jurisdiction under Part III or Part IIIA may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

PART IV

MISCELLANEOUS

46. *Penalties*—(1) Whoever in any return, balance-sheet or other document required by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) If any person fails to produce any book, account or other document or to furnish any statement or information which under sub-section (2) of section 35 it is his duty to produce or furnish, or to answer any question relating to the business of a banking company which he is asked by an officer making an inspection under that section he shall be punishable with a fine which may extend to five hundred rupees in respect of each offence, and if he persists in such refusal, to a futher fine which may extend to fifty rupees for every day during which the offence continues.

(3) If any deposits are received by a banking company in contravention of an order under clause (a) of sub-section 4 of section 35 every director or other officer of the banking company, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it, shall be deemed to be guilty of such contravention and shall be punishable with a fine which may extend to twice the amount of the deposits so received.

(4) If any other provision of this Act is contravened, or if any default is made in complying with any requirement of this Act or of any order made thereunder, every director and other officer of the banking company who is knowingly a party to the contravention or default shall be punishable with a fine not exceeding five hundred rupees, and where the contravention or default is a continuing one, with a further fine not exceeding fifty rupees for every day during which it continues.

(5) Without prejudice to the provisions of sub section (4), if any banking company fails to comply with the provisions of section 24 or section 25, the Reserve Bank shall by notice in writing make a demand on the banking company to comply with the said provisions within thirty days from the receipt of the notice, and if the banking company fails so to do the Reserve Bank may apply under section 38 for the winding up of the Banking company.

47. *Cognizance of offences*— No Court shall take cognizance of any offence punishable under section 45 except upon complaint in writing made by an officer of the Reserve Bank generally or specially authorised in writing in this behalf by the Reserve Bank, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

48. *Application of fines* — A Court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

49. *Special provisions for private banking companies.*— The exemptions whether express or implied, in favour of a private company in sections 17, 77, 83B, 86H 91B, and 91D, and sub-section (5) of section 144 of the Indian Companies Act, 1913, (VII of 1913), shall not operate in favour of a private company which is a banking company.

50. *Certain claims for compensation barred.*— No person shall have any rights, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any of the provisions contained in sections 10 and 16 or by reason of the compliance by a banking company with any order given to it under sub-section (ii) of clause (d) of sub-section (1) of section 36.

51 *Application of certain provisions to the Imperial Bank of India.*— Without prejudice to the provisions of the Imperial Bank of India Act, 1920 (XLVII of 1920), the provisions of sections 10, 13 to 17,

19 to 21, 23 to 31, 34 to 48, 50 and 52 shall also apply, so far as may be, to and in relation to the Imperial Bank of India as they apply to and in relation to other banking companies.

52. *Power of Central Government to make rules* —(1) The Central Government may, after consultation with the Reserve Bank, make rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act and all such rules shall be published in the official Gazette.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the details to be included in the returns required by this Act and the manner in which such returns shall be submitted.

(3) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the Central Clauses Act, 1897 (X of 1897), shall not be less than six months from the date on which the draft of the proposed rules was published

Provided that in respect of the first occation on which rules are made under this section, the provisions of this sub-section shall not apply

53. *Power to exempt in certain cases* —The Central Government may, on the recommendation of the Reserve Bank, declare, by notification in the official Gazette, that any or all of the provisions of this Act shall not apply to any banking company or to any class of banking companies either generally or for such period as may be specified

54. *Protection of action taken under Act* —(1) No suit or other legal proceeding shall lie against the Central Government, the Reserve Bank or any officer for anything which is in good faith done or intended to be done in pursuance of this Act.

(2) Save as otherwise expressly provided by or under this Act, no suit or other legal proceeding shall lie against the Central Government, the Reserve Bank or any officer for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuarce of this Act.

55. *Amendment of Act II of 1934* —The Reserve Bank of India Act, 1934 (11 of 1934) shall be amended in the manner specified in the fourth column of the First Schedule, and the amendments to section 18 thereof as specified in the said Schedule shall be deemed to have had effect on and from the 20th day of September, 1947

56. *Repeals.*—(1) The enactments mentioned in the third column of the Second Schedule shall be repealed to the extent specified in the fourth column thereof.

(2) Notwithstanding the repeal by this Act of any Ordinance mentioned in the Second Schedule, anything done or any action taken in the exercise of any power conferred by any Order so repealed, shall for all purposes be deemed to have been done or taken in the exercise of powers conferred by this Act as if this Act had been in force on the day such thing was done or such action was taken.

THE FIRST SCHEDULE

(*See* section 55)

AMENDMENTS

Year	No.	Short title	Amendments
1	2	3	4
1934	II	The Reserve Bank of India Act, 1934.	(1) In section 17, to clause (15A), the following shall be added, namely:— "and under the Banking Companies Act, 1949". (2)(a) Section 18 will be renumbered as sub-section (1) of that section and in sub-section (1), as so renumbered,— (i) in clause (3), after the words "of that section" the following words shall be added, namely — "or when the loan or advance is made to a banking company, as defined in the Banking Companies Act, 1949, against such other form of security as the Bank may consider sufficient". (ii) for the words "under this section" wherever they occur, the words "under this sub-section" shall be substituted, (b) After sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:— "(2) where a banking company to which a loan or advance has been made under the provisions of clause (3) of sub-section (1) is wound up, any sums due to the Bank in respect of such loan or advance, shall, subject only to the claims, if any, of any other banking company in respect of any prior loan or advance made by such banking company against any security, be a first charge on the assets of the banking company." (3) In section 42 for sub-section (6) the following sub section shall be substituted, namely :—

Year	No.	Short title	Amendments
1	2	3	4
			(6) The Bank shall, save as hereinafter provided, by notification in the Gazette of India,—
			(a) direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in any State of India and which—
			(i) has a paid-up capital and reserve of an aggregate value of not less than five lakhs of rupees, and
			(ii) satisfies the Bank that its affairs are not being conducted in a manner detrimental to the interests of its depositors, and
			(iii) is a company as defined in clause (2) of section 2 of the Indian Companies Act, 1913 (VII of 1913) or a corporation or a company incorporated by or under any law in force in any place outside the States of India,
			(b) direct the exclusion from that Schedule of any scheduled bank,—
			(i) the aggregate value of whose paid-up capital and reserve becomes at any time less than five lakhs of rupees, or
			(ii) which is, in the opinion of the bank after making an inspection under section 35 of the Banking Companies Act, 1949, conducting its affairs to the detriment of the interests of its depositors, or
			(iii) which goes into liquidation or otherwise ceases to carry on banking business:
			Provided that the Bank may, on application of the scheduled bank concerned and subject to such conditions, if any, as it may impose, defer the making of a direction under subclause (i) or

Year	No.	Short title	Amendments
1	2	3	4
			sub-clause (ii) of clause (b) for such period as the Bank considers reasonable to give the scheduled bank an opportunity of increasing the aggregate value of its paid-up capital and reserves to not less than five lakhs of rupees or, as the case may be, of removing the defects in the conduct of its affairs; (c) alter the description in that Schedule whenever any scheduled bank changes its name. *Explanation.*—In this sub-section the expression "value" means the real or exchangeable value and not the nominal value which may be shown in the books of the Bank concerned, and if any dispute arises in computing the aggregate value of the paid-up capital and reserves of a Bank a determination thereof by the Bank shall be final for the purposes of this sub-section

THE SECOND SCHEDULE

(*See* section 56)

REPEALS

Year	No.	Short title	Extent of repeal
1	2	3	4
1913	VII	The Indian Companies Act, 1913	The whole of Part XA.
1946	XXVII	The Banking Companies (Restriction of Branches) Act, 1946.	The whole.
1946	IV	The Banking Companies (Inspection) Ordinance, 1946.	The whole.
1948	XXV	The Banking Companies (Control) Ordinance, 1948	The whole.

THE THIRD SCHEDULE

(*See* Section 29)

FORM A.

FORM OF BALANCE-SHEET

CAPITAL AND LIABILITIES	Rs.	A.	P.	Rs.	A.	P.	PROPERTY AND ASSETS	Rs.	A.	P.	Rs.	A.	P.
CAPITAL (*a*)—							CASH						
Authorised Capital..... ..							In hand and with Reserve Bank (including foreign currency notes) . .						
Shares of Rs.... . .each							Balances with other Banks (showing whether on deposit or current account):						
Issued Capital . shares of Rs..... .. . each							(i) in India.						
Subscribed Capital . . . Shares of Rs .. .each							(ii) outside India.						
Amount called up at Rs... per share							MONEY AT CALL AND SHORT NOTICE						
Less calls unpaid							BILLS DISCOUNTED AND PURCHASED. (*e*) (Other than Treasury Bills of the Central and State Governments)						
Add forfeited shares							(i) payable in India.						
RESERVE FUND (*f*)							(ii) payable outside India						
DEPOSITS AND OTHER ACCOUNTS							INVESTMENTS (stating mode of valuation, *e g*, cost or market value) (*f*)						
Fixed Deposits							(i) Securities of the Central and State Governments and Trustee securities, including Treasury Bills of the Central and State Governments						
Savings Bank Deposits .													
Current Accounts and contingency (unadjusted) accounts . . .													
BORROWINGS FROM OTHER BANKS, AGENTS, ETC.							(ii) Shares (classifying into preference, ordinary, deferred and other classes of shares and showing separately shares fully paid up and partly paid up.						
(i) in the States of India													
(ii) outside India.													
Particulars .													
(i) Secured (stating the nature of security)							(iii) Debentures or Bonds.						
(ii) Unsecured . .							(iv) Other investments (to be classified under proper heads). . . .						
BILLS PAYABLE .							(v) Gold. . . .						
BILLS FOR COLLECTION BEING BILLS RECEIVABLE AS *per contra* :													
(i) payable in India . .													
(ii) payable outside India.													

FORM A—*Contd.*

CAPITAL AND LIABILITIES	Rs. A. P.	Rs. A. P.	PROPERTY AND ASSETS	Rs. A. P.	Rs. A. P.
			LOANS, ADVANCES, CASH CREDITS AND OVERDRAFTS (other than bad and doubtful debts for which provision has been made to the satisfaction of the auditors). . . .		
			(i) in India		
			(ii) outside India		
			.....		
			Particulars:		
OTHER LIABILITIES (TO BE SPECIFIED) (c)			(i) Debts considered good in respect of which the bank is fully secured. . . .		
ACCEPTANCES, ENDORSEMENTS AND OTHER OBLIGATIONS *per contra*			(ii) Debts considered good for which the bank holds no other security than the debtors' personal security		
			(iii) Debts considered good, secured by the personal liabilities of one and more parties in addition to the personal security of the debtors		
PROFIT AND LOSS			(iv) Debts considered doubtful or bad, not provided for . . .		
less appropriation *thereof*- - - - -			(v) Debts due by directors or officers of the bank or any of them either severally or jointly with any other persons . . .		
CONTINGENT LIABILITIES (b)			(vi) Debts due by companies or firms in which the directors of the bank are interested as directors, partners or managing agents or in the case of private companies, as members . . .		
			(vii) Maximum total amount of loans, including temporary advances made at any time during the year to directors or managers or officers of the company.		
			(viii) Maximum total amount of loans, including		

FORM A—*contd.*

CAPITAL AND LIABILITIES	Rs. A. P.	Rs. A. P.	PROPERTY AND ASSETS	Rs. A. P.	R. A. P.
			temporary advances granted during the year to the companies or firms in which the directors of the bank are interested as directors, partners or managing agents or, in the case of private companies, as members.		
			(ix) Due from banks.		
			BILLS FOR COLLECTION BEING BILLS RECEIVABLE AS *per contra* :		
			(i) payable in India . . .		
			(ii) payable outside India .		
			ACCEPTANCES, ENDORSEMENTS AND OTHER OBLIGATIONS *per contra.*		
			PREMISES LESS DEPRECIATION (g)		
			FURNITURE AND FIXTURES LESS DEPRECIATION (g)		
			OTHER ASSETS, INCLUDING SILVER (to be specified) (*h*) . .		
			NON BANKING ASSETS ACQUIRED IN SATISFACTION OF CLAIMS (stating mode of valuation) (i)		
			PROFIT AND LOSS		
Total			Total		

NOTES

(a) Capital

(i) The various classes of capital, if any, should be distinguished

(ii) Shares issued as fully paid-up pursuant to any contract without payments being received in cash should be stated separately.

(iii) Where circumstances permit, issued and subscribed capital and amount called up may be shown as one item, e g, Issued and Subscribed Capital... Shares of Rs.....paid up.

(iv) In the case of banking companies incorporated outside

FORM A—*Contd.*

India, the amount of deposit kept with the Reserve Bank of India under sub-section (2) of section II of the Banking Companies Act, 1949, should be shown under this head, the amount, however, should not be extended to the outer column.

(*b*) The Reserve fund maintained under section 17 of the said Act should be shown separately.

(c) Under this heading are to be included such items as the following, to be shown under separate headings suitably described : pension or insurance funds, unclaimed dividends, advance payments and unexpired discounts, liabilities to subsidiary companies and any other liabilities.

(d) These should be classified under the following categories :—

(i) Claims against the Banking company not acknowledged as debts.

(ii) Money for which the Bank is contingently liable showing separately the amount of any guarantee given by the banking company on behalf of directors or officers.

(iii) Arrears of cumulative preference dividends

(iv) Liability on Bills of Exchange re-discounted.

(v) Liability on account of outstanding Forward Exchange Contracts.

(*e*) Particulars as under "Loans, Advances, Cash Credits and Overdrafts" are to be shown under this heading

(*f*) Where the value of the investments shown in the outer column of the balance-sheet is higher than the market value, the market value shall be shown separately in brackets.

(*g*) Bank premises wholly or partly occupied for the purposes of business should be shown against "Premises less depreciation". In the case of fixed capital expenditure, the original cost, and additions thereto and deductions therefrom during the year should be stated, as also the total depreciation written off. Where sums have been written off on a reduction of capital or revaluation of assets, every balance-sheet after the first balance-sheet subsequent to the reduction or revaluation should show the reduced figures with the date and amount of the reduction made. Furniture, fixtures and other assets which have been completely written off need not be shown in the balance-sheet.

(*h*) Under this heading may be included such items as the following, which must be shown under headings suitably described : Preliminary, formation and organisation expenses, development expenditure, commission and brokerage on shares, interest accrued on investments but not collected, investments in shares of subsidiary companies and any other assets.

(i) Value shown shall in no case exceed market value

FORM B.

FORM OF PROFIT AND LOSS ACCOUNT

Profit and Loss Account for the year ended *December*

EXPENDITURE		INCOME (LESS PROVISION MADE DURING THE YEAR FOR BAD AND DOUBTFUL DEBTS)	
Interest paid on deposits	..	Interest and Discount.	
Salaries and Allowances (showing separately salaries and allowances to managing director or manager.)		Commission, Exchange and Brokerage.	
Directors' Fees and allowances	...	Rents.	
Local Committee members' fees and allowances	...	Transfer from contingencies account.	
Provident Fund	..	Profit made on sale of investments, gold and silver, land, premises and other assets.	
Rent, Taxes, Insurance, Lighting, etc		Profit made on revaluation of investments, gold and silver, land, premises and other assets	
Law Charges	.	Income from non-banking assets, and profit from sale of or dealing with such assets.	
Postage, Telegrams and Stamp		Other receipts.	.
Auditors' Fees		Loss (if any).	
Depreciation on Bank's Property	.		
Repairs to Bank's Property			
Stationery, Printing, Advertisement, etc			
Loss from sale of or dealing with non-banking assets			
Other Expenditure	.		
Balance of Profit			
Total		Total	...