

Concept paper – Note on the Approach

Following the recommendations of the Company Law Committee known as the Bhaba Committee set up in 1950 the Companies Act, 1956, was enacted with the object to amend and consolidate the law relating to companies and certain other associations by repealing the Companies Act, 1913. The Companies Act, 1956, has been amended as many as 24 times since 1956. The major amendment to the Companies Act, 1956, was made after considering the recommendations of the Sachar Committee by enacting the Companies Amendment Act, 1988. The next major amendment was made by the Companies Amendment Act, 2002, consequent to the report of the high powered Eradi Committee. Looking at the proliferation and diversity of amendments which have been made to the Act, an attempt to recodify the law appears inevitable.

The previous two attempts at making a comprehensive review of the existing law by introducing Companies Amendment Bill 1993 and 1997 failed as the assent of the Parliament could not be received. The Ministry introduced the Companies (Amendment) Bill, 2003, containing important provisions in the arena of independence of auditors, relationship of auditors with the management of the company, independent directors with a view to improve the corporate governance practices in the corporate sector. Department examined the concerns expressed and the suggestions made by the industry associations, organizations and professionals and sought to introduce an amendment to the Amendment Bill. In the meanwhile, a decision was taken by the Government for preparation of a concept paper containing a model codified company law which would consolidate the existing provisions of the law. The following broad approach has been adopted while drafting the concept paper :-

- (1) To bring the Corporate Law in consonance with the changes that have occurred in the economic development.
- (2) To delete the redundant provisions and to regroup the scattered provisions relating to specific subjects.
- (3) To condense, simplify and rationalize the provisions of company law.
- (4) To delink the procedural aspects from the substantive law.
- (5) To give an overview of the form of the re-codified Companies Bill containing only 289 sections and a few schedules, in place of existing 781 sections and 15 schedules.

The concept paper as presented in the website contains XXV chapters. The chapters deal with the following :

- i) Chapter I-VII deal with formation of company and other organizational matters.
- ii) Chapter VIII-IX deal with Accounts and Audit
- iii) Chapter X-XII deal with management of the company
- iv) Chapter XIII contains powers of Central Government to carry out inspection and investigation of companies
- v) Chapter XIV-XV relates to reorganization of companies by merger, amalgamation, etc.
- vi) Chapter XVI-XVIII deal with winding up the company
- vii) Chapter XIX deals with other register able entities.
- viii) Chapter XX deals with Producer Companies, a separate clause of companies
- ix) Chapter XXI to XXV deal with foreign companies, constitution of the Offices of the Registry of Companies and other miscellaneous provisions.

It is reiterated that the concept paper is only an approach to the introduction of a recodified bill in the Parliament. The concept paper has not been vetted by the Legislative Department, Ministry of Law.

The aim of this concept paper is only to provoke critical examination of the provisions contained in this concept paper by all chambers of commerce, business organizations, professional bodies, academicians and persons connected with corporate sector, directly or indirectly. The Ministry will feel rewarded if it stimulates widest possible public debate so that the bill as and when introduced in the Parliament will duly take into account the various points of view.

The Ministry invites suggestions and criticisms for improvement of the concept paper. After incorporating the valuable suggestions of the corporate sector, the Companies Bill will be framed for introduction in the Parliament. Once the concepts are frozen after public debate and completion of consultation process, necessary changes in rules and schedules will be proposed and finalized.

It will be appreciated if the suggestions are given, in a tabular form, against each clause. All suggestions must, however, reach the Department (by post or by e-mail at mca.conceptcolaw@sb.nic.in latest by October, 31st 2004.

NOTES ON CHAPTERS

Chapter-I

Preliminary(Section 1 to 2)

This Chapter deals with the title “ Date of Commencement of the Act” as well as the definitions.

Chapter-II

Incorporation of Company and matters incidental thereto (Sec.3 to 16)

This Chapter deals with procedure for incorporation of companies, the liability of members and directors, types of companies, alteration of the type of company and change of name of the companies. The rules proposed to be prescribed under this chapter would cover the contents of the Memorandum and Articles of Association, being the charter of the company. The particulars furnished at the time of incorporation of companies, at present, are insufficient to clearly establish the identity of the promoters, especially in case of vanishing companies. It is proposed to strengthen the requirements of particulars at the time of incorporation of companies. The guideline for availability of name is also proposed to be prescribed by way of rules.

Chapter-III

Issue of Securities, Capital and related matters (Sec.17 to 32)

This Chapter deals with issue of prospectus, requirement of registration of prospectus with the Registrar, deemed prospectus, civil and criminal liability for mis-statement in prospectus and other related matters. The contents of prospectus is contained in Schedule-II to the Bill. This Chapter also deals with further issue of capital , issue of securities at premium/discount, allotment of shares & debentures, issue of certificate for securities and reduction of share capital. The procedural part in respect of the above matters is proposed to be prescribed by way of rules.

Chapter-IV

Public Deposits(Sec.33)

This Chapter deals with invitation and acceptance of public deposits. While the protection of small depositors incorporated in the Act by Companies Amendment Act, 2000, is retained, the rigours of section 58AAA of 1956 Act is reduced by making only the offences relating to non-repayment of deposits as cognizable. The substantive part of the Companies (Acceptance of Deposits) Rules is proposed to be shifted to the Companies General Rules and Forms.

Chapter-V

Registration of Charges(Sec.34 to 36)

This Chapter deals with registration of charges with the Registrar. The present procedure of condonation of delay in filing of charges with the Registrar by the Company Law Board/Central Government is proposed to be dispensed with by levying additional fee. Similarly, the Register of Charges maintained by the Registrars in Form No.13 of Central Government Rules and Forms is proposed to be dispensed with. The existing Form-8, 10, 13 and 17 are proposed to be combined in a composite charge form, which will be available for inspection of the public. The time available with the company for filing charge documents is proposed to be increased to 60 days.

Chapter-VI

Members meetings and resolution (Sec.37 to 47)

This chapter deals with maintenance of Register of Members, conduct of general meetings, rights of members, types of resolutions, enabling provisions for the companies to get the consent of the shareholders by postal ballot and maintenance of minutes of meetings. The requirement of holding statutory meeting by public companies has been done away with as it has become more of a formality than to serve any useful purpose. The existing restrictions in respect of conduct of Annual General Meetings on Sundays and public holidays is proposed to be removed in the Rules. The coverage of postal ballot is proposed to be enhanced to new businesses, as it will improve the participation of shareholders in the affairs of the company.

Chapter-VII

Dividend, Investor Education & related matters (Sec.48 to 50)

This chapter deals with payment of dividend, transfer of unpaid dividend to Investors' Education and Protection Fund and prohibition of payment of dividend out of capital. Transfer of Profits to Reserves before declaration of dividend and the method of arriving at the net profit for the purpose of declaration of dividend are proposed to be prescribed by way of rules. The unpaid dividend amount retained in the General Revenue Account of the Government of India under the existing section 205B is also proposed to be transferred to the Investors' Education and Protection Fund so that the shareholders' entitled to the unpaid dividend prior and after the Companies Amendment Act, 1998, are placed on par.

Chapter-VIII

Accounts (Sec.51 to 55)

This chapter deals with the books of accounts to be maintained by the company, the form and content of balance sheet, the manner of authentication of balance sheet and the contents of directors' report. The form of balance sheet recommended by the Institute of Chartered Accountants of India is adopted with some modifications as Schedule VI. This chapter also requires companies to appoint the Chief Accounts Officer who will be responsible for the matters relating to accounts and audit.

Chapter-IX

Matters relating to audit and auditors (Sec.56 to 62)

This chapter deals with appointment, powers, duties and liabilities of auditors. The recommendations of the Naresh Chandra Committee have been considered while formulating the provisions relating to appointment of auditors and constitution of the Audit Committee. The prohibition of performance of non-audit services by auditor as recommended by the said committee is proposed to be prescribed by way of rules. This chapter also deals with special audit and cost audit.

Chapter X

Matters relating to Directors, powers, functions, etc. (Sec.63 to 71)

This chapter deals with minimum and maximum number of directors, appointment of directors, retirement, disqualification, removal and vacation of office by directors. The recommendations of the Naresh Chandra Committee with reference to induction of independent directors have been included in the provisions of the Act. The attributes of an independent director, as recommended by the Naresh Chandra Committee are proposed to be prescribed by way of rules. This chapter has attempted

to consolidate the procedure for appointment of directors available in different sections of the present act.

Chapter XI

Meetings, powers of the Board and related party transactions(Sec.72 to 81)

This chapter deals with meetings, powers and restrictions of the board of directors including in respect of inter-corporate investments and loans.

This chapter also deals with the duties of the directors to the board with reference to disclosure of their interest in related party transactions. This chapter attempts to consolidate the existing provisions of the Act in respect of transactions with related parties under a single section. At present certain types of transactions which are very significant in terms of the value of transactions are not covered by the provisions of the Act. The consolidated section covers almost all types of transactions which a company may enter into with the related parties. The rules proposed to be prescribed under this section will enable the companies to self-regulate the transactions to the related parties subject to an upper limit.

Chapter XII

Appointment of Managerial Personnel (Sec.82 to 88)

This chapter deals with appointment of managerial personnel, their remuneration and powers of Central Government to remove managerial personnel. No substantive changes have been made in the limits of remuneration payable to managerial personnel. The schedule to the Act dealing with appointment of managerial personnel has undergone some changes to enable the companies to self-regulate the payment of managerial remuneration depending on the performance of the company, without the approval of the Central Government.

Chapter XIII

Inspection and Investigation (Sec.89 to 92)

This chapter deals with the power of the Central Government to carry out inspection and investigation of companies.

Chapter XIV

Matters relating to Merger, Demerger, compromise and arrangement(Sec.93 to 96)

This chapter deals with procedure relating to proposals of compromise arrangement and the confirmation thereof by the National Company Law Tribunal. This chapter deals with power of the company to acquire shares of dissenting shareholders in a scheme involving transfer of shares from one company to another.

Chapter XV
Oppression and Mismanagement (Sec.97 to 100)

This chapter deals with the power of the tribunal to give order on an complaint made by any member regarding conduct of business prejudicial to public interest or in a manner oppressive to any member or members. This chapter also deals with the power of Central Government to appoint directors to protect the public interest/shareholders. Miscellaneous provisions such as contribution of employees to the provident fund are also covered under this chapter.

Chapter XVI
National Company Law Tribunal (Sec.101 to 122)

This chapter deals with constitution of the National Company Law Tribunal, Appeal against order of the tribunal, constitution of the Appellate Tribunal, legal representation before the tribunal and appeal against orders of the Appellate Tribunal.

Chapter XVII
Revival and Rehabilitation of Sick Industrial Companies (Sec.123 to 132)

This chapter deals with procedure for sick companies to make a reference to the Tribunal, order of enquiry by the tribunal to decide whether a company has become sick, preparation and sanction of scheme, rehabilitation and consequences including winding up of sick companies.

Chapter XVIII
Corporate Winding up and Dissolution (Sec.133 to 207)

This chapter deals with provisions relating to corporate winding up and dissolution including voluntary winding up. Important amendments have taken place in the Chapter on Winding up by The Companies Amendment Act, 2000, consequent to the report of the high powered Eradi Committee. The powers of the High Court in corporate winding up have been shifted to the National Company Law Tribunal though the provisions of the Act are yet to be implemented. In view of the above no major changes have been made except clubbing of various related provisions and shifting of procedural aspects to rules.

Chapter XIX

Organization capable of being register under this Act. (Sections 208-212)

This Chapter deals with the provisions to allow register under this Act certain companies, which were not registered under this Act but formed in pursuance of any Act of Parliament other than this Act or any other Indian Law. This could be allowed only if there is assent in writing of all members of the organization. In case the organization is to register as company limited by guarantee or an unlimited company the assent shall be along with an under taking from each member to contribute to the assets of company in case of its being wound up. After registration all provisions of this Act are to be applicable to such companies.

Chapter XX

Producer Companies (Sec.213-233)

This chapter deals with incorporation of producer companies, object for which producer company shall be incorporated and specific provisions applicable to producer companies. The contents of the memorandum, articles, object for which producer companies are incorporated and certain related matters are proposed to be shifted to rules. No substantial changes are made as the Act was passed by the Parliament only in the year 2000.

Chapter XXI

Companies incorporated outside India (Sec.234-243)

This chapter deals with the requirement of the companies incorporated outside India, but having a place of business in India, to register with the Registrar of Companies. At present the registration of the foreign companies is centralized with the Registrar of Companies, Delhi. Due to globalisation, more foreign companies have started places of business in India. Hence it is proposed to empower the other Registrars also to register the companies incorporated outside India subject to their jurisdiction over the place of business.

Chapter XXII
Registration Offices, Other Offices and fees (Sec.244-250)

This chapter deals with power of Central Government to constitute offices of the Registrars, appointment of Registrars, Regional Directors, Director General of Inspection and Investigation, duties of Registrars and fees payable at the time of filing of documents. The proposal to modernize the offices of Registrars by allowing electronic filing of documents has been taken into account while drafting this chapter.

Chapter XXIII
Information from companies and special types of companies (Sec.251-256)

This chapter deals with the power of Central Government to collect statistics and information from companies and power to exempt or modify applicability of certain provisions of the Act in respect of special types of companies.

Chapter XXIV
Offences and Penalties (Sec.257-267)

At present penal provisions are provided in the section itself. It is proposed to shift the penalties to a separate schedule. The quantum of penalties is proposed to be rationalized keeping in view the principle that the penalty should be commensurate with the gravity of offences. It is also proposed to prescribe mandatory minimum penalty in case of public companies. The chapter also deals with composition of offences under the Act.

Chapter XXV
Miscellaneous Provisions(Sec.268 to 289)

This chapter deals with miscellaneous provisions, power of Central Government to make rules, regulations, amend schedules and saving clauses. This chapter also deals with the matters to be administered by Securities and Exchange Board of India in respect of listed companies and companies which propose to get listed in recognized stock exchanges.

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11. Members *and directors* severally liable for debts in certain cases
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22. Personation for acquisition, etc., of shares.
23. Application of premium received on issue of shares
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33. Public Deposits

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- 77. Investments of company to be held in its own name.
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- 83. Remuneration of Managerial Personnel
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- 134. Liability as contributories of present and past members
- 135. Obligation of directors whose liabilities are unlimited
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- 137. Provision as to application for winding up

- 138. Statement of affairs to be filed on winding up of a company.

- 139. Commencement of winding up by Tribunal

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- 142. Application of Fund.

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174. Power of Tribunal to appoint and remove Liquidator in voluntary winding up and notice by liquidator of his appointment.
175. Arrangement binding on company and creditors.
176. Power to apply to Tribunal to have questions determined or powers exercised.

177. Application of Liquidator to Tribunal for Public examination of promoters, directors etc.
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180. Application of insolvency rules in winding up of insolvent companies.
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183. Fraudulent preference liabilities and rights of fraudulently preferred persons.
184. Avoidance of voluntary transfer.
185. Transfers for benefit of all creditors to be void.
186. Effect of floating charge.
187. Disclaimer of onerous property in case of a company which is being wound up.
188. Avoidance of transfer etc. after commencement of winding up.
189. Avoidance of certain attachment, executions, etc. in winding up by court/tribunal.
190. Offences by officers of companies in liquidation.
191. Penalty for falsification of books.
192. Penalty for frauds by officers.
193. Liability where proper accounts are not kept.
194. Liability for fraudulent conduct of business.
195. Power of court /Tribunal to access damages against delinquent directors, etc.
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199. Inspection and disposal of books and papers of company.
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223. Donation, loans and investments.
224. Director and other employees, appointment, powers & functions, vacation of office.
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- 260. Jurisdiction to try offences, trial and nature of certain offences.
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- 272. Protection of Acts done in good faith.
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- 274. Protection of employees during investigation by Inspector or pendency of proceeding before appellate Tribunal in certain cases.
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- 276. Delegation by Central Government of its powers and functions under the Act.
- 277. Power of Central Government or Tribunal to accord approval etc. subject to condition and to prescribed fees and applications.
- 278. Annual report by Central Government.
- 279. Power to alter schedules.
- 280. Power of Central Government to makes Rules.
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- 283. Saving of orders, Rules etc enforce at commencement of the Act.

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DRAFT COMPANIES BILL

Chapter - I

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Companies Act
(2) It extends to the whole of India
(3) It shall come into force on such date as the Central Government may, by notification, appoint.

2. Definitions

(1) "Abridged Prospectus" means a memorandum containing such salient features of a prospectus as may be prescribed;
(2) "Accounting Standards" means the standards of accounting, prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards constituted under sub-section (6) of section 53;
(3) "Appellate Tribunal" means the National Company Law Appellate Tribunal constituted under sub-section (1) of section 111;
(4) "Articles " means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act;
(5) "Banking Company " has the same meaning as in the Banking Companies Act, 1949 (10 of 1949)
(6) "Board of Directors" or " Board ", in relation to a company, means collective body of the directors of the company
(7) "Body corporate " or " corporation " includes a company incorporated outside India but does not include (a) a corporation sole; (b) a co-operative society registered under any law relating to co-operative societies; and (c) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.
(8) "Books of accounts" includes records maintained in respect of : (a) all sums of money received and expended by the company and the

matters in respect of which the receipt and expenditure take place ;

(b) all sales and purchases of goods by the company ;

(c) the assets and liabilities of the company;

(d) a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the books of accounts; and

(e) such other records as may be prescribed.

(9) " Book and paper " and " book or paper " include accounts, deeds, vouchers, writings, and documents, minutes, registers maintained on paper or computer network, floppy, diskette, magnetic cartridge tape, CD-rom or any other computer readable media;

(10) " Branch Office " in relation to a company means

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

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

(c) any establishment engaged in any production, processing, manufacture, trading or rendering service.

(11) "Charge" means an interest or lien created on the property of the company or its undertaking or both, as a security, and includes

(a) a mortgage other than usufructuary mortgage of the assets in a company;

(b) a charge for the purpose of securing any issue of debentures including series of debentures entitling holders *pari passu*;

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

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

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

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

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

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

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

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

(12) "Company " means a company formed and registered under this Act or an existing company formed and registered under any of the previous Companies Laws.

(13) “Company limited by shares” means 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.
(14) “Company limited by guarantee” means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up.
(15) " Court " means, <p style="text-align: center;">(a) with respect to any matter relating to a company other than any offence against this Act, the Court having jurisdiction under this Act with respect to that matter relating to that company;</p> <p style="text-align: center;">(b) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Metropolitan Magistrate or a Presidency Magistrate, having jurisdiction to try such offence ;</p>
(16) “Chartered Accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
(17) “Chief Accounts Officer” means the chief accounts officer, of a company appointed under sub-section (1) of section 88, by whatever name called;
(18) Company Liquidator so far it relates to the winding up of a company by the Tribunal, shall be one who- <p style="text-align: center;">(a) may be appointed from a panel of professional firms of chartered accountants, advocates, company secretaries, costs and works accountants or firms having a combination of these professions, which the Central Government shall constitute for the Tribunal; or</p> <p style="text-align: center;">(b) may be a body corporate consisting of such professionals as may be approved by the Central Government from time to time; or</p>
(19) “Cost Accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
(20) “Contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and includes the proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.
(21) " Debenture " includes bonds and any other securities of a company, whether constituting a charge on the assets of the company or not ;
(22) “Deemed Director” means a person in accordance with whose directions or instructions the board of directors of a company is accustomed to act.
(23) “Deposit” means any deposit of money with, and includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.
(24) "Depository" has the same meaning as in the Depositories Act, 1996 (22) of 1996
(25) "Derivative" has the same meaning as in clause (aa) of section 2 of the Securities

Contracts (Regulation) Act, 1956 (42 of 1956);
(26) "Director " includes any person occupying the position of director, by whatever name called.
(27) "Dividend" means a return on the shares held in the company and payable out of distributable surplus and includes any interim dividend.
(28) "Document" includes summons, notice, requisition, order, other legal process, and registers, whether issued, sent or kept in pursuance of this or any other Law for the time being in force, maintained in any medium capable of being retrieved, including by electronic means or in any other manner.
(29) "Director General" means the Director General of Inspection and Investigation, appointed under Sub-section (5) of Section 244.
(30) "Employees stock option" means the option given to the whole-time directors, officers or employees of a company, which gives such directors, officers or employees the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a pre-determined price;
(31) "Expert" includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him.
(32) "Financial year" means, in relation to a body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, which shall not be less than six months but not exceeding fifteen months Provided that, in relation to an insurance company, "financial year" shall mean the calendar year referred to in sub-section (1) of section 11 of the Insurance Act, 1938 (4 of 1938) ;
(33) "Free reserves" means those reserves, net of accumulated losses and expenses not written off, which as per the latest audited balance sheet of the company, are free for distribution as dividend but shall not include balance to the credit of the securities premium account and share application money.
(34) "Financial Institution" includes any scheduled bank defined in the Reserve Bank of India Act, 1934, and any public financial institution.
(35) "Foreign Company" means a body corporate incorporated outside India.
(36) "Government company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company.
(37) "Gross Receipt" of a company, means the aggregate value of the realization made from the sale, supply or distribution of goods or on account of services rendered, or both, and includes income accruing from investments or loans, profit on sale of assets or investments and other unclassified receipts of revenue nature.
(38) "Holding company"– A company shall be deemed to be the holding company of another if, and only if, that other is its subsidiary. Provided no company which is a subsidiary of another company shall, after the commencement of this Act, be a holding company.

Provided further that a company which is a subsidiary of another company may be a holding company of a body corporate incorporated outside India.

(39) "Hybrid" means any security which has the character of more than one type of security, including their derivatives;

(40) "Information memorandum" includes a notice, circular, advertisement or document containing the particulars such as price and terms of issue of securities in relation to a prospectus for issue of any security.

(41) "Industrial company" means a company which owns one or more industrial undertakings;

(42) "Industrial undertaking" means any undertaking, pertaining to any of the industries specified for the time being in the First Schedule to the Industries (Development and Regulation) Act, 1951 carried on in one or more factories by any company; and includes ancillary industrial undertaking as defined in clause (aa) of section 3 of that Act but does not include a small-scale industrial undertaking as defined in clause (j) of that section;

(43) "Insurance company" means a company which carries on the business of insurance either solely or in conjunction with any other business or businesses subject to regulations prescribed by the appropriate authority.

(44) "Interested director" means any director who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company either by himself or through his relative, a partner in a firm in which the director is a partner, a firm in which such a director or relative is a partner or a private company of which the director is a member or director or a public company of which the director is a director or a member holding not less than two percent of the paid up share capital in the other company.

(45) "Independent Director" means a non-executive director of a company who apart from receiving director's remuneration, does not have any material pecuniary relationship or transactions of such amount as may be prescribed, with the company, its promoters, managing director, wholtime director, other directors, manager or its holding company and its subsidiaries apart from possessing such attributes for being treated as Independent director as may be prescribed by the Central Government from time to time.

(46) "Listed public company" means a public company which has any of its securities listed in any recognized stock exchange; under the Securities Contract (Regulation) Act, 1956.

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

(48) "Managing Director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its board of directors or, by virtue of its articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called.

(49) "Member" means;

i) the subscribers of the memorandum of a company, on its registration and whose name is entered in its register of members of the company.

ii) every other person who agrees in writing to become a member of a company and whose name is entered in its register of members of the company.

iii) every person holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository .

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

(51) "Minimum Subscription" means the amount so stated in the prospectus as minimum subscription.

(52) "Non Banking Financial Company" has the same meaning as in the Reserve Bank of India Act, 1934.

(53) "Net worth" means the sum total of the paid-up capital , free reserves and the balance to the credit of Securities Premium Account after deducting the provisions or expenses as may be prescribed.

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

(54) "Nidhi" is a company formed with the exclusive object of cultivating the habit of thrift, saving and functioning further mutual benefit of members by receiving deposits only from individual enrolled as members and by lending only to individuals, also enrolled as members, and which functions as per notifications and guidelines prescribed.

(55) "Officer" includes any director or manager or secretary or chief accounts officer or auditor or any person in accordance with whose directions or instructions the board of directors or any one or more of the directors is or are accustomed to act;

(56) "Officer who is in default" means all or any of the following officers of the company for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment.

- (a) the managing director or managing directors; and
- (b) the whole-time director or whole-time directors; and
- (c) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; and
- (d) the manager; and
- (e) every employee, who is in receipt of remuneration more than the remuneration drawn by the managing director or any whole-time director in the company in which such an employee is employed and who himself or along with his spouse and dependent children holds not less than two per cent, of the equity share capital of the company; and
- (f) any other director in respect of contravention of any of the provisions of this Act which had taken place with his consent or connivance or is attributable to any neglect on his part; and
- (g) any director or officer charged by the board with the responsibility of

complying with that provision;

Provided that the person so charged has given his consent in this behalf to the board and the company has intimated such consent to the Registrar in the prescribed manner;

- (h) where any company does not have any officers specified in clauses (a) to (g), any director or directors who may be specified by the board in this behalf or where no director is so specified, all directors; and
- (i) the secretary;
- (j) the chief accounts officer in respect of offences for which he is specifically punishable;
- (k) the share transfer agents, bankers, registrars to the issue, merchant bankers, in respect of the issue or transfer of any securities of the company.

(57) "Official Liquidator", so far it relates to the winding up of a company by the Tribunal, shall be one who may be a whole time or part-time officer appointed by the Central Government and designated as Official Liquidator or Deputy, Joint or Assistant Official Liquidator as the case may be .

(58) "Option in securities" has the same meaning as in clause (d) of section 2 of the Securities Contracts (Regulation) Act, 1956; (42 of 1956)

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

(60) "Office or place of profit" – Any office or place shall be deemed to be an office or place of profit under the company –

(a) in case the office or place is held by a director, if the director holding it obtains from the company anything by way of remuneration over and above the remuneration to which he is entitled as such director, whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise;

(b) in case the office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it, obtains from the company anything, by way of remuneration whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise.

(61) "Paid-up capital" or "capital paid-up" includes capital credited as paid-up.

(62) "Postal ballot" means voting by post including electronic mode.

(63) "Preference share capital" means, with reference to any company limited by shares, that part of the share capital of the company which has a preferential right in respect of payment of dividend and repayment of capital in the event of winding up.

(64) "Prescribed" means, prescribed by rules made under this Act.

(65) "Previous company law" means

(a) any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866), and repealed by that Act;

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

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

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

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

(f) any law corresponding to any of the Acts or the Ordinance aforesaid and in force :

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

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

(g) the Portuguese Commercial Code, in so far as it relates to "sociedades anonimas" ;

(h) the Companies Act, 1956.

(66) "Private company" means a company which by its articles,-

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

(b) limits the number of its members to fifty –

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.

Provided further that -

- (i) persons who are in the employment of the company; and
- (ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment

and have continued to be members after the employment ceased;

shall not be included in the said 50 numbers.

(c) prohibits any invitation to the public to subscribe for any securities of, the company;

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

and shall have such amount of paid up capital as may be prescribed from time to time.

Explanation: In case a private company fails to have paid up capital in accordance with the provisions of this sub-section or is not carrying on business or in operation referred to in Section 207, the liability of every director, manager and every member of such company shall remain unlimited till the company is struck off by the Registrar under section 207.

(67) "Promoter" means a person or persons who have control over the affairs of the company directly or indirectly, whether as a shareholder, director or otherwise and includes any person or persons named as promoters in any offer document of securities but does not include any person or persons named in the offer or document by reason of his acting in the professional capacity.

(68) "Prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any securities of a body corporate, but does not include an information memorandum or like document issued prior to the issue of prospectus;

(69) "Public company" means a company which –

(a) is not a private company; and

(b) has a minimum paid up capital of such amount, as may be prescribed;

Explanation 1:- Any company which is a subsidiary of a public company or a body corporate incorporated outside India, if incorporated in India, to be a public company within the meaning of this Act, shall be a public company.

Explanation 2:- Any private company which is a subsidiary of a public company as at the date of the commencement of this Act shall cease to be a private company on the expiry of a period of one year from the commencement of this Act.

Explanation 3: In case a public company fails to have a paid up capital in accordance with the provisions of this sub-section or is not carrying on business or in operation referred to in Section 207, the liability of every director, manager and every member of such company shall remain unlimited till the company is struck off by the Registrar under section 207.

(70) "Public financial institution" means any financial institution already notified and are notified from time to time by the Central Government in the Official Gazette as public financial institution.

(71) "Place of business" includes a liaison office, a share transfer or share registration office.

(72) "Recognized Stock Exchange" means a Stock Exchange notified by the Central Government in the official gazette as a Recognized Stock Exchange, whether in or outside India.

(73) "Red-herring prospectus" means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered.

(74) "Registrar" means any officer appointed by the Central Government as Registrar, Deputy or Assistant Registrar of Companies or by whatever designation called, for the purpose of administering the provisions of the Act.

(75) "Regional Director" means a Regional Director appointed by the Central Government for the purposes of the Act.

(76) "Relative" means a person who is related to another in the following manner, namely:-

- (a) Spouse;
- (b) Spouse's parents;
- (c) Father (including step-father);
- (d) mother (including step-mother);
- (e) son (including step-son);
- (f) son's wife;
- (g) daughter (including step-daughter);
- (h) daughter's husband;
- (i) son's children;
- (j) daughter's children
- (k) brother (including step-brother);
- (l) brother's wife;
- (m) sister (including step-sister);
- (n) sister's husband,
- (o) spouse's brother
- (p) spouse's sister

and includes a member of Hindu undivided family.

(77) "Remuneration" means any money or moneys worth incurred by the company for availing services rendered by the recipients and shall also include -

- (a) any expenditure incurred by the company in providing any rent-free accommodation, or any other benefit or amenity in respect of accommodation free of charge, any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate;
- (b) any expenditure incurred by the company in respect of any obligation or service, which, but for such expenditure by the company, would have been incurred by such obligator; and
- (c) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for his spouse or child.

(78) "Reduction of Capital" means -

- (a) extinguishing or reducing the liability on any of its shares in respect of share capital not paid-up;

<p>(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost, or is unrepresented by available assets; or</p> <p>(c) either with or without extinguishing or reducing liability on any of its shares, pay of any paid-up share capital which is in excess of the wants of the company.</p>
(79) "Schedule" means a Schedule annexed to this Act ;
(80) "Scheduled Bank" has the same meaning as in the Reserve Bank of India Act, 1934 (2 of 1934)
(81) "Secretary" means a Company Secretary within the meaning of clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980), and includes any other individual possessing the prescribed qualifications and appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties ;
(82) "Secretary in whole-time practice" means a secretary who shall be deemed to be in practice within the meaning of sub-section (2) of section 2 of the Company Secretaries Act, 1980 (56 of 1980), and who is not in full-time employment ;
(83) "Securities" means securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956, and includes hybrids;
(84) "Securities and Exchange Board of India" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).
(85) "Share" means share in the share capital of a company;
(86) "Small Shareholders" means a shareholder holding shares of nominal value of such amount as may be prescribed.
(87) "Share with differential rights" means a share that is issued with differential rights as to dividend, voting or otherwise in accordance with such rules and subject to such conditions as may be prescribed.
(88) "Shelf prospectus" means a prospectus issued by any financial institution or bank for one or more issues of the securities or class of securities specified in that prospectus;
(89) "Sick Industrial company" means an industrial company which has <ul style="list-style-type: none"> (i) accumulated losses in any financial year equal to fifty per cent or more of its average net worth during four years immediately preceding such financial year; and (ii) failed to repay its debts within three consecutive quarters on demand made in writing for its repayment by a creditor or creditors of such company.
(90) "Small depositor" means a depositor who has deposited in a financial year a sum in a company not exceeding such amount as may be prescribed and includes his successor, nominee and legal representative.
(91) "Specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.
(92) "State level institutions" means any of the following institutions, namely:- <ul style="list-style-type: none"> (a) the State Financial Corporations established under section 3 or section

<p>3A and institutions notified under section 46 of the State Financial Corporations Act, 1951(63 of 1951);</p> <p>(b) the State Industrial Development Corporation registered under this Act;</p>
<p>(93) "Subsidiary company" means a company if, and only if, its holding company -</p> <p>(a) controls the composition of its board of directors; or</p> <p>(b) exercises or controls more than one-half of its total voting power in a case where it has issued securities and such securities have the same voting rights as equity shares; or</p> <p>(c) holds more than one-half in value of its paid-up equity capital; or</p>
<p>(94) "Sweat equity shares" means equity shares issued by the company to employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;</p>
<p>(95) "Total strength" means the total strength of the board of directors of a company as determined in pursuance of this Act, after deducting therefrom the number of the directors, if any, whose places may be vacant at the time;</p>
<p>(96) "Total voting power" in regard to any matter relating to a body corporate, means the total number of votes which may be cast in regard to that matter on a poll of such body, if all the members thereof and all other persons, if any, having a right to vote and cast their votes;</p>
<p>(97) "Tribunal" means the National Company Law Tribunal constituted under section 101;</p>
<p>(98) "Turnover of a company" means the aggregate value of the realization made from the sale, supply or distribution of goods or on account of services rendered, or both or income accruing from investments or loans in respect of companies engaged in the business of non-banking financial companies during a financial year;</p>
<p>(99) "Unlimited Company" means a company not having any limit on the liability of its members.</p>
<p>(100) "Unregistered company" includes any partnership or association consisting of more than 7 members but shall not include:</p> <p>i) any company incorporated by any Act of Parliament or any other Indian law or any Act of Parliament of the United Kingdom; or</p> <p>ii) a company registered under this Act ; or</p> <p>iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden or Pakistan immediately before the separation of that country from India.</p>
<p>(101) "Variation" shall include abrogation; and "vary" shall include abrogate.</p>
<p>(102) "Whole time Director" includes a director in the whole-time employment of the company.</p>

Chapter –II

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERE TO

3. Act to override memorandum, articles, etc.

Save as otherwise expressly provided in the Act :

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

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

4. Prohibition of associations and partnerships exceeding certain number:

(1) No association of persons or a partnership shall be formed consisting of more than; (i) ten persons for the purpose of carrying on the business of banking, (ii) 50 persons for the purpose of carrying on a profession of such professions as may be prescribed, (iii) 20 persons for the purpose of carrying on any other business, unless it is registered as a company under this Act, or is formed in pursuance of any other law.

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

(3) Every member of an association or partnership carrying on business in contravention of this section shall -

(a) be personally liable for all liabilities incurred in such business; and

(b) be punishable under this Act.

5. Mode of forming incorporated company:

(1) No company shall be registered by a name which, in the opinion of the Central Government and subject to such rules and guidelines as may be prescribed, is undesirable.

(2) Without prejudice to the generality of the foregoing power, a name which

(a) is identical with, or too nearly resembles the name of a company in existence,

(b) includes a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999, in respect of the business activity for which the trade mark is registered or the subject of an application,

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

(3) Any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum and articles of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, as a private company with or without limited liability, unless otherwise specifically provided for in this Act.

Provided seven or more persons are required where the company to be formed will be a public company.

(4) Such a company may be either-

(a) a company limited by shares ; or

(b) a company limited by guarantee; or

(c) an unlimited company

(5) The format and contents of the Memorandum and Articles of Association shall be as prescribed.

6. Incorporation of Companies

(1) There shall be presented to the Registrar of the state, under whose jurisdiction the registered office of the company is to be situate, the following for registration:

(a) the memorandum of association of the company;

(b) its articles of association ;

(c) a declaration by an Advocate defined under Advocate's Act, or a Secretary or a Chartered Accountant, or a Cost Accountant in whole-time practice, in India who is engaged in the formation of a company, or by a person named in the Articles as a Director, Manager or Secretary of the company, that all the requirements of this Act and rules have been complied with in respect of registration and matters precedent or incidental thereto.

(d) an affidavit from each of the subscribers to the memorandum and from persons mentioned as first directors named in the Articles that he is not convicted of any offence in connection with the promotion, formation or management of a company or not being found guilty of any fraud or misfeasance for any breach of his duty to any company under section 71.

(e) notice of the address of the place where the Registered Office of the company is proposed to be situated on incorporation.

(f) particulars of the name, address, nationality and such other particulars of the persons mentioned as first directors of the company along with their consent to act as such including the interest of such directors in other firms or body corporates.

(g) any other document as may be prescribed.

(2) If the Registrar is satisfied that all the requirements aforesaid have been complied with by the Company and that it is authorized to be registered under this Act, he shall retain, register the documents aforesaid and certify under his hand that the company is incorporated.

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

(4) A certificate of incorporation given by the Registrar in respect of any company shall be conclusive evidence that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the company is duly registered under this Act.

(5) The amount of share capital subscribed by the subscribers to the Memorandum shall be paid within a period of 1 month from the date of

incorporation.

(6) If any person or persons trade or carry on business under any name or title of which the words “limited” or ”private limited” or any contraction or imitation thereof is or are included, that person or each of those persons, shall, unless duly incorporated as a public company with with limited liability or as a private company with limited liability as the case may be, be punishable under this Act.

7. Alteration of Memorandum of Association

(1) A company may, by special resolution, alter the provisions of its memorandum to change the place of its registered office from one state to another, or from one place to another within a state involving change of jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies within the same state or with respect to the objects of the company, or for altering its share capital or alteration of the liability clause to convert a limited company into unlimited company and vice versa or for any other purposes that may be prescribed.

Provided that the alteration of the provisions of the memorandum relating to change of place of its registered office from one state to another shall be with the prior permission of the Central Government and any change of the Registered Office from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies within the same state shall be confirmed by the Regional Director in the manner as may be prescribed.

Provided further that the alteration and confirmation thereof, if any, shall be filed with the Registrar in such manner and within such time as may be prescribed who shall register the same in the manner prescribed.

Provided also any alteration of the Memorandum, in the case of a company limited by guarantee and not having a share capital, 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) Upon the passing of any such special resolution, and compliance with the requirements under the Act and Rules prescribed under the Act in respect of each such alteration and not otherwise, the altered provisions thereof shall be as valid as if they had been originally contained in the memorandum.

(3) For any default in complying with the provisions of this section, the company and every officer of the company in default are punishable under the Act.

8. Alteration of Articles of Association

(1) Subject to the provisions of this Act and to the conditions contained in its Memorandum, a company may by special resolution, alter its Articles in the manner prescribed, including alterations having the effect of conversion of a private company into a public company and a public company into private company.

Provided a company, being a private company alters its articles in such a manner that they no longer include the provisions which 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 such alteration cease to be a private company.

Provided further that any alteration having the effect of conversion of a public company into a private company shall take effect only with the approval of the Central Government.

(2) Any alteration in the Articles of Association shall be filed with the Registrar in the manner prescribed, who shall register the same and issue certificate in respect of such matters and subject to such conditions as may be prescribed and no alteration shall have any effect unless it has been duly registered.

(3) If a company makes default in complying with the provisions of this Section, the company and officers in default are liable under this Act.

(4) Any alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles of association as the case may be. If a company makes default in complying with the requirements it shall be punishable under the Act.

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

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

Registered Office of the Company

(1) A company shall, on and from the date of its incorporation have a registered office to which all communications and notices may be addressed.

(2) Notice of every change in the situation of the registered office shall be given to the Registrar in the manner as may be prescribed.

Provided that except on the authority of a special resolution passed by the company, the registered office of the company shall not be changed outside the local limits of any city, town or village where such office is situated.

(3) Every company shall get its name, address of its Registered Office, authorized capital and subscribed capital displayed, in such of the documents/seal, notice and advertisement in such manner as may be prescribed.

(4) (a) If an officer of the company or any person on its behalf fails to comply with the provisions of this section and rules the company and every officer of the company in default shall be punishable under the Act.

(b) If any officer of the company or any person on its behalf uses or authorizes the use, issues and signs, any of the documents prescribed in this section without complying with the provisions of this section, he shall be personally liable for the holder of the Bill of Exchange, Hundi or Promissory Note or such instruments, unless it is duly paid by the company.

10. Commencement of Business

(1) A company having a share capital, whether or not it has issued a prospectus inviting the public to subscribe for its shares, shall not at any time commence any business or exercise borrowing powers unless -

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

(b) there has been filed with Registrar a duly verified declaration by one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole-time practice, in the prescribed form, that clause (a) of this sub-section has been complied with.

(2) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be punishable under the Act.

(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.

11. Members and directors severally liable for debts in certain cases.-

(a) If at any time the number of members of a company is reduced, in the case of a public company, below seven, or in the case of a private company, below two, and the company carries on business for more than six months while the number is so reduced *or*

(b) In case a private or a public company fails to have a paid up capital in accordance with the provisions of section 2 (66) or sec. 2 (69), as the case may be, the liability of every director, manager and every member of such company shall remain unlimited till the company is struck off by the Registrar under section 207.

(c) at any time a company continues to do business of being a Non Banking Financial Company, or an insurance company, without due registration and authorization under the relevant enactments or

(d) at any time the company carries on business in violation of such provisions of the Act as may be prescribed, then;

every person who is a member, director or manager of the company during the time that it so carries on business and is cognizant of the aforesaid facts, shall be severally liable for the payment of the whole of the debts of the company contracted during that period, and may be severally sued therefor.

12. Change of name of the company

(1) The provisions of section 5(1) & 5(2) are applicable mutatis mutandis to change of name of the company.

(2) A company may change its name:

a) on its own, by a special resolution and with the approval of the Central Government signified in writing or

b) on the direction of the Central Government, by an ordinary resolution

in the manner prescribed.

Provided that the Central Government may give direction on its own or on an application, only if:

i) through inadvertence or otherwise, a company on its first registration or on its change of name, is registered with a name which -

(a) in the opinion of the Central Government, is identical with, or too nearly resembles, the name of a company in existence, whether under this Act or any previous companies law, or

(b) in the opinion of the Central Government, the name of the company includes a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999, in respect of the business activity for which the trade mark is registered or the subject of an application on the date of such registration or change of name,

Provided that an application under this sub-section shall be considered by the Central Government upto a period of five years from the date of its first registration or on its registration by a new name of the first mentioned company.

(3) An appeal against the direction of the Central Government under sub-section (2) shall lie with the National Company Law Tribunal.

(4) The Central Government may, on the ground of the security of the State or public interest, direct any company, at any time to change its name and such company shall forthwith change its name:

(5) No approval of the Central Government shall be required for change of the name of the company where the only change in the name of the company is the deletion therefrom or addition thereto of the word "private".

(6) If a company makes default in complying with any direction given under this section, the company and every officer who is in default, shall be punishable under this Act.

13. Power to grant licence for registration of associations having charitable objects as limited companies.

(1) Where it is proved to the satisfaction of the Central Government that an association:-

(a) is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object and not confined to one State; and

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

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

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

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

(4) Where it is proved to the satisfaction of the Central Government that the constitution of the company registered under this Act as a limited company is in compliance with sub-section (1), the Central Government may, on an application by the company, by licence, authorise to change its name, consisting of the omission of the word "Limited" or the words "Private Limited" therefrom.

(5)(a) The company, licensed under this section may by a special resolution change its name, including or consisting of the omission of the word "limited" or the word "private limited", with the previous approval of the Central Government signified in writing.

(b) A company in respect of which a licence under this section is in force shall not alter the provisions of its memorandum and articles except with the previous approval of the Central Government signified in writing.

(6) The Central Government may by general or special order and to the extent specified in the order exempt the companies to which a licence is granted under this section from such of the provisions of this Act as may be specified therein.

(7) The licence may at any time be revoked by the Central Government after giving an opportunity of being heard to the company and on such revocation, the provisions of sub-sections (2) & (6) of this section shall not apply to such company.

If the company makes default in complying with any of the requirements of this section, the company and the officers in default shall be punishable under the Act.

14. Contracts to be executed by company

(1). Contracts, which, if made between private persons, are by law required to be in writing signed by the parties to be charged therewith, would be valid although made verbally and not reduced into writing, may be made in writing signed or, as the case may be, on behalf of the company by any person acting under its authority, express or implied, and may, in the same manner, be varied or discharged.

(2) A contract made according to sub-section (1) shall bind the company.

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

(4) 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 any document on its behalf in any place either in or outside India.

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

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

(7) The manner in which the company will have and use this official seal will be as may be prescribed.

15. Service of documents

(1) A document may be served on a company or an officer thereof by such means as may be prescribed.

(2) A document may be served by a company on the Registrar or any member, or a holder of any other security thereof, in the manner as may be prescribed.

16. Authentication of documents and proceedings.

Save as otherwise expressly provided in this Act, a document or proceeding requiring authentication by a company may be signed by a director, the manager, the secretary or a person authorized by the board of the company provided such authorization is filed with the Registrar as may be prescribed.

CHAPTER – III

ISSUE OF SECURITIES AND RELATED MATTERS.

17. Prospectus and other related matters

(1) No body corporate shall offer securities to public for subscription, unless, a prospectus which is dated, containing the particulars as may be prescribed is issued; and a copy thereof has been delivered to the Registrar for registration in

the manner prescribed.

Provided that any offer or invitation to subscribe for securities is made to 50 persons or more, any document by which offer of sale is made shall, for all purposes, be deemed to be a prospectus issued by the body corporate.

Provided further that any public financial institutions, public sector banks, scheduled banks whose main object is financing shall issue a shelf prospectus in the manner prescribed.

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

(3) No prospectus shall be issued more than 90 days after the date on which a copy thereof is delivered for registration;
The Registrar shall not register the prospectus unless the requirements of the Act and the Rules made there under are complied with.

(4) (i) A prospectus shall not include a statement purporting to be made by an expert, unless the expert is a person who is not, and has not been engaged or interested in the formation or promotion, or in the management, of the company.

(ii) The statement purporting to be made by an expert and included in the prospectus shall specify that such expert has given his written consent to the issue thereof and that he has not withdrawn his consent as aforesaid.

(5) A body corporate shall not issue, circulate, or distribute in India or outside India, any form of application for subscribing to the securities of a body corporate unless the form is issued, circulated or distributed with a copy of the abridged prospectus .

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

Provided further that this subsection 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 securities.

(6) A body corporate shall not at any time vary the terms of the contract referred to in the prospectus except subject to the approval or except on the authority given by, the company in general meeting.

(7) Where any prospectus is published as a newspaper advertisement or in any other manner, it shall be in the form of an abridged prospectus.

(8) (i) Where a body corporate allots or agrees to allot any of its securities with a view to or in all those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall for all the purposes, be deemed to be a prospectus issued by the company;

(ii) The persons making offer under this section shall be deemed to be the persons named in the prospectus as directors of the company.

(9) Notwithstanding anything contained in this Section, the provision of this section shall apply to Non-banking Financial Companies and Public Financial Institutions subject to the guidelines prescribed in this behalf in consultation with the Securities and Exchange Board of India and the Reserve Bank of India.

(10) A body corporate making an issue of securities or Indian depository receipts may circulate an information memorandum to the public in the manner prescribed and such a body corporate shall be bound to file a prospectus prior to opening of subscription list and offer as a red-herring prospectus at least three days before the opening of the offer.

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

(12) If any prospectus is issued in contravention of any of the provisions of this section, the body corporate, the officer in default and every person who is knowingly a party to the issue thereof, shall be punishable under this Act.

18. Criminal liability for mis-statements in prospectus

Where a prospectus issued includes any untrue statement, any person who authorize the issue of prospectus shall be punishable under the Act unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did upto the time of issue of the prospectus believe that the statement was true.

19. Civil liability for mis-statements in prospectus

(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for securities of a company, the following persons shall be liable to pay compensation to every person who subscribes for any securities on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein, that is to say,

(a) every person who is a director of the company at the time of the issue of the prospectus;

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

(c) every person who is a promoter of the company ; and

(d) every person who has authorised the issue of the prospectus :

Provided that where, under section 17(4) the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not, by reason of having given such consent, be

liable under this sub-section as a person who has authorised the issue of the prospectus except in respect of an untrue statement, if any, purporting to be made by him as an expert.

(2) No person shall be liable under sub-section (1), if he proves:

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent ;

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent ;

(c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal and of the reason therefor ; or

(d) that -

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

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation ; and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that that person had given the consent required by section 17 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder ; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement, or a correct copy of or a correct and fair extract

from, the document :

Provided that this sub-section shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 17, as a person who has authorised the issue of the prospectus in respect of an untrue statement, purporting to be made by him as an expert.

(3) A person who, apart from this sub-section, would, under section 17, be liable by reason of his having given a consent required of him as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable, if he proves -

(a) that, having given his consent under section 17 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration ;

(b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reason therefor ; or

(c) that he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, believe, that the statement was true.

(4) Where , -

(a) the prospectus specifies the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof ; or

(b) the consent of a person is required under section 17 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus ;

the directors of the company excluding those without whose knowledge or consent the prospectus was issued, and every other person who authorised the issue thereof, shall be liable to indemnify the person referred to in clause (a) or clause (b), as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the

case may be, or in defending himself against any suit or legal proceeding brought against him in respect thereof :

Provided that a person shall not be deemed for the purposes of this sub-section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 17 to the inclusion therein of a statement purporting to be made by him as an expert.

(5) Every person who, becomes liable to make any payment by virtue of this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the former person was, and the latter person was not, guilty of fraudulent misrepresentation.

(6) Any person or group of persons subscribing to the securities in the company, or any investors association registered either with the Department of Company Affairs or Securities and Exchange Board of India may file a suit to enforce the provisions of this section.

(7) Notwithstanding the provisions of this section if the loss or damage referred to in sub-section (1) has been caused by a fraudulent act or acts, then the liability will be unlimited.

20. Interpretation of provisions relating to prospectus

The statement included in the prospectus shall be deemed to be untrue:-

- (a) if the statement is misleading in the form or context in which it is included; and
- (b) where the omission from prospectus of any matter is included to mislead, the prospectus shall be deemed in respect of such omission, to be a prospectus in which an untrue statement is included.

For the purpose of this section and sections 17 & 19, the expression "included" when used with reference to the prospectus, means included in the prospectus itself or contained in any report or memorandum appearing on the face thereof or by reference incorporated therein.

21. Penalty for fraudulently inducing persons to invest money.

Any person who, either by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into, or to offer to enter into

- (a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting shares or debentures: or
- (b) any agreement the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures,

or by reference to fluctuations in the value of shares or debentures ;
shall be punishable under the Act.

22. Personation for acquisition, etc., of securities

(1) Any person who :

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

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

shall be punishable under the Act.

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

23. Application of premium received on issue of securities

A company may issue securities at a premium whether for cash or otherwise, subject to such conditions as may be prescribed including matters relating to transfer of amounts received towards securities premium and utilization thereof.

24. Issue of shares at a discount

(1) A company may issue shares of a class already issued, at a discount subject to such conditions as may be prescribed.

(2) A body corporate may issue sweat equity shares of a class of shares already issued if the issue of sweat equity shares is authorized by a special resolution passed by a company and subject to such conditions as may be prescribed.

(3) All the limitations, restrictions and provisions relating to equity shares shall be applicable to such sweat equity shares.

25. Further issue of capital

(1) Where at any time a Company, proposes to increase the subscribed capital of the company by issue of further shares, then such further shares shall be offered to the persons, who at the date of offer are holders of equity shares of the company, in proportion as nearly as circumstances admit, to the capital paid up on those shares and subject to such conditions as may be prescribed.

Provided that the provisions of this section shall not apply if such increase is :

(i) authorized by a special resolution passed for offer of further shares to any persons whether or not the holders of shares on the date of issue, or

(ii) where no such special resolution is passed the issue is authorized by an ordinary resolution and approved by the Central Government subject to rules as may be prescribed.

(iii) caused by the exercise of an option attached to debentures issued or loans raised by the company to convert debentures or loans into shares or to subscribe for shares in the company subject to such conditions as may be prescribed.

(iv) under the scheme of employees stock option subject to such conditions as may be prescribed

(2) A company shall be entitled to make an issue of securities to its employees, officers, or working directors to purchase its securities, by giving an option, pursuant to a scheme of option framed by the company in accordance with the rules prescribed in this regard.

26. Purchase of its own securities by the Company

(1) No company limited by shares and no company limited by guarantee and having a share capital shall have power to buy its own securities unless the consequent reduction of capital is effected and sanctioned in pursuance of section 32 or sub-section (8) of section 97, or give a loan, guarantee or provide security or otherwise provide any financial assistance for purchase of its own securities, whether directly or indirectly.

Provided a company may purchase its own securities out of its free reserves or the securities premium account or the proceeds of the issue of any securities subject to such conditions as may be prescribed;

(2) Nothing in this section shall apply to granting of loans by a company , to persons (other than directors or managers) bonafide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully paid up shares in the company subject to such conditions as may be prescribed.

27. Allotment

(1) No allotment shall be made of any securities of the company offered to the public for subscription unless the minimum subscription has been subscribed and the sum payable on application for the amount so stated has been paid to and received by the company whether in cash or by cheque, or other instrument which has been purchased by the applicant; and the allotment made, if any, in contravention of this sub-section is voidable at the instance of the applicant.

(2) Every company, intending to offer securities to the public for subscription by the issue of a prospectus (otherwise than on an offer made under first proviso to sub-section (1) & sub-section (10) of section 17) shall, before such issue, make an application to one or more recognised stock exchanges for permission for the securities intending to be so offered to be dealt with in the stock exchange or each such stock exchange and the prospectus issued shall state so.

(3) Any allotment made on an application for allotment of securities in pursuance of a prospectus, shall be void if the permission has not been granted by the Stock Exchange or each such Stock Exchange, as the case may be, before expiry of ten weeks from the date of closing of subscription list.

Provided where an appeal against the decision of any recognized Stock Exchange refusing permission for the securities to be dealt in on that Stock Exchange has been preferred under Section 22 of the Securities Contract (Regulation) Act, 1956, such allotment shall not be void until the dismissal of the appeal.

(4) In the event of non-compliance with the provisions of receipt of minimum subscription and obtaining of permission of the Stock Exchange, all moneys received from applicants for shares shall be repaid subject to conditions as may be prescribed.

(5) No allotment shall be made of any securities of a company in pursuance of a prospectus issued generally, and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the fifth day after that on which the prospectus is first so issued or such later time, if any, as may be specified in the prospectus . The manner of reckoning the fifth day shall be as prescribed.

(6) The amount payable on application, retention of application money in separate account, reckoning of the date of allotment, issue of advertisement regarding allotment of shares, the requirement for appointment of underwriters and terms and conditions for such appointment, return of allotment and other related matters, consequential action and penalty for non-compliance shall be as prescribed.

(7) Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this Section shall be void.

(8) If any director of a company knowingly contravenes or willfully authorizes or permits allotment of shares without receipt of the minimum subscription, or allots shares without obtaining permission of the Stock Exchange , he shall be

personally liable to compensate the company and the allottee respectively for any loss, damages, or cost which the company or allottee may have sustained or incurred thereby;

Provided that the proceedings to recover any such loss, damage or costs shall not commence after the expiry of two years from the date of allotment.

(9) Whenever a Company having a share capital makes any allotment of shares, the Company shall file with the Registrar, a return of allotment as prescribed.

(10) A Company may pay commission to any person in connection with subscribing to its securities subject to the conditions as may be prescribed.

28. Securities, kinds, voting rights & others

(1) The securities in a company shall be movable property, transferable in the manner provided by the articles of the company, prima facie evidenced by a certificate issued under the common seal of the company and duly distinguished by its appropriate number.

Provided that numbering of the shares shall not apply to the shares held with a depository.

(2) The Central Government may prescribe rules for issue, making calls for unpaid amount on shares, issue of duplicate certificate for securities and receipt and recording of nomination of securities. Any non-compliance of the rules is punishable under the rules.

(3) Share capital of a company limited by shares shall be of two kinds, viz.

(a) equity share capital

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise

(b) Preference share capital

(4) The preference shares issued by a company shall be redeemed in such manner and subject to such conditions as may be prescribed. The redemption of preference shares under this section by a company shall not be taken as reducing the amount of its share capital.

(5) Where a company is not in a position to redeem any preference share and to pay dividend, if any, in accordance with the terms of the issue, (such shares being hereinafter referred to as unredeemed preference shares), it may, with the consent of the Tribunal on a petition made by it in this behalf and notwithstanding anything contained in this Act, issue further redeemable preference shares equal to the amounts due (including the dividend thereon), in

respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed shares shall be deemed to have been redeemed.

(6) Subject to the provisions of the Act,

- (a) every member of a company limited by shares and holding equity share capital therein shall have right to vote in respect of such capital on every resolution placed before the company and
- (b) his voting right on a poll shall be in proportion to his share of the paid up equity capital of the company

Provided that the voting rights of the holders of the equity shares with differential rights shall be subject to such rules and conditions as may be prescribed..

Provided further that the member shall not be entitled to any voting right in respect of the monies so paid by him on the whole or part of the amount paid on any share held by him, until the same would, but for such payment, become presently payable.

(7) Subject to rules framed under this section every member of the company limited by shares and holding any preference share capital therein shall, in respect of such capital, be entitled to vote on every resolution placed before the company at any meeting, which directly affect the rights attached to his preference shares, including resolution for winding up of the company or for the repayment or reduction of such share capital subject to such conditions as may be prescribed.

Provided that the Central Government may by rules made in this behalf, specify a class or classes of companies in which the voting rights in respect of preference shares shall not accrue or accrue subject to such conditions as may be prescribed.

(8) Any calls for further share capital on the same class of shares shall be made on an uniform basis.

(9) A company may accept from any holder of a security, the whole or part of the amount remaining unpaid on any security held by him although not called up.

Provided, in the case of companies limited by shares, such member shall not be entitled to any voting right in respect of monies so paid by him until the same becomes payable.

(10) A company may capitalize the profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company subject to such conditions as may be prescribed.

29. Variation of share holders rights

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

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

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

(2) The holders of not less, in the aggregate, than ten percent 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 Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal.

30. Transfer & transmission of securities

(1) A company shall not register a transfer of securities of the company (or the interest of the member in the company in case of a company having no share capital), unless a proper instrument of transfer, as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered within such time from the date of execution as may be prescribed, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.

Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within such period, a company may register the transfer on such terms as to indemnity as the board may think fit.

Provided further that nothing in this section shall prejudice any power of the company to register as security holder any person to whom the right to any securities of the company has been transmitted by operation of law.

(2) Where the application is made by the transferor and relates to partly paid shares the transfer shall not be registered, unless the company gives the notice of application to the transferee and the transferee makes no objection to the transfer within two weeks from the receipt of notice.

(3) The provisions, relating to application of transfer of security, effected by the transferor and transferee both of whom are entered as beneficial holders in the records of a depository, shall not apply.

(4) The certification by a company of any instrument of transfer of securities of, the company, in such manner as may be prescribed can be taken as a

representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the securities in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the securities.

(5) Where any person acts on the faith of an erroneous certification made by a company negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(6) Every company, unless prohibited by provision of law or any order of Court, Tribunal or other authority shall deliver in accordance with procedure laid down in section 15, the certificates of all securities allotted or transferred as under:

- (a) within 2 months after incorporation in the case of subscribers to the memorandum
- (b) within 2 months from the date of allotment in the case of any allotment of any of its securities, and
- (c) within 1 month in the case of transfer of shares after the application of the registration of transfer of any such securities is received.

Provided that the Central Government may extend any of the periods within which the certificates of all debentures allotted shall be delivered to a further period not exceeding six months subject to such condition as may be prescribed.

Provided that where the securities are dealt with in a depository the company shall intimate the details of allotment of securities or transfer to the depository immediately on allotment or transfer of such security.

(7) A transfer of the share or other interest in a company of a deceased member thereof made by his legal representative shall, although the legal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

(8) (a) If default is made in complying with this section, including intimation to the depository, the company and every officer of the company who is in default shall be punishable under the Act.

(b) If any person deceitfully personates an owner of any share or interest in a company, or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such shares or interest or any coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable under the Act.

(9) If a company refuses, whether in pursuance of any power of the company

under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities of the company, it shall within one month from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission as the case may be, giving reasons for such refusal.

(10) If the name of any person is without sufficient cause, entered in the Register of Members of a company including Foreign Register of Members or Debenture holder, if any, or after having been entered in the register, is, without sufficient cause, omitted therefrom, the aggrieved person including a depository participant or investor or Securities and Exchange Board of India, may appeal to the tribunal, for rectification of the Register of Members, or within two months, against any refusal of the company to register the transfer or transmission or against any failure on its part within the period referred to above, either to register the transfer or transmission or to send notice of its refusal to register the same.

Explanation: For the purpose of this section, in the case of Foreign Register of Members or Debenture holders, the term 'Tribunal' may be read as 'any competent Court in the State or country outside India which the Central Government may, by notification in the official gazettee, nominate for this purpose.

(11) The form of appeal, time limit within which appeal have to be made, the person who may make an appeal and other related matters shall be as prescribed.

(12) The Tribunal may decide any question which is necessary or expedient to decide in connection with the application for rectification including the question relating to the title of any person who is a party to the application.

(13) The Tribunal may either dismiss the appeal or reject the application or by order direct that the transfer or transmission shall be registered by the company or direct rectification of the register; The Tribunal may also give direction to a depository to rectify its register or records. The Tribunal may also make such orders as to costs.

(14) If default is made in giving effect to the orders of the Tribunal under this section, the company and every officer who is in default shall be punishable under the Act.

31. Debentures

(1) No company shall issue any debentures carrying voting rights.

(2) No body corporate shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the body corporate has, before such issue appointed one or more debenture trustees. The conditions governing the appointment of such trustees shall be as prescribed.

(3) The Central Government may prescribe rules for securing any issue of debentures, execution of debenture trust deed, right of debenture holders to inspect the trust deed and to obtain copies thereof, creation of debenture redemption reserve, appointment of debenture trustees, liability of the trustees, rights of the holders of debentures, power to reissue redeemed debentures and other related matters. Any default in complying with the Rules prescribed under the Act shall be punishable under the Act.

(4) The debenture trustee shall take such steps as to protect the interest of the debenture holders and redress their grievances in general and in particular take such other illustrative steps as may be prescribed.

(5) Subject to the provisions of this section and exemptions prescribed, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, liability for breach of trust, where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

Provided the liability of the debenture trustee shall be subject to such exemption as may be prescribed.

(6) A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

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

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

(8) Where a company fails to redeem the debentures on the date of maturity or fails to pay interest on the debentures, the tribunal may, on the application of any or all of the holders of debentures, shall, after hearing the parties concerned, direct, by order, the company to redeem the debenture forthwith by payment of

principal and interest due thereon.

(9) If default is made in complying with the order of the Tribunal in connection with the debentures every officer of the company who is in default shall be punishable under the Act.

(10) A contract with the company to take up and pay for any debentures of the body corporate may be enforced by a decree for specific performance.

32. Reduction of share capital

(1) A company limited by shares or a company limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner as may be prescribed, subject to confirmation by the Tribunal.

(2) The Tribunal may issue such directions, as it may deem fit, on the petition filed by the company for an order of confirmation of reduction of capital, including issue of notice to such creditors.

(3) The Tribunal, if satisfied that every creditor of the company, his debt or claim has been discharged or determined or has been secured or is not obtained, may make an order confirming the reduction on such terms and conditions as it deem fit.

(4) The company shall deliver, a certified copy of the order and a minute approved by the Tribunal showing, with respect to the share capital of the company as altered by the order,

- (i) the amount of share capital,
- (ii) number of shares into which it is to be divided,
- (iii) the amount of each share and
- (iv) the amount, if any, at the date of registration deemed to be paid up on each share;

to the Registrar, who shall register the same.

(5) Notice of the registration shall be published in such manner as the Tribunal may direct.

(6) The Registrar shall certify 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 capital have been complied with and the share capital of the company is such as is stated in the minute.

(7) The provisions of this section shall not apply to buy back of its own securities by a company.

(8) The company shall not utilize the share premium account except as may be prescribed

	<p>Provided that the provisions of this section relating to reduction of share capital of a company shall apply as if the securities premium account were the paid up capital of the company .</p> <p>(9) A member of the company, past or present, shall not be liable, in respect of any share, to any call or contribution exceeding in amount the difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the minute of reduction :</p> <p>Provided that, if any creditor entitled in respect of any debt or claim to object to the reduction of share capital is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after the reduction the company is unable, within the meaning of section 136, to pay the amount of his debt or claim, then</p> <p style="padding-left: 40px;">(a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day immediately before the said date ; and</p> <p style="padding-left: 40px;">(b) if the company is wound up, the Tribunal, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.</p> <p>(10) Nothing in sub-section (9) shall affect the rights of the contributories among themselves.</p> <p>(11) If any officer of the company</p> <p style="padding-left: 40px;">(a) knowingly conceals the name of any creditor entitled to object to the reduction ;</p> <p style="padding-left: 40px;">(b) knowingly misrepresents the nature or amount of the debt or claim of any creditor ; or</p> <p style="padding-left: 40px;">(c) abets or is privy to any such concealment or misrepresentation as aforesaid ;</p> <p>he shall be punishable under the Act.</p>
	<p>CHAPTER - IV</p>

PUBLIC DEPOSITS

33. Public Deposits

(1) The Central Government may, in consultation with Reserve Bank of India, prescribe the limit upto which, the manner in which and the conditions subject to which deposits may be invited or accepted by the company either from the public or from its members.

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

(a) such deposit is invited or cause to be invited in accordance with the rules prescribed; and

(b) an advertisement, including therein a statement showing the financial position of the company, total number of small depositors and amount due to them in respect of which default in repayment has been made and waiver of any interest accrued on deposits of small depositors, has been issued by the company in such form and in such manner as may be prescribed.

(3) The provisions of sections 18, 19 & 21 of the Act as they relate to prospectus shall be applicable to an advertisement issued pursuant to this section.

(4) No company shall invite or allow any other person to invite or cause to be invited on its behalf, any deposit if the company has defaulted in the repayment of any deposit or part thereof and interest thereupon in accordance with the terms and conditions of such deposit.

(5) Where any deposit is accepted by a company in contravention of the rules made under sub-section (1) the repayment of such deposits shall be made by the company within 30 days from the date of acceptance of such deposit.

(6) Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf, any deposit in excess of the limits prescribed under the rules or in contravention of the manner or condition prescribed under this section, a company and every officer of the company who is in default shall be punishable under the Act.

(7) Where a company omits or fails to make repayment of deposit in accordance with provisions of this section or rules made under this Act, the company and every director of the company at the time of commission of default shall be punishable under the Act.

(8) Every company which accepts deposits from small depositors shall intimate to the tribunal any default made by it in repayment of any such deposit or part thereof or interest thereupon within 60 days from the date of default and

such intimation shall include particulars of names and addresses of the small depositors, the principal sum of deposits due to them and interest accrued thereon.

(9) Where a company has failed to repay any deposit or part thereof in accordance with terms and conditions of such deposits the tribunal may either on its own motion or on the application of the depositor or on receipt of intimation from the company for the default in repayment to the small depositors or interest thereupon direct, by order, the company to make repayment of such deposit or part thereof or interest thereupon forthwith or within such time and subject to such conditions as may be prescribed in the order.

Provided the tribunal may, before making any order under this sub-section, give a reasonable opportunity of being heard to the company, the other persons interested in the matter, and small depositors as the case may be.

(10) Whoever fails to comply with any order made by the tribunal under sub-section(9) shall be punishable under the Act.

(11) Notwithstanding anything contained in sections 259 and 261, every offence connected with or arising out of non-repayment of deposits under this Section shall be cognizable offence under the Code of Criminal Procedure 1973.

Provided the Court shall take cognizance of any offence under this section only on a complaint made by the Central Government or any officer authorized by it in this regard.

(12) The Central Government may on an application if it considers it necessary for avoiding any hardship or for any other just or sufficient reason, by order, grant extension of time to a company to comply with, or exempt any company from any of the provisions of this section and rules prescribed under the Act, either generally or for any specified period subject to such condition as may be specified in the order only in respect of deposits not specifically covered by sub-section (9) of this section.

Provided that the Central Government shall not grant time or exemption in respect of repayment of deposit.

(13) Nothing contained in this section shall apply to a banking company or such other company as the Central Government may, after consultation with Reserve Bank of India, specify in this behalf.

CHAPTER V
REGISTRATION OF CHARGES

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

(1) Subject to the provisions of this Part, the particulars of every charge created by a company, shall, so far as any security on the company's property or undertaking is conferred thereby, whether the property or undertaking is situated in India or outside India, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, be filed with the Registrar for registration in the manner prescribed, in default of which the charge shall be void against the liquidator and any creditor of the company, if any.

Provided that the term "creation of charge" includes charge created outside India comprising property situated outside India, charge created in India but comprises property situated outside India, any charge created for the benefit of debenture holders, modification of the terms and conditions or the extent of operation of any charge created and acquisition of property which is subject to charge of any kind whether the property is situated in India or outside India, but does not include negotiable instruments given to secure payment of any book debts of the company.

Provided further that in the event of any company being wound up during the period prior to filing of the particulars of charge the onus of proving the creation of charge before the liquidator shall lie with the lender.

(2) Nothing in sub section(1) shall prejudice any contract or obligation for the repayment of the money secured by the charge.

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

(4) The Registrar shall register any charge filed with him in pursuance of this part.

(5) Every charge created by a company shall be void against the liquidator and any creditor the company unless the prescribed particulars thereof are filed pursuant to sub-section (1).

(6) The holding of debentures entitling the holder to a charge on immovable property shall not, for the purposes of this section , be deemed to be an interest in immovable property.

(7) Where any 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 charge as from the date of such registration.

	<p>(8) The company shall cause the particulars of registration of the charge created in respect of debentures issued, be endorsed on every debenture certificate issued.</p> <p>(9) It shall be the duty of a company to file with the Registrar for registration the particulars of every charge created by the company, and of every issue of debentures of a series, requiring registration under this Part; but registration of any such charge may also be effected on the application of any person interested therein.</p> <p>(10) The company and the chargeholder shall give intimation, in the prescribed form, to the Registrar, of the payment or satisfaction, in full, of any charge relating to the company and requiring registration under this Part, within the prescribed time and the Registrar shall register the same.</p> <p>(11) The Central Government, may on the application of the company or any person interested and on such terms and conditions as it may deem just and expedient direct, that any omission or misstatement of any particular with respect to any charge, issue of debenture or satisfaction of charge already filed with the Registrar was accidental or due to inadvertence or some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company, be rectified.</p> <p>(12) If default is made in complying with the provisions of this section, the company , and every officer of the company who is in default, shall be punishable under the Act.</p>
	<p>35. Intimation of the appointment of Receiver or Manager</p> <p>(1) If any person obtains an order for appointment of a receiver of, or of a person to manage, the property of a company, or if any person appoints such receiver or person under any powers contained in any instrument, he shall, within the time prescribed, give notice of the fact to the Registrar; and the Registrar shall, on payment of the prescribed fee, register the document.</p> <p>(2) Where any person so appointed under the powers contained in any instrument ceases to act as such, he shall, on so ceasing, give to the Registrar notice to that effect; and the Registrar shall register the notice.</p> <p>(3) If any person makes a default in complying with the requirements of sub-section (1) or sub-section (2), he shall be punishable under the Act.</p>
	<p>36. Company's register of charges.</p> <p>(1) Every company shall keep at its registered office a register of charges and enter therein all charges specifically affecting the property of the company,</p>

and all floating charges on the undertaking or on any property of the company, giving in each case the particulars prescribed along with a copy of instrument creating the charge.

(2) If any officer of the company knowingly omits, or willfully authorises or permits the omission of, any entry required to be made in pursuance of sub-section (1), he shall be punishable under the Act.

(3) The Register of Charges and copies of instruments kept in pursuance of sub-section (1) of this section, shall be open during business hours (but subject to such reasonable restriction as the company in the articles may impose, so that not less than two hours in each day are allowed for inspection) to the inspection of any creditor or member of the company without fee, at the registered office of the company..

(4) If the inspection of the said register or copies of instruments is refused, the company, and every officer of the company who is in default, shall be punishable under the Act

(5) The Central Government may also by order compel an immediate inspection of the said copy of register, after giving an opportunity of being heard to both the parties.

CHAPTER VI

MEMBERS, MEETINGS & RESOLUTIONS

37. Register of Members and Security Holders

(1) Every company shall keep in one or more books a register of its members, index of members, register and index of debenture holders, register and index of any other security holder by whatever name called, register and index of beneficial owners and foreign register of members, debenture holders or any other security holder in the manner prescribed.

Provided that the register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 shall be deemed to be an index of members and register and index of debenture holders or any other security as the case may be.

(2) If default is made in complying with sub-section (1) or rules made thereunder , the company, and every officer of the company who is in default, shall be punishable

under the Act.

38. Annual Return and Inspection

(1) Every company having share capital and every company not having share capital shall prepare and file with the Registrar a Return containing such particulars in such form as may be prescribed in the Schedule.

(2) If a company fails to comply with the provisions of this section or Rules prescribed under the Act, the company, and every officer of the company who is in default, shall be punishable under the Act.

(3) Such of the Registers and copies of such of the returns shall be kept at the Registered Office of the company and be kept open for inspection and allowed for making extracts or copies thereof, subject to such conditions as may be prescribed.

Provided that such Registers and copies of returns shall be kept at any other city, town or village in which more than one tenth of the total number of members entered in the Register of Members, reside, if such other place has been approved by a special resolution passed by the company in general meeting and the Registrar has been given, in advance, a copy of the proposed special resolution.

(4) (i) If any inspection, or the making of any extract required under this section is refused, or if any copy required under this section or rules prescribed under the Act is not sent within the period specified in such rules, the company, and every officer of the company who is in default, shall be punishable under the Act.

(ii) The Central Government may also, by order, compel an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it, or that the copy required shall forthwith be sent to the person requiring it, as the case may be.

(5) The Registers and documents mentioned in sub-section (3) shall be prima facie evidence of any matter directed or authorized to be inserted therein by the Act or Rules made thereunder.

39. Annual General Meeting.

(1) Every company shall in each year hold, in addition to any other meetings, a general meeting as its annual general meeting in the manner prescribed and not more than fifteen months shall elapse between the date of one annual general meeting and that of the next.

Provided that the Registrar may, for any reason beyond the control of the company, extend the time within which any annual general meeting shall be held, by a period not exceeding three months.

(2) If default is made in holding an annual general meeting in accordance with this section, the Central Government may, notwithstanding anything in this Act or in the articles of the company, on the application of any member of the company, call, or

direct the calling of, a general meeting of the company and give such ancillary or consequential directions, including, a direction, that one member of the company present in person or by proxy shall be deemed to constitute a meeting as the Central Government thinks expedient in relation to the calling, holding and conducting of the meeting and such a meeting shall be deemed to be the Annual General Meeting of the Company.

Provided that in the case a sick industrial company the provisions of this section shall have effect as if for the word 'Central Government' the word 'Tribunal' had been substituted.

(3) If default is made in holding a meeting of the company in accordance with this section, or in complying with any directions of the Central Government or Tribunal as the case may be, under sub-section (2) of this section, the company, and every officer of the company in default, shall be punishable under the Act.

40. General Meeting on requisition.

(1) The board of directors of a company shall, on the requisition of such number of members of the company and in such manner prescribed, forthwith proceed duly to call an extraordinary general meeting of the company.

(2) If the board does not, within twenty-one days from the date of the deposit of a valid requisition in regard to any matter, proceed duly to call a meeting for the consideration of those matters within the stipulated time, the meeting may be called by the requisitionists themselves in the manner prescribed.

(3) The Central Government may prescribe the rules regarding notice, conduct of the meeting, quorum, voting, entitlement of members to appoint proxies and other related matters for conducting any general meeting.

41. Explanatory Statement

(1) A statement setting out all material facts concerning each item of special business to be transacted at a General Meeting including interest of any director, manager, their relative if any, shall be annexed to the notice of the meeting and the contents of such a statement shall be as prescribed.

Explanation: Any business to be transacted in any General Meeting is deemed special unless prescribed as an ordinary business .

(2) Where as a result of the non-disclosure or insufficient disclosure, in a statement referred to in sub-section (1), being made by a director or manager, if any, benefit accrues to the director or manager or his relatives either directly or indirectly, the director or the manager shall hold such benefit in trust for the benefit of the company and he shall, without prejudice to any other penalty leviable under this Act or under any other law for the time being in force, be liable to indemnify the company or where such benefit cannot be measured in terms of monetary value, compensate the company to the extent of the benefit received by him.

(3) If a default is made in complying with the provisions of this section, every officer of the company, who is in default, shall be punishable under this Act.

42. Voting Rights of Members

(1) Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien and not on any other ground.

(2) 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 demanded, and the declaration of the result by the Chairman shall be conclusive evidence of the result of voting.

(3) A poll may be ordered to be taken by the Chairman of the Meeting of his own motion or on a demand made in that behalf by such number of members as may be prescribed. The Chairman of the meeting shall have the power to regulate the manner in which a poll shall be taken and the result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

(4) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act and the rules made thereunder or the articles, the Tribunal may, either of its own motion or on the application of any director of the company, or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner subject to such directions as the Tribunal may deem fit.

(5) 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.

43. Circulation of Members' Resolution

(1) A company shall, on the requisition in writing of such number of members and in the manner prescribed (unless the company otherwise resolves) give, to the members of the company entitled to receive notice of the next general meeting, notice of any resolution which may properly be moved and is intended to be moved at that meeting.

(2) The company shall not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the Central Government is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter ; and the Central Government may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(3) If default is made in complying with the provisions of this section or rules made thereunder, every officer of the company who is in default, shall be punishable under the Act.

44. Declaration of beneficial interest

(1) Notwithstanding anything contained in any other law, where a person, whose name is entered in the Register of Members of a company as a holder of a share in that company does not hold the beneficial interest in such a share, the person holding the beneficial interest in such share or class of shares of the company, shall make a declaration to that effect to the company who shall in turn file a return with the Registrar within such time and in such form as may be prescribed.

(2) Any charge, promissory note or any other collateral agreement, created, executed or entered into in relation to any share, by the ostensible owner thereof, or any hypothecation by the ostensible owner of any share, in respect of which a declaration is required to be made under the foregoing provisions of this section, but not so declared, shall not be enforceable by the beneficial owner or any person claiming through him.

(3) If default is made in complying with the provisions of this section or rules made thereunder, every officer of the company who is in default, shall be punishable under the Act.

45. Ordinary Resolution & Special Resolution

(1) A resolution shall be an ordinary resolution when at a general meeting of which the notice required under this Act has been duly given, the votes cast (whether on a show of hands, or on a poll, as the case may be,) in favour of resolution (including the casting vote, if any, of the chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the resolution by members so entitled and voting.

(2) A resolution shall be a special resolution when:-

(a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution ;

(b) the notice required under this Act has been duly given of the general meeting ;
and

(c) the votes cast in favour of the resolution (whether on a show of hands, or on a poll, as the case may be) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, are not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

(3) Where, by any provision contained in this Act or in the Articles, special notice is required of any resolution, notice of the intention to move the resolution shall be given to the company in the manner prescribed and the company shall give its members notice of the resolution in the manner prescribed.

(4) Where a resolution is passed at an adjourned meeting of ;

(a) a company ,

(b) the holders of any class of shares in a company , or

(c) the board of directors of a company .

the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

(5) A copy of every resolution, in respect of such matters as may be prescribed, shall be filed with the Registrar in the manner prescribed, who shall record the same.

(6) If any default is made in complying with this sub-section and the rules made thereunder the company and every officer in default including liquidator of a company, if any, is punishable under the Act.

46. Postal Ballot

(1) Notwithstanding anything contained in the foregoing provisions of this Act, a listed public company shall, in the case of resolutions relating to such business as the Central Government may, by notification, declare to be conducted only by postal ballot (including voting by electronic mode), get any resolution passed by means of postal ballot, in the manner prescribed.

(2) If default is made in complying with this section and rules made thereunder , the company and every officer of the company, who is in default shall be punishable under the Act.

47. Minutes of the Meeting

(1) Every company shall cause minutes of all proceedings of every general meeting including meeting called by the requisitionist referred to in section 40 and of all proceedings of every meeting of its board of directors or of every committee of the board, to be kept in the manner prescribed and the minutes of the meeting kept in accordance with this sub-section shall be evidence of the proceedings recorded therein.

(2) Where minutes of the proceedings of any general meeting of the company or of any meeting of its board of directors or of a committee of the board have been kept in accordance with sub-section (1) and rules made thereunder, then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and in particular, all appointments of directors or liquidators made at the meeting shall be deemed to be valid.

(3) If default is made in complying with the foregoing provisions of this section and rules made thereunder in respect of any meeting, the company, and every officer of the

company who is in default, shall be punishable under the Act.

(4) No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by this section to be contained in the minutes of the proceedings of such meeting.

(5) If any report is circulated or advertised in contravention of sub-section (4), the company, and every officer of the company who is in default, shall be punishable under the Act.

CHAPTER VII

DIVIDENDS, INVESTOR EDUCATION AND RELATED MATTERS.

48. Declaration and payment of Dividend

(1) No dividend shall be declared at a general meeting or paid except in cash, by a company for any financial year, except out of the profits of the company for that year arrived at after providing for depreciation in accordance with the rules prescribed or out of the profits of the company for any previous financial year or years arrived at, after providing for depreciation in respect of those years and loss sustained in respect of any of the previous financial years, which remains undistributed, or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government.

Provided that a company which fails to comply with the provisions of sub-section (5) of section 28 shall not, so long as such failure continues, declare any dividend on its equity shares.

Provided further that the Central Government may, if it thinks necessary so to do in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year or any previous financial year or years without providing for depreciation.

(2) The board of directors may declare interim dividend, during any financial year without requiring to comply with the provisions of sub-section (1) above, subject to final approval by the general meeting after the end of the financial year.

(3) The dividend once declared shall neither be revoked nor modified.

(4) Notwithstanding anything contained in sub-section (1), no dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at except after the transfer to the reserves of the company of such percentage of its profits for that year as may be prescribed.

(5) The dividend declared shall be paid or credited to the account of registered shareholder or to his bankers, notwithstanding any declaration of beneficial interest in any securities, and when the dividend is payable to the bankers, no separate application need be filed by the bankers for payment of such dividend.

(6) Where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in the previous financial year(s) and transferred by it to the reserves, such declaration of dividend shall be made only in accordance with the rules prescribed in this behalf, and a resolution passed at the meeting of the board with the consent of all the directors present and with the prior approval of the financial institutions which have made term loans to the company and thereafter in accordance with a special resolution passed by the shareholders in an annual general meeting.

(7) Where a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted in accordance with this Section and rules made thereunder, to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable under the Act.

Provided that no offence shall be deemed to have been committed within the meaning of the foregoing provisions in the following cases, namely :-

(a) where the dividend could not be paid by reason of operation of any law ;

(b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with ;

(c) where there is a dispute regarding the right to receive the dividend ;

(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company.

(8) No company shall give, or no shareholder (including proxy, if any) shall demand or accept, any gift either at any general meeting or otherwise in lieu of or in addition to the dividend payable under this section. In case of any default in complying with this sub-section, the company and its officers in default are punishable under the Act.

Provided 'gift' does not include discount coupon, food or beverages offered at any general meeting.

49. Un-paid Dividend

(1) The transfer of dividend amounts to the bank and payment therefrom shall be

as prescribed.

(2) Any dividend which remains unpaid or unclaimed for a period of seven years from the date of declaration of such dividend and the amounts lying to the credit of the general revenue account under section 205B of the Companies Act, 1956, for a period beyond seven years, shall be credited to the Fund established under sub-section(3) of this Section.

(3) The Central Government shall establish a fund to be called the Investor Education and Protection Fund. The amounts to be credited to the fund, manner, utilization and administration of the fund, authority to administer the fund and related matters shall be as per the Rules prescribed in consultation with Comptroller and Auditor General of India

(4) If a company fails to credit such amounts to the Investors Education and Protection Fund established under sub-section 3 above, the company and every officer of the company who is in default shall be punishable under the Act.

(5) Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act,

(a) transfer the dividend in relation to such shares to the special account referred to in section 49 and rules made thereunder unless the company is authorised by the registered holder of such share in writing to pay such dividend to the transferee specified in such instrument of transfer ; and

(b) keep in abeyance in relation to such shares any offer of rights shares under section 25 and any issue of fully paid-up bonus shares.

Provided that in relation to shares offered under section 25, to any director or officer of the company, the company shall dispose of and distribute proceeds thereof to the persons who are entitled thereto as the Court may direct or in the manner prescribed.

50. Payment of Interest out of capital

(1) No declaration or payment of dividend under this Section, including, interim dividend shall result in payment of dividend or interest out of capital.

Provided where any shares in a company are issued for the purpose of raising money to defray the expenses of the construction of any work or building, or the provision of any plant, which cannot be made profitable for a lengthy period, the company may 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 as may be prescribed and with the previous sanction of the Central Government .

Provided further nothing in this section shall affect any company to which the Indian Railway Companies Act, 1895 (10 of 1895), or the Indian Tramways Act, 1902

(4 of 1902) applies.

(2) The grant of such sanction shall be conclusive evidence, for the purposes of this section, that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section.

(3) 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.

CHAPTER VIII

ACCOUNTS

51. Books of account to be kept by a company.

(1) Every company shall keep at its registered office such proper books of account with respect to matters as may be prescribed, which shall explain the transaction and give a true and fair view of the state of affairs of the company including that of branch office, if any. Such books shall be kept on accrual basis and according to double entry system of accounting. .

Provided that all or any of the books of account aforesaid may be kept at such other place in India as the board of directors may decide and when the board of directors so decides, the company shall, within seven days of the decision, file with the Registrar a notice in writing giving the full address of that other place.

(2) The inspection of books of account and the period for which the books of account shall be preserved in good order, as prescribed.

(3) Where the company has :

- (i) managing director(s) ,
- (ii) A manager,
- (iii) The wholetime director incharge of finance,
- (iv) The Chief Accounts Officer,
- (v) any other person charged with the duty of seeing that the requirements of this section are complied with

such managing director or manager, wholetime director incharge of finance, Chief Accounts Officer and any other person charged with the duty of seeing that the requirements of this section are complied with and where the company has no person mentioned in (i) to (v) above, every director of the company shall be liable for punishment under the Act, if they fail to take all reasonable steps to secure compliance

by the company with the requirements of this Section and rules made thereunder or has by his own wilful act been the cause of any default by the company.

52. Annual Accounts and Balance Sheet

(1) At every annual general meeting of a company held in pursuance of section 39, the board of directors of the company shall lay before the company;

(a) a balance sheet as at the end of the period as specified in the Rules and

(b) a profit and loss account or in the case of company not carrying on business for profit, an Income and Expenditure Account for the period as may be prescribed and referred to as financial year,

within six months from the close of the financial year.

Provided that the Registrar of Companies may grant extension of the financial year in this regard for any special reason, which cannot, in any case, exceed three months.

Provided further that a holding company shall have the option to prepare consolidated accounts including balance sheet and profit and loss account for itself and its subsidiary or subsidiaries which shall be a sufficient compliance of this section if such consolidated accounts are laid at its Annual General Meeting which shall be without prejudice to the requirements of subsidiary companies complying with the provisions of this section.

(2) In case of default in complying with the provisions of this section, any person, being a director of a company or any person, not being the director of the company, having been charged by the board with the duty of seeing that the provisions of this section have been complied with, fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable under this Act.

53. Form and contents of Balance Sheet and Profit and Loss Account

(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in such form as may be prescribed (with due regard to the general instructions prescribed and Accounting Standards for the preparation of Balance Sheet) or as near thereto as circumstances admit or in such other form as may be approved by the Central Government either generally or in any particular case.

(2) Every profit and loss account of a company or Income and Expenditure Account in case of companies not carrying on business for profit, shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject as aforesaid, be in such form, or as near thereto as circumstances admit, as

may be prescribed.

Provided any reference to a Balance Sheet or Profit & Loss Account shall include any notes thereon or documents annexed thereto giving information required by this Act to be given in the form of such notes or documents.

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of balance sheet has been specified in or under the Act governing such class of company.

(3) There shall be attached to the balance sheet of a holding company having a subsidiary or subsidiaries at the end of the financial year as at which the holding company's balance sheet is made out, the documents as may be prescribed, in respect of such subsidiary or of each such subsidiary, in case the company does not opt to comply with the second proviso to sub-section (1) section 52.

(4) Where a company is a holding company in relation to one or more of its subsidiaries, the directors shall, instead of preparing separate annual accounts for itself and for each of its subsidiary companies, prepare annual accounts for itself and its subsidiaries (hereinafter in this section referred to as consolidated accounts, the contents of which shall be as prescribed) and place before the annual general meeting of the holding company.

(5) The Central Government may on its own, or on an application by a class or classes of companies, by notification in the Official Gazette, exempt any class or classes of companies from compliance with any of the requirements of this section or the rules prescribed, if, in its opinion, it is necessary to grant the exemption in public interest. Any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

(6) The Central Government may, by a Notification in the Official Gazette, constitute an Advisory Committee to be called the National Advisory Committee on Accounting Standards to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under this Act.

(7) Every profit and loss account and balance sheet of the company shall comply with the accounting standards as may be prescribed by the National Advisory Committee on Accounting Standards.

(8) Where the profit and loss account and the balance sheet of the company do not comply with the accounting standards, such companies shall disclose in its profit and loss account and balance sheet, the following, namely:-

- (a) the deviation from the accounting standards
- (b) the reasons for such deviation; and

(c) the financial effect, if any, arising due to such deviation

(9) Where the company has

- a. managing director(s),
- b. a manager,
- c. wholetime director incharge of finance,
- d. the chief accounts officer,
- e. any other person charged with the duty of seeing that the requirements of this section are complied with

such managing director or manager, wholetime director incharge of finance, chief accounts officer and any other person charged with the duty of seeing that the requirements of this section are complied with and where the company has no person mentioned in (a) to (e) above, every director of the company shall be liable for punishment under the Act, if they fail to take all reasonable steps to secure compliance by the company with the requirements of this Section and the rules made thereunder.

54. Annual Accounts, Board's Report and matters connected therewith.

(1) The balance sheet and the profit and loss account shall be approved by the board of directors before they are signed on behalf of the board in accordance with the rules prescribed and before they are submitted to the auditors for their report thereon.

(2) The Profit and Loss Account shall be annexed to the balance sheet and the auditors' report (including the Auditors' separate, special or supplementary report, if any) shall be attached thereto.

(3) There shall be attached to every balance sheet laid before a company in general meeting, a report by its board of directors, with respect to matters as may be prescribed and shall be signed in the manner prescribed.

(4) References in this Act to documents annexed or required to be annexed to a company's accounts or any of them shall not include the board's report, the auditors' report or any document attached or required to be attached to those accounts.

(5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section and rules made thereunder, or being the chairman, signs the board's report otherwise than in conformity with the provisions of the rules, he shall, in respect of each offence, be punishable under the Act.

(6) (a) If any copy of a balance sheet or profit and loss account which has not been signed is issued, circulated or published; or

(b) If any copy of a balance sheet is issued, circulated or published without

there being annexed or attached thereto, as the case may be, a copy each of

- (i) the profit and loss account,
- (ii) any accounts, reports or statements which, by virtue of second proviso to sub-section(1) of section 52 are required to be attached to the balance sheet,
- (iii) the auditors report, and
- (iv) the board's report referred to in sub-section (3);

the company, and every officer of the company who is in default, shall be punishable under the Act.

55. Filing of the Balance Sheet with the Registrar and right of Member to copies of Audited Balance Sheet

(1) A copy of every Balance Sheet (including the Profit and Loss Account, the Auditors' Report and every other document required by law to be annexed or attached, as the case may be, to the balance sheet) which is to be laid before a company in general meeting shall, not less than twenty-one days before the date of the meeting, be sent to such of the persons as may be prescribed.

Provided in the case of a company whose shares are listed in a recognized Stock Exchange, sending of a statement containing salient features of documents referred to in this sub-section shall be deemed as sufficient compliance with this sub-section.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be punishable under the Act.

(3) After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting a copy each of such balance sheet and profit and loss account, and in the manner as may be prescribed, shall be filed with the Registrar.

(4) Where Annual General Meeting of a company for any year has not been held, the documents referred to in sub-section (1), duly signed, along with statement of the fact and reasons for not holding the Annual General Meeting shall be filed with the Registrar within 30 days from the latest day on or before the Annual General Meeting ought to have been held in accordance with the provisions of this Act.

(5) If default is made in complying with the requirements of sub-section (3) or sub-section (4) of this section and rules made, the company and every officer of the company, who is in default, shall be punishable under this Act.

(6) Where any particulars or information including payments made to any director or other persons by any other company, body corporate, firm or person which are required to be given in the balance sheet or profit and loss account of a company or in any document required to be annexed or attached thereto, it shall be the duty of

the concerned officer of the company to furnish without delay to the company, and also to the company's auditor, whenever he so requires, those particulars or that information in as full a manner as possible.

(7) The Chief Accounts Officer and any other person knowingly makes default in performing the duty cast on him by sub-section (6), he shall be punishable under the Act.

CHAPTER IX

MATTERS RELATING TO AUDIT AND AUDITORS

56. Appointment and removal of Auditors

(1) Every company shall, at each annual general meeting, appoint a person or a firm(s), as auditor or auditors, who is not in full time employment elsewhere, or not holding appointment as auditor exceeding such number of companies as may be prescribed from time to time, to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting subject to such conditions as may be prescribed.

Provided that the auditor of a Government company shall be appointed by Comptroller and Auditor General of India.

Provided further that before any appointment or re-appointment of auditor or auditors is made by any company at any annual general meeting, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the effect that the appointment or re-appointment if made, will be in accordance with the conditions as may be prescribed.

(2) Subject to the provisions of sub-section (1) and rules made thereunder, at any annual general meeting, a retiring auditor, by whatsoever authority appointed, shall be re-appointed, unless:

(a) he is not qualified for re-appointment ;

(b) he has given the company notice in writing of his unwillingness to be re-appointed ;

(c) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-

appointed ; or

- (d) a notice has been given of an intended resolution to appoint some person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with.

(3) Where at an annual general meeting no auditors are appointed or re-appointed, the Central Government may appoint a person to fill the vacancy.

(4) The company shall, within thirty days of the Central Government's power under sub-section (3) becoming exercisable, give notice of that fact to that Government ; and, if a company fails to give such notice, the company, and every officer of the company who is in default, shall be punishable under the Act.

(5) The first auditor or auditors of a company shall be appointed by the board of directors within three months of the date of registration of the company ; and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting :

Provided that:

- (a) the company may, at a general meeting, remove any such auditor or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting ; and
- (b) if the board fails to exercise its power under this sub-section a company in general meeting may appoint the first auditor or auditors.

(6) The board may fill any casual vacancy in the office of an auditor who shall hold office until the conclusion of the next Annual General Meeting; but while any such vacancy continues, the remaining auditor or auditors, if any, may act.

Provided that where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the company in general meeting.

(7) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

(8) Except as provided in the proviso to sub-section (5), any auditor appointed under this section may be removed from office before the expiry of his term only by the company in general meeting, after obtaining the previous approval of the Central Government in that behalf.

(9) Special Notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed or for a proposal for removing the first auditors appointed under sub-section (5) of this section or for removing an auditor from office before the expiry of his term under sub-sec.(8) of this section and the manner of such an appointment or removal shall be as prescribed.

57. Remuneration of Auditors

(1) The remuneration of the auditors of a company :

- (a) in the case of an auditor appointed by the board or the Central Government, may be fixed by the board or the Central Government, as the case may be;
- (b) in the case of companies to which provisions of section 255 are applicable and the appointment of auditor made pursuant to first proviso to section 56(1) by the Comptroller and Auditor-General of India, and
- (c) in any other case subject to clause (a), shall be fixed by the company in general meeting or by the board if General Meeting so decides.

For the purposes of this sub-section, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression " remuneration ".

58. Qualifications and disqualifications of Auditors

(1) A person shall not be qualified for appointment as auditor of a company unless he is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949).

Provided that a firm whereof all the partners practicing in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of the company, in which case any partner so practicing may act in the name of the firm.

(2) None of the following persons shall be qualified for appointment as auditor of a company:

- (a) a body corporate;
- (b) an officer or employee of the company;
- (c) a person who is a partner or who is in employment, of an officer or employee of the company;
- (d) a person who is holding any security of the company or who is indebted to the company or given guarantee or provided any security in connection

with the indebtedness of any third person to the company for such amount as may be prescribed;

- (e) a person or a firm who has business relationship of material pecuniary nature for such amounts as may be prescribed;
- (f) a person whose relative, related in the manner prescribed, is in the employment in the company in which he is appointed or proposed to be appointed;
- (g) a person subject to such other disqualification as may be prescribed;

59. Powers and duties of Auditors

(1) Every Auditor of a company shall have a right of access at all times to the books of accounts and vouchers of the company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the company such information and explanation as the auditor may think necessary for the performance of his duties as auditor and shall inquire into the matters as may be prescribed.

(2) The auditor shall make a report to the members of the company on the accounts examined by him, and on every Balance Sheet and Profit and Loss Account and on every other document declared by this Act to be part of or annexed to the Balance Sheet or Profit and Loss Account, which are laid before the company in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view :

(a) (i) In the case of the balance-sheet, of the state
of the company's affairs as at the end of its

financial year and

(ii) In the case of the profit and loss account, of
the profit or loss for its financial year.

(b) The report shall state on such other matter as
may be prescribed.

(3) Where any of the matters referred to in clauses a(i) and a(ii) of sub-section(2) or in respect of matters prescribed under sub-section(2), is answered in the negative or with a qualification, the auditor's report shall state the reason for the answer.

(4) The Central Government may, by general or special order in consultation with the Institute of Chartered Accountants of India, direct that, in the case of such class or description of companies as may be specified in the order, the auditor's report shall also include a statement on such matters as may be specified therein.

(5) Where a company has a branch office, the accounts of that office shall be audited by the company's auditor appointed under this section or by a person qualified for appointment as auditor of the company under this section or where the branch office is situate in a country outside India, either by the company's auditor or a person qualified as aforesaid or by an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as prescribed.

(6) An auditor appointed under this part shall not provide such service or services relating to any of the matters as may be prescribed, to a company in which he has been appointed or proposed to be appointed as an auditor under this section.

(7) Only the person appointed as auditor of the company, or where a firm is so appointed in pursuance of this section only a partner in the firm practicing in India, may sign the auditor's report, or sign or authenticate any other document of the company required by law to be signed or authenticated by the auditor.

(8) The auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company

(9) All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company; and the auditor shall be entitled to attend any general meeting and to be heard at any general meeting which he attends, on any part of the business which concerns him as the auditor.

(10) If any default is made by a company in complying with any of the provisions of sections 56, 57, 58 or 59, the company and every officer of the company in default are punishable under the Act.

(11) If default is made in complying with the requirements with any of the provisions contained in this section or rules made, the auditor concerned, and the person, if any, other than the auditor who signs the report or signs or authenticates the document, shall, be punishable under the Act.

60. Special Audit

(1) Where the Central Government is of the opinion,—

(a) that the affairs of any company are not being managed in accordance with sound business principles or prudent commercial practices; or

(b) that any company is being managed in a manner likely to cause serious injury and damage to the interest of the trade, industry or business to which it pertains; or

(c) that the financial position of any company is such as to endanger its solvency; or

(d) that contravention of the provisions of this Act in relation to the maintenance of accounts of the company or in the conduct of audit have eroded the faith and confidence in the proper management of the company; or

(e) that the management of the company is being conducted in any manner

prejudicial to the interests of holders of securities or development of securities market or creditors of the company or the public interest;

(f) the management of the company has indulged in insider trading or market manipulation, the Central Government may, at any time, by order, direct that a special audit of the company's accounts as it may consider necessary, shall be conducted either by a chartered accountant or a cost accountant or a firm of such professionals, as the case may be, or by the company's auditor himself, for such period or periods, as may be, specified in the order and the auditor so appointed shall be referred to as a Special Auditor.

The special auditor shall have the same powers and duties in relation to the special audit as an auditor of a company has under section 59.

Provided that the special auditor shall instead of making his report to the members of the company make the same to the Central Government.

(3) The report of the special auditor shall include all matters required to be included in an auditor's report under section 59 and also include a statement on any other matter which may be referred to him by that Government.

(4) The Central Government may by an order direct the conduct of special audit subject to such conditions as may be prescribed.

(5) If any person mentioned in the order made pursuant to sub-section (4) fails to fulfill any condition specified in such order, he shall be punishable under the Act.

61. Cost Audit

(1) Where in the opinion of the Central Government it is necessary so to do in relation to any company required under clause (d) of sub-section(8) of section(2) to include in its books of account the particulars referred to therein, the Central Government may, by order, direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order by an auditor who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959).

(2) An audit conducted by an auditor under this section shall be in addition to an audit conducted by an auditor appointed under section 56

(3) The auditor under this section shall be appointed at the General Meeting of the company in accordance with the provisions of section 56 and subject to conditions as may be prescribed and the auditor shall have the same powers and duties in relation to an audit conducted by him under this section as an auditor of a company has under section 58 who shall make his report to the Central Government in such form and within such time as may be prescribed and shall also at the same time forward a copy of the report to the company.

(4) The Central Government may direct the conduct of cost audit subject to such condition and order such action on the report as it may consider necessary.

(5) If default is made in complying with the provisions of this section, or any of the directions given by the Central Government under sub-section (4), the company and every officer of the company who is in default are punishable under the Act.

62. Audit Committee

(1) Every public company having paid-up capital of such amount as may be prescribed shall constitute a committee of the board known as Audit Committee which shall consist of not less than two independent directors and not more than such number of maximum independent directors, as the Central Government, may prescribe.

Provided that every Company which has constituted the Audit Committee before the commencement of this Act, shall reconstitute within one year from such commencement, the Audit Committee consisting of independent directors in accordance with the provisions of this Act.

Provided further the Central Government may, by notification in the official gazette, exempt any class of companies from compliance with any of the requirements in this section, if, in its opinion, it is necessary to grant the exemption.

(2) Every Audit Committee shall act in accordance with the terms of reference to be specified in writing by the board.

(3) The composition, election of chairman, attendance of the meeting of the Audit Committee by the auditors and others, powers and functions shall be as prescribed.

(4) The board's report under sub-section(3) of section 54 of the Act shall disclose the composition of the Audit Committee.

(5) The recommendations of the Audit Committee on any matter relating to financial management including the audit report, shall be binding on the board

(6) If the board does not accept the recommendations of the Audit Committee, it shall record the reasons therefor and communicate such reasons to the shareholders.

(7) If default is made in complying with the provisions of this section, the company, and every officer who is in default, shall be punishable under the Act

Chapter X
Matters relating to Directors, Powers, Functions etc.

63. Number of Directors

(1) Every public company shall have a minimum of three directors.

Provided every public company having paid-up capital or turn over of such amounts as may be prescribed shall have a minimum of seven directors out of which not less than three or such number as near to fifty percent of the strength of the board, whichever is higher, shall be independent director as defined in sub-section(45) of section 2 and possessing such attributes necessary for being appointed as an independent director as may be as prescribed.

Provided further that the companies, existing before the commencement of this Act shall have minimum number of directors, maximum number of directors, independent directors in accordance with the provisions of this section, within such period and in such manner, as may be prescribed:

(2) Every private company shall have at least two directors.

(3) Every public company having—

(a) a paid-up capital of five crore rupees or more; and

(b) one thousand or more small shareholders,

may have a director elected by such small shareholders in the manner as may be prescribed.

(4) No public company shall have more than fifteen directors, including additional directors, if any. Any increase in the number of its directors beyond the above limit, shall not have any effect, unless approved by the Central Government and shall become void, if, and if so far as, disapproved by the Government;

Provided that where such permissible maximum is 15 or less than 15, no approval of the Central Government shall be required if the increase in number of directors does not make the total number of directors more than 15.

(5) No body corporate, association or firm shall be appointed as director of a company, and only an individual shall be so appointed

64. Appointment of Directors

(1) Every director shall be appointed by the company in general meeting except:

(a) if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the board of directors at a meeting of the board and the appointee shall hold office only up to the date up to which the director in whose place

the appointee is appointed would have held office if it had not been vacated.

(b) The articles may confer on the board of directors power to appoint any person, other than one who fail to get elected as director in an election, as additional directors who shall hold office only up to the date of the next annual general meeting of the company.

(c) The board of directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint an alternate director to act for a director (hereinafter in this section called "the original director") during his absence for a period of not less than three months from India , who shall hold office till the original director returns to India.

(d) In default of and subject to any regulations in the articles of a company, subscribers of the memorandum who are individuals, shall be deemed to be the directors of the company, until the directors are duly appointed in accordance with this section.

(2) Any assignment of office by any director or manager of a company shall be void.

(3) (a) At a general meeting a motion shall not be made for the appointment of two or more persons as directors of the company, including motion for nominating a person for appointment, by a single resolution, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(b) A resolution moved in contravention of clause (a) shall be void, whether or not objection was taken at the time of its being so moved.

Provided that where a resolution so moved is passed, no provision for the automatic re-appointment of the director retiring by rotation in default of another appointment shall apply.

(4) Every person proposed as a candidate for the office of a director and every person who is appointed as a director shall not act as a director unless he signs his consent in writing to act as a director, which shall be filed with the Registrar in such manner as may be prescribed.

(5) A person who is not a retiring director shall, be eligible for appointment to the office of director at any general meeting, subject to such rules as may be prescribed.

(6) Notwithstanding anything contained in this Act, the articles of a public company may provide for the appointment of not less than two-thirds of the total number of the directors, according to the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise, the appointments being made once in every three years.

(7) The board shall not accept the resignation tendered by any director, if it is likely to result in a situation where the number of directors and additional directors together, might fall below the minimum strength fixed for the board under this Act.

65. Retirement of Directors

(1) (a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation; and

(b) The manner of ascertaining the directors retiring by rotation and filling of such vacancies shall be as prescribed.

66. Disqualification and vacation of Office of Director

(1) A person shall not be capable of being appointed director of a company, if he is disqualified under any of the conditions prescribed in the Rules.

(2) The office of the director shall become vacant, if:

(a) he is found to be of unsound mind by a Court of competent jurisdiction;

(b) he applies to be adjudicated an insolvent;

(c) he is adjudged an insolvent;

(d) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;

(e) he fails to pay any call in respect of shares of the company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call unless the Central Government has, by notification in the Official Gazette, removed the disqualification incurred by such failure;

(f) he absents himself from three consecutive meetings of the board of directors, or from all meetings of the board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the board;

(g) he acts in contravention of the provisions relating to entering into contracts or arrangements in which he is directly or indirectly interested;

(h) he fails to disclose his interest in any contract or arrangement;

(i) he becomes disqualified by an order of Court;

(j) he is removed in pursuance of the provisions of this Act;

(k) having been appointed a director by virtue of his holding any office or other employment in the company he ceases to hold such office or other employment in the company.

Provided the disqualification referred to in clauses (d), (e) and (j) shall not take effect-

(a) for thirty days from the date of the adjudication, sentence or order;

(b) where any appeal or petition is preferred within the thirty days aforesaid against the adjudication, sentence or conviction resulting in the sentence, or order until the expiry of seven days from the date on which such appeal or petition is disposed of; or

(c) where within the seven days aforesaid, any further appeal or petition is preferred in respect of the adjudication, sentence, conviction, or order, and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of.

(3) Subject to the provisions of sub-sections (1) and (2), if a person functions as a director when he knows that the office of director held by him has become vacant on account of any of the disqualifications, specified in sub-section (1), he shall be punishable under the Act.

67. Removal of Directors

(1) A company may, by ordinary resolution, remove a director (not being a director appointed by the Central Government in pursuance of section 98) before the expiry of his period of office, after giving an opportunity of being heard to the concerned director and subject to such conditions as may be prescribed.

Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under sub-section (6) of section 64 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the board in pursuance of section 64 be filled up as a casual vacancy under clause (a) of sub-section (1) of section 64 (who shall not be the removed director) or by the appointment of another director in his stead by the meeting at which he is removed, provided special notice of the intended appointment has been given. A director so appointed shall hold office until the date up to which his predecessor would have held office if he had not been removed as aforesaid.

(3) Nothing in this section shall be taken :

(a) as depriving a person removed thereunder of any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director; or

(b) as derogating from any power to remove a director which may exist apart from

this section.

68. Number of Directorships

(1) No person shall, hold office at the same time as a director in more than fifteen companies:

Provided that where any such person also holds office as a managing director or whole-time director in any company, the limit specified in this sub-section shall be reduced to ten:

Provided further that the Central Government may, specify, by the notification in the Official Gazette, the percentage of shares which may be held by such director in a class or classes of companies wherein a person may be appointed as a director.

(2) Any person holding office as director beyond the limit prescribed in sub-section (1) before the commencement of this Act and where a person already holding the office of director in more number of companies than prescribed in sub-section(1) is appointed as a director ,shall, choose the directorship which he wishes to continue to hold or to accept, so however that the total number of the directorship, old and new, held by him shall not exceed the number prescribed in sub-section(1).

(3) None of the new appointments of director shall take effect until such choice is made; and all the new appointments shall become void if the choice is not made within fifteen days of the day on which the last of them was made.

(4) The Central Govt. may prescribe rules in connection with the exclusion of certain directorships for the purposes of this section

(5) Any person who holds office, or acts, as a director of more than the number of companies in sub-section(1), shall be punishable under this Act.

Register of Directors

69. (1) Every company shall keep at its registered office a register of its directors, managing director, chief accounts officer, manager and secretary, containing with respect to each of them the particulars, including details of securities held by him in the company or any other body corporate, being the company's subsidiary or a holding company or a subsidiary of the company's holding company, as may be prescribed, and shall within the period prescribed, send to the Registrar a return containing the prescribed particulars along with such other information or documents required to establish the identity of the directors and their interest in other firms and body corporates.

(2) If default is made in complying with this section, the company, and every officer of the company who is in default, shall be punishable under the Act.

(3) The said registers referred to in this section shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting. If default is made in complying with this sub-section the company, and every officer of the company who is in default, shall be punishable

under the Act.

(4) The Register pursuant to this section shall be kept at the Registered Office of the company and it shall be open for inspection at such office during business hours and extracts be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in the same manner, and on payment of such amount as may be prescribed.

(5) If any inspection required under sub-section (4) is refused, or if any copy required thereunder is not sent within a reasonable time, the Central Government may also by order compel an immediate inspection and supply of copies required thereunder, the company, and every officer of the company who is in default, shall be punishable under the Act.

70. Miscellaneous provisions relating to Directors

(1) No company shall pay to any officer or employee thereof, whether in his capacity as such or otherwise, remuneration free of any tax, or otherwise calculated by reference to, or varying with, any tax payable by him, or the rate or standard rate of any such tax, or the amount thereof.

Explanation: In this sub-section, the expression " tax " comprises any kind of income-tax including super-tax.

(2) (a) If any person, being an undischarged insolvent,

(i) discharges any of the functions of a director, or acts as or discharges any of the functions of the manager, of any company; or

(ii) directly or indirectly takes part or is concerned in the promotion, formation or management of any company;

he shall be punishable under the Act.

(3) In this section, " company " includes:

(a) an unregistered company ; and

(b) a body corporate incorporated outside India, which has an established place of business within India.

71. Power to restrain fraudulent persons from managing companies

(1) Where:

(a) a person is convicted of any offence in connection with the promotion, formation or management of a company; or

(b) in the course of winding up a company it appears that a person:

(i) has been guilty of any offence for which he is punishable (whether he has been convicted or not) under section 194; or

(ii) has otherwise been guilty, while an officer of the company,

of any fraud or misfeasance in relation to the company or of any breach of his duty to the company;

the Court or the Tribunal as the case may be may make an order that that person shall not, without the leave of the Court or the Tribunal as the case may be, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company, for such period not exceeding five years as may be specified in the order.

(2) In sub-section (1), the expression " the Court or the Tribunal as the case may be ",

(a) in relation to the making of an order against any person by virtue of Clause (a) thereof, includes the Court or the Tribunal as the case may be by which he is convicted, as well as any Court or the Tribunal as the case may be having jurisdiction to wind up the company as respects which the offence was committed ; and

(b) in relation to the granting of leave, means any Court or the Tribunal as the case may be having jurisdiction to wind up the company as respects which leave is sought.

(3) A person intending to apply for the making of an order under this section by the Court or the Tribunal as the case may be having jurisdiction to wind up a company shall give not less than ten days' notice of his intention to the person against whom the order is sought, and at the hearing of the application, the last-mentioned person may appear and himself give evidence or call witnesses.

(4) An application for the making of an order under this section by the Court or the Tribunal as the case may be having jurisdiction to wind up a company may be made by the Official Liquidator, or by the liquidator of the company, or by any person who is or has been a member or creditor of the company.

(5) On the hearing of any application for an order under this section by the Official Liquidator or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the Official Liquidator or liquidator, the Official Liquidator or liquidator shall appear and call the attention of the Court or the Tribunal as the case may be to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(6) An order may be made by virtue of sub-clause (ii) of clause (b) of sub-section (1), notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

(7) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be punishable under the Act.

(8) The provisions of this section shall apply to every company and be in addition to, and without prejudice to the operation of, any other provision contained in this Act.

CHAPTER XI

MEETINGS, POWERS OF THE BOARD AND RELATED PARTY TRANSACTIONS

72. Meetings of Directors

(1)(a) In the case of every company, a meeting of its board of directors shall be held in such a manner that not more than three months shall lapse between two consecutive meetings of the board.

Provided that the Central Government may, by notification in the Official Gazette, direct that the provisions of this section shall not apply in relation to any class of companies or shall apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification.

(b) Any meeting of the board of directors may be held by participation of the directors of the board through video conferencing and such meeting shall be valid if the minutes of such meeting has been recorded in the minutes book under sub-section (1) of section 47, approved and signed within three months by all directors of the board who participated in such meeting:

Provided that the Central Government may, by a notification in the Official Gazette, specify the powers which shall not be exercised in a meeting held through video conferencing.

(2) (a) Notice of every meeting of the board of directors of a company shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.

Provided that nothing in the section shall apply to an emergency meeting in which a majority of the independent directors are present.

(b) Every officer of the company whose duty it is to give notice as aforesaid and who

fails to do so shall be punishable under the Act.

73. Quorum of Meeting

(1) (a) The quorum for a meeting of the board of directors of a company shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher:

Provided that where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength, the number of the remaining directors, that is to say, the number of the directors who are not interested and present at the meeting, being not less than two, shall be the quorum during such time.

(b) If a meeting of the board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned till the same day in the next week.

(2) No resolution shall be deemed to have been duly passed by the board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or to all the members of the committee, then in India (not being less in number than the quorum fixed for a meeting of the board or committee, as the case may be), and to all other directors or members at their usual address in India, and has been approved by such of the directors as are then in India, or by a majority of the directors such of them, who are entitled to vote on the resolution.

Provided that such resolution is ratified at a subsequent meeting of the board or the Committee thereof, as the case may be, and is made part of the minutes of such meeting.

(3) Acts done by a person as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles:

Provided that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been shown to the company to be invalid or to have terminated.

74. Powers of the Board

(1) (a) The board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do:

Provided that the board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting;

Provided further that in exercising any such power or doing any such act or thing, the board shall be subject to the provisions contained in that behalf in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by

the company in general meeting.

(b) No regulation made by the company in general meeting shall invalidate any prior act of the board which would have been valid if that regulation had not been made.

(2) (a) The board of directors of a company shall exercise the following powers on behalf of the company in such manner and subject to such conditions as may be prescribed and it shall do so only by means of resolutions passed at meetings of the board :

- (i) the power to make calls on shareholders in respect of money unpaid on their shares;
- (ii) the power to authorize the buy back of securities under Section 26;
- (iii) the power to issue debentures whether in India or outside;
- (iv) the power to borrow moneys including arrangement with its bankers for overdraft, cash credit or other account;
- (v) the power to invest the funds of the company;
- (vi) the power to grant loans or give guarantee or provide security in respect of loans;
- (vii) power to make contribution to charitable or other funds;
- (viii) making of contributions directly or indirectly to any political party or for any political purpose to any person.

Provided that the board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, a principal officer of the branch office, the powers specified in clauses (iv), (v) & (vi) to the extent prescribed.

Provided further that the provisions of this section shall apply to the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, drafts, order or otherwise, or the placing of moneys on deposit by a banking company with another banking company on such conditions as the board may prescribe, subject to such conditions as the Reserve Bank of India may impose.

(b) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the board of any of the powers specified in sub-section (1).

75. Restriction on powers of Board

The board of directors of the company shall, exercise the following powers exceeding such limits and subject to such conditions as may be prescribed in this behalf, only with the consent of the company in general meeting

- (a) sell, lease or otherwise dispose of the undertaking of the company;
- (b) remit, or give time for the repayment of, any debt due by a director;
- (c) invest, otherwise than in trust securities,
- (d) borrow moneys exceeding the limits as may be prescribed; contribute to charitable and other funds.

76. Inter-corporate loans and investments.

(1) No company shall, directly or indirectly,-

(a) make any loan to any other body corporate:

(b) give any guarantee, or provide security, in connection with a loan made by any other person to , or to any other person, by any body corporate: and

(c) acquire by way of subscription, purchase or otherwise the securities of any other body corporate,

exceeding sixty percent of its paid up share capital and free reserve, or one hundred percent of its free reserves, whichever is more:

Provided that where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, along with the investment, loan, guarantee or security proposed to be made or given by the board, exceeds the aforesaid limits, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:

Provided further that the board may give guarantee, without being previously authorised by a special resolution, if,-

(a) a resolution is passed in the meeting of the board authorizing to give guarantee in accordance with the provisions of this section:

(b) there exist exceptional circumstances which prevent the company from obtaining previous authorisation by a special resolution passed in a general meeting for giving a guarantee: and

(c) the resolution of the board under clause (a) is confirmed within twelve months, in a general meeting of the company or the annual general meeting held immediately after passing of the board resolution, whichever is earlier:

Provided also that the notice of such resolution shall indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made or loan or security or guarantee to be given, the purpose of the investment, loan or security or guarantee, specific sources of funding and such other details.

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

Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, alongwith the investments, loans, guarantee or security proposed to be made or given does not exceed the limit of sixty percent specified in sub-section (1), if there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution:

(3) No loan to any body corporate shall be made at a rate of interest lower than the prevailing bank rate, being the standard rate made public under section 49 of the Reserve Bank of India Act, 1934 (2 of 1934)

(4) No company, which has defaulted in complying with the provisions of section 33, shall, directly or indirectly,-

(a) make any loan to any body corporate:

(b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate : and

(c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate,

till such default is subsisting.

(5) The Central Government may prescribe, for a class or classes of companies registered as stock broker or any other intermediary under section 12 of the Securities and Exchange Board of India Act, 1992, the limits upto which such companies may receive inter corporate loans or deposits and the extent to which any company may

make loan or inter corporate deposits or inter corporate investments.

(6) Every company shall keep such register showing such particulars as may be prescribed, in respect of every investment or loan made, guarantee given or security provided by it in relation to any body corporate under sub-section (1) which shall be open to inspection and extracts thereof furnished subject to such rules as may be prescribed.

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

(a) to any loan made, any guarantee given or any security provided or any investment made by-

(i) a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of financing industrial enterprises, or of providing infrastructural facilities;

(ii) a company whose principal business is the acquisition of securities;

(iii) to any loan made, any guarantee given or any security provided by a holding company to its wholly owned subsidiary or in respect of a loan made to its wholly owned subsidiary;

(iv) to acquisition by a holding company by way of subscription, purchases or otherwise, the securities of its wholly owned subsidiary.

(b) to investment made in shares allotted in pursuance of sub-section (1) of section 25.

(8) If default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be punishable under the Act.

77. Investments of company to be held in its own name.

(1) All investments made or held by a company, not being a company whose principal business consist of buying and selling of securities, at the commencement of this Act either in property or any other asset on its own behalf shall be made and held by it in its own name; and where any such investments are not so held at the commencement of this Act the company shall, within a period of one year from such commencement, either cause them to be transferred to, and hold them in, its own name, or dispose of them.

Provided a company may hold any shares in its subsidiary in the name or names of any nominee or nominees of the company, if and in so far as it is necessary so to do, to ensure that the number of members of the subsidiary is not reduced, where it is

a public company, below seven, and where it is a private company, below two.

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

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

Provided that if within a period of six months from the date on which the securities are transferred by the company to, or are first held by the company in the name of, the State Bank of India or a Scheduled Bank as aforesaid, no transfer of such securities takes place, the company shall, as soon as practicable after the expiry of that period, have the securities retransferred to it from the State Bank of India or the Scheduled Bank or, as the case may be, again hold the securities in its own name; or

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

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

(3) The certificate or letter of allotment relating to securities in which investments have been made by a company shall, except in the cases referred to in sub-section (2) be in the custody of such company or with the State Bank of India or a Scheduled Bank, being the bankers of the company.

(4) Where, in pursuance of sub-section (2) securities in which investments have been made, by a company are not held by it in its own name, the company shall maintain a register with such particulars as may be prescribed, which shall be open to the inspection of any member or debenture holder of the company without charge, during business hours, subject to such reasonable restrictions as the company may, by its articles or in general meeting impose, so that not less than two hours in each day are allowed for inspection.

(5) If any inspection required under sub-section (4) is refused, the Central Government may, by order, direct an immediate inspection of the register.

(6) If default is made in complying with any of the requirements of this section , the company, and every officer of the company who is in default, shall be punishable under the Act.

78. Disclosure of interest of Directors

(1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, shall disclose the nature of his concern or interest at a meeting of the board of directors in

the manner and subject to such conditions as may be prescribed.

Provided that a general notice given to the board by a director to the effect that he is concerned or interested in a specified body corporate, firm, or relative and is to be regarded as concerned or interested in any contract or arrangement which may be entered into with such an entity after the date of notice, and shall be deemed to be sufficient disclosure ; such a notice shall be valid till the end of the financial year in which it is given.

(2) Every director who fails to comply with sub-section(1) and rules made thereunder shall be punishable under the Act.

79. Related party transactions

(1) Except with the previous consent of the board of directors of a company accorded by a resolution passed at a meeting of the board and not otherwise, subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with;

- (i) a director of the company or
- (ii) his relative, or
- (iii) a firm in which such a director or relative is a partner, or
- (iv) any other partner in such a firm, or
- (v) a private company of which the director is a member or director, or
- (vi) any body corporate at a general meeting of which not less than twenty five percent of the total voting power may be exercised or controlled by any such director, or by two or more such directors together or
- (vii) any body corporate, the board of directors, managing director, or manager whereof is accustomed to act in accordance with the directions or instructions of the director

with respect to:

- (a) sale, purchase, supply of any goods, materials or property, movable or immovable , or
- (b) availing or rendering of any services, or
- (c) leasing of any property, movable or immovable , or
- (d) making any loan to , or giving any guarantee or providing any security in connection with a loan made, or
- (e) entering into any financial arrangement or transaction represented by a book debt which was from its inception in the nature of a loan or an advance, or
- (f) appointment of any agents for purchase or sale of goods, materials, services or property, or
- (g) appointment to any office of profit under the company or a subsidiary thereof, or
- (h) underwriting the subscription of any securities or derivatives thereof, of the company.

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than the amount and the quantum of transaction to be entered into exceeding the sums, as may be prescribed, shall be entered into except

with the previous approval of the Central Government.

(2) Any contract or arrangement entered into without obtaining the consent or approval, as the case may be, is voidable at the option of the board.

(3) Every person who is a party to any contravention of sub-section (1), including in particular any person with whom the contract or arrangement, is entered into shall be punishable under the Act.

80. Interested directors not to participate or vote in Board's proceedings

(1) No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement; nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void.

Provided that the provisions of this section shall not apply in respect of cases as may be prescribed.

(2) Every director who fails to comply with this sub-section and rules made thereunder shall be punishable under the Act.

81. Register of interest of directors and contracts

(1) Every company shall keep one or more registers in which shall be entered separately particulars of all contracts or arrangements to which this section applies, including the particulars as may be prescribed to the extent they are applicable in each case.

(2) Every director who fails to comply with this section and rules made thereunder shall be punishable under the Act.

(3) Every director (including deemed director), managing director, Chief Accounts Officer, manager or secretary of any company, who is appointed to, or relinquishes, the office of director, managing director, chief accounts officer, manager or secretary of any other body corporate, shall, within thirty days of his appointment to, or relinquishment of, such office as the case may be, disclose to the company the aforesaid particulars relating to the office in the other body corporate which are required to be specified under sub-section (1) of this section and if he fails to do so, he shall be punishable under the Act.

(4) (a) Every director including a deemed director of a company, shall give notice, in writing, to the company, at a meeting of the board, of such matters relating to himself as may be necessary for the purpose of enabling the company to comply with the provisions of this section.

(b) Any person who fails to comply with clause (a) above shall be punishable under the Act.

(c) Every company shall keep a register showing the shareholding of the directors in the company and any other body corporate containing such particulars as may be prescribed.

(d) If default is made in complying with the above clause and rules made thereunder, the company and the officers who are in default are punishable under the Act.

(5) The Register pursuant to sub-section (1) & 4(c) aforesaid shall be kept at the Registered Office of the company and it shall be open for inspection at such office during business hours and extracts be taken therefrom and copies thereof may be required, by any member of the company to such extent, in such manner, and on payment of such amount as may be prescribed.

(6) The said registers shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

If default is made in complying with this sub-section the company, and every officer of the company who is in default, shall be punishable under the Act.

(7) If any inspection required under this section is refused, or if any copy required thereunder is not provided within a reasonable time, the Central Government may by order compel an immediate inspection and supply copies required thereunder, and the company and every officer of the company who is in default, shall be punishable under the Act.

CHAPTER XII

Appointment of Managerial Personnel

82. Appointment of Managing Director or Manager

(1) Notwithstanding anything contained in this Act or any other law or any agreement or instrument, no company shall, appoint or employ at the same time, more than one of the following categories of managerial personnel, namely :

(a) managing director,

(b) manager.

(2) No company shall, appoint or employ, or continue the appointment or employment of, any firm, body corporate or association as its manager.

(3) No company shall appoint or employ any individual as its managing director or manager for a term exceeding five years at a time.

Provided that the individual(s) may be reappointed or re-employed or the term of office extended by further period not exceeding five years on each occasion.

Provided further that any such re-appointment, re-employment or extension shall not be sanctioned earlier than two years from the date on which it is to come into force.

(4) No company shall, appoint or employ, or continue the appointment or employment of, any person as its managing or whole-time director or manager who :

(a) is an undischarged insolvent, or has at any time been adjudged an insolvent;

(b) suspends, or has at any time suspended, payment to his creditors, or makes, or has at any time made, a composition with them; or

(c) is, or has at any time been, convicted by a Court of an offence involving moral turpitude.

Provided the Central Government, may, by notification in the official gazette remove the disqualification incurred by any person in virtue of clause (a),(b) or (c) either generally or in relation to any company or companies specified in the notification.

(5) Every public company having a paid-up share capital of such sum as may be prescribed, shall have a managing or whole-time director or a manager.

(6) No appointment of a person as a managing or whole-time director or a manager in a public company shall be made except with the approval of the Central Government unless such appointment is made in accordance with the conditions prescribed.

(7) Any application seeking approval of Central Government under sub-section (6) shall be made within such time, in such manner and subject to such conditions as may be prescribed and the Central Government, while according approval shall have regard to the public policy relating to the removal of disparities in income besides imposing such conditions as it may deem fit.

(8) If the appointment of a person as a managing or whole-time director or a manager is not approved by the Central Government under sub-section (6):

(a) the person so appointed shall vacate his office as such managing or whole-time director or manager on the date on which the decision of the Central Government is communicated to the company;

(b) refund the entire amount of salaries, commissions and perquisites received or enjoyed by him between the date of his appointment and the order of the Central Government; and

(c) if he omits or fails to do so, he shall be punishable under the Act.

(9) All acts done by a managing or whole-time director or a manager, as the case may be, purporting to act in such capacity and whose appointment has been found to be in contravention of the rules, shall, if the acts so done are valid otherwise, be valid notwithstanding any order made by the Tribunal.

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

Provided that such appointment or employment is made or approved by a resolution passed at a meeting of the board with the consent of all the directors present

at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors of the company.

83. Remuneration of Managerial Personnel

(1) The total remuneration payable by a public company to its directors and its manager in respect of any financial year shall not exceed eleven percent of the net profits of the company for that financial year computed in the manner as may be prescribed.

Provided that a director who is neither the managing director nor a director in whole-time employment may receive fees for attending each meeting of the board or a committee thereof, of such amounts not exceeding the amount as may be prescribed.

(2) The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined in accordance with and subject to the provisions of this section by a resolution or, if the articles so required, by a special resolution, passed by the company in general meeting and the remuneration payable to any such director determined as aforesaid shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity but exclusive of remuneration paid to a director for services rendered in his professional capacity.

(3) A director who is either in the whole-time employment of a company or a managing director or a manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company, computed in the manner prescribed, or partly by one way and partly by the other

Provided that except with the approval of the Central Government such remuneration shall not exceed five per cent of the net profits for one such director, and if there is more than one such director, ten per cent for all of them together.

(4) A director who is neither in the whole-time employment of the public company nor a managing director may be paid remuneration either:

(a) by way of a monthly, quarterly or annual payment with the approval of the Central Government; or

(b) by way of commission if the company by special resolution passed not earlier than one year, which shall be valid only for three years, authorizes such payment which shall not exceed:

(i) one percent of the net profits of the company, if the company has a managing or whole-time director or a manager

(ii) three percent of the net profits of the company, in any other case

Provided that the company in general meeting may, with the approval of the Central Government, authorize payment of such remuneration at a rate exceeding one percent or three percent of its net profits as the case may be.

(5) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company and the company shall not waive any sum refundable to it under this sub-section unless permitted by the Central Government.

(6) No director of a company who is in receipt of any commission from the company and who is either in the whole-time employment of the company or a managing director shall be entitled to receive any commission or other remuneration from any subsidiary of such company.

(7) In the case of a public company, any provision relating to the remuneration of any manager or director including a managing or whole-time director, or any amendment thereof, which purports to increase or has the effect of increasing, whether directly or indirectly, the amount thereof, whether that provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or by its board of directors, shall not have any effect

- (a) in cases where the appointment is made in accordance with the conditions prescribed, unless such increase is in accordance with the conditions prescribed;
- (b) in cases where the remuneration is governed by the provisions of clause(b) of sub-section (4) of section 83 unless such increase is within the limits specified in the said section;
- (c) in any other case, unless it is approved by the Central Government.

Explanation: For the purpose of this section, "appointment" includes "re-appointment" and "wholetime director" includes a "director in the wholetime employment of the company".

(8) (a) Every person who is a party to any contravention of the provisions of sections 82 & 83 shall be punishable under the Act.

(b) All persons who are knowingly parties to any contravention shall be liable jointly and severally for the repayment of the remuneration paid to the appointee and amounts waived in contravention of the provisions of sections 82 & 83.

84. Amendment of provisions relating to managing, whole-time directors, directors and manager.

(1) An amendment of any provision relating to the appointment or re-appointment of a managing or whole-time director or of a director not liable to retire by rotation or

manager, including provisions purporting to increase or have the effect of increasing, whether directly or indirectly the remuneration of the director or the manager, whether that provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or by its board of directors, shall not have any effect;

(a) in cases where the remuneration is governed by the rules prescribed in sub-section (6) of section 82, unless such increase is in accordance with the conditions specified in the rules; and

(b) in any other case, unless it is approved by the Central Government and the amendment shall become void, if, in so far as, it is disapproved by that Government.

85. Compensation for loss of office of Directors or Managers

(1) Payment may be made by a company, except in cases and subject to such limits as may be prescribed, to managing director, or a director holding the office of manager or in the whole-time employment of the company, and not to any other director, by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement.

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

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

(a) from such company; or

(b) from the transferee of such undertaking or property or from any other person (not being such company), subject to such conditions as may be prescribed.

(4) Where a director of a company receives payment of any amount in contravention of sub-section (3), the amount shall be deemed to have been received by him in trust for the company.

(5) No director of a company shall, in connection with the transfer to any person of all or any of the shares in a company, being a transfer resulting from such of the offers and subject to such conditions as may be prescribed.

(6) If -

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

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

he shall be punishable under the Act

(7) If -

(a) the requirements of this Section and the rules made thereunder are not complied with in relation to any such payment as is governed by clause (b) of sub-section (1); or

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting called for the purpose, of the holders of the shares to which the offer relates and other holders of shares of the same class (other than shares already held at the date of the offer by, or by a nominee for, the offerer, or where the offerer is a company, by, or by a nominee for, any subsidiary thereof) as any of the said shares;

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

Explanation: If at a meeting called for the purpose of approving any payment as required by this sub-section, a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall, for the purposes of that sub-section, be deemed to have been approved.

86. Powers of Central Government to remove managerial personnel from office

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

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

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

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

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

Central Government may state a case against the person aforesaid and refer the same to the Tribunal or such officer as the Tribunal may appoint who is deemed as a public servant, in the form of an application with such particulars as may be prescribed along with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(2) The Tribunal may make such orders as it may deem fit including interim order directing that the concerned managerial personnel shall not discharge any of the duties of his office.

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

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

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

87. Appointment of Company Secretary

(1) Every company having such paid up share capital, as may be prescribed, shall employ a whole time secretary, who shall be a Company Secretary within the meaning of the Company Secretaries Act, 1980.

(2) A company secretary in whole-time employment shall, inter alia, perform the functions as may be prescribed .

(3) Every company having such paid up share capital, as may be prescribed, shall attach with the board's Report referred to in sub-section (3) of section 54, a certificate from a Secretary in whole-time practice in such form and subject to such conditions, as may be prescribed, as to whether the company has complied with all the provisions of this Act or not:

Provided that a company, which is not required to employ a company secretary but having employed the Company secretary, may file a certificate from him.

(4) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable under the Act.

(5) Where the Central Government is of the opinion that the affairs of any company are not being conducted in accordance with the provisions of this Act, the Central Government may, at any time, by order direct that the secretarial compliance audit of the company for such period or periods as may be specified, in the order, shall be conducted and may, by order, appoint a company secretary as defined in this Act to conduct such audit.

(6) A company secretary appointed under sub-section (5) shall have the same powers and duties in relation to the secretarial compliance audit as a company secretary of a company has under this section;

Provided that the company secretary shall, submit the report of the secretarial compliance audit to the Central Government.

(7) the company secretary appointed under sub-section (5) shall report on all the matters specified in the order and shall also include a statement on any other matter which may be referred to him by the Central Government.

(8) The Central Government may, by order, direct any person specified in the order to furnish to the company secretary, within such time as may be specified therein, such information or additional information as may be required by the company secretary in connection with secretarial compliance audit; and on failure to comply with such order, such person shall be punishable under the Act.

(9) On receipt of the report of secretarial compliance audit, the Central Government may take such action on the report as it considers necessary in accordance with the provisions of this Act or any other law for the time being in force.

(10) The expenses of, and incidental to secretarial compliance audit, (including the remuneration of the company secretary) shall be determined by the Central Government and paid by the company and in case of default, such payment shall be recoverable from the company as an arrear of land revenue.

Explanation: For the purposes of this section “secretarial compliance audit” means verification and audit of compliance requirements under various provisions of this Act and identification of non compliances having a bearing on the conduct of affairs of the company.

(11) The documents, returns, forms as prescribed and required to be filed with the Registrar or any statutory authority shall be pre-certified by a company secretary in whole-time practice in such form and manner, as may be prescribed, by the Central Government.

Explanation: For the purposes of this section, “certification by a company secretary in whole-time practice” means and includes a pre-certification of any of the documents required to be filed with the Registrar or any statutory authority under this Act and all certificates issued by the company secretary in whole-time practice in evidence of compliance with the provisions of this Act.

88. Appointment of Chief Accounts Officer

(1) Every public company having paid up share capital of such amount as may be prescribed shall appoint a whole-time qualified accounts officer to be known as the chief accounts officer, who shall be qualified as prescribed and such accounts officer shall be responsible for the proper maintenance of the books of account of the company, and shall ensure proper disclosure of all required information indicated in the prospectus or any other offer document, and also ensure compliance of the

provisions of this Act relating to the accounts of the company. The Chief Accounts Officer appointed shall also be responsible for the preparation of the annual accounts of the company.

(2) Any default in complying with the provisions of this section is punishable under the Act.

Chapter XIII

INSPECTION AND INVESTIGATION

89. Inspection

(1) The books of account and other books and papers of every company shall be open to scrutiny and inspection during business hours:

- (i) by the Registrar, or
- (ii) by such officer or officers of the Government as may be authorized by the Central Government in this behalf;

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

(2) It shall be the duty of every director, other officer or employee of the company to produce to the person making inspection under sub-section (1), all such books of account and other books and papers of the company in his custody or control and to furnish him with any statement, information or explanation, other documents or extracts thereof relating to the affairs of the company, as the said person may require of him, within such time and at such place as he may specify.

(3) It shall also be the duty of every director, other officer or employee of the company to give to the person making inspection under this section all assistance in connection with the inspection which the company may be reasonably expected to give.

(4) The person making the inspection under this section may, during the course of inspection,

(i) make or cause to be made copies of books of account and other books and papers, or

(ii) place or cause to be placed any marks of identification thereon in token of the inspection having been made.

(5) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, any person making an inspection under this section shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters,

namely :

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person ;

(ii) summoning and enforcing the attendance of persons and examining them on oath ;
and

(iii) inspection of any books, registers and other documents of the company at any place.

(6) Where an inspection of the books of account and other books and papers of the company has been made under this section, the person(s) making the inspection shall make a report to the Central Government in respect of the inspection made by its officers.

(7) The Central Government may require the person(s) making the report to attach such documentary proof in respect of the findings of the inspection as may be prescribed.

(8) Any officer authorised to make an inspection under this section shall have all the powers that a Registrar has under this Act in relation to the making of inquiries.

(9) If default is made in complying with the provisions of this section, every officer of the company who is in default shall be punishable under the Act.

(10) Where a director or any other officer of a company has been convicted of an offence under this section he shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified for holding such office in any company, for a period of five years from such date.

90. Power of the Registrar to call for information and seizure of documents

(1) Where, on perusing any document which a company is required to submit to him under this Act, the Registrar is of opinion that any information or explanation is necessary with respect to any matter to which such document purports to relate, he may, by a written notice, call on the company submitting the document to furnish in writing such information or explanation, within such time as he may specify in the notice.

(2) On receipt by the company of the notice under sub-section (1), it shall be the duty of the company, and of all persons who are officers of the company, to furnish such information or explanation to the best of their power.

(3) On receipt of a copy of the notice under sub-section (1), it shall also be the duty of every person who has been an officer of the company to furnish such information or explanation to the best of his power.

(4) The Registrar, on receipt of such information and explanation from the company,

shall send a report to the Central Government on the affairs of the company.

(5) If no information or explanation is furnished within the time specified or if the information or explanation furnished is, in the opinion of the Registrar, inadequate, the Registrar shall send a report to the Central Government on the affairs of the company for such action as the Central Government may deem fit.

(6) If the company, or any such person as is referred to in sub-section (2) or (3) refuses or neglects to furnish any such information or explanation or if the company or any such person as is referred to in sub-section (4) refuses or neglects to produce any such books and papers, without prejudice to any action under sub-section (5), the Registrar shall make an application to the Tribunal for an order on the company for production before the Registrar of such books and papers as in the opinion of the Tribunal, may reasonably be required by the Registrar for the purpose referred to in sub-section (1).

(7) Whoever fails to comply with any order made by the Tribunal under sub-section (6) shall be punishable under the Act.

(8) On receipt of any information, explanation, book or paper produced whether in pursuance of the notice of the Registrar under sub-section (1) or of an order of the Tribunal under sub-section (6), the Registrar may annex that information, book or paper, or where that book or paper is required by the company, any copy or extract thereof, to the document referred to in sub-section (1) ; and any information or any book or paper or copy or extract thereof so annexed shall be subject to the like provisions as to inspection, the taking of extracts and the furnishing of copies, as that document is subject.

(9) If it is represented to the Registrar on materials placed before him by any contributory or creditor or any other person interested that the business of a company is being carried on in fraud of its creditors or of persons dealing with the company or otherwise for a fraudulent or unlawful purpose, he may, after giving the company an opportunity of being heard, by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order, within such time as he may specify therein ; and provisions of sub-sections (2), (3), (4), (5) and (7) of this section shall apply to such order. If upon inquiry the Registrar is satisfied that any representation on which he took action under this sub-section was frivolous or vexatious, he shall disclose the identity of his informant to the company.

(10) The provisions of this section shall apply mutatis mutandis to documents which a liquidator, or a foreign company is required to file under this Act.

(11) Where, upon information in his possession or otherwise, the Registrar has reasonable ground to believe that the books and papers of, or relating to, any company or other body corporate or managing director or manager of such company or other body corporate, may be destroyed, mutilated, altered, falsified or secreted, the Registrar may make an application to the Magistrate of the First Class or, as the case may be, the Metropolitan Magistrate having jurisdiction for an order for the seizure of such books and papers.

(12) After considering the application and hearing the Registrar, if necessary, the

Magistrate may, by order, authorise the Registrar-

(a) to enter, with such assistance as may be required, the place or places where such books and papers are kept ;

(b) to search that place or those places in the manner specified in the order ; and

(c) to seize such books and papers as he considers necessary after allowing to take copies of or extracts from such books or paper to be taken at the cost of the company.

(13) The Registrar shall return the books and papers seized under this section as soon as may be, and in any case not later than the ninetieth day, after such seizure, to the company or the other body corporate or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return :

Provided that the Registrar may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary.

Provided further that the company may obtain from the Registrar copy of any of its paper or books seized, at its cost.

(14) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 relating to searches or seizures made under that Code.

91. Investigation

(1) The Central Government may, where a report has been made by the Registrar under sub-section (4) of section 90, appoint one or more competent persons, not being a firm or body corporate or other associations, as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct.

(2) Where an application has been received from the members of the company along with such evidence as the Tribunal may require for the purpose of showing that the applicants have good reason for requiring investigation -

(a) in the case of a company having a share capital, from not less than two hundred members or from members holding not less than one-tenth of the total voting power therein, and

(b) in the case of a company having no share capital from not less than one-fifth of the persons on the company's register of members,

the Tribunal may, after giving the parties an opportunity of being heard, by order, declare that the affairs of the company ought to be investigated by an inspector or

inspectors, and on such a declaration being made, the Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of the company, after requiring the applicants to give security for such amount as may be prescribed for payment of cost of the investigation if it thinks fit, and to report thereon in such manner as the Central Government may direct.

(3) Without prejudice to its powers under section the Central Government

(a) shall appoint one or more competent persons, not being a firm, body corporate or other association, as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct, if

(i) the company, by special resolution ; or

(ii) the Court, by order,

declares that the affairs of the company ought to be investigated by an inspector appointed by the Central Government ; and

(b) may do so if, in the opinion of the Tribunal, there are circumstances suggesting

(i) that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose ;

(ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members ; or

(iii) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company.

(4) If an inspector appointed under sub-section (1) or (3) to investigate the affairs of the company thinks it necessary for the purposes of his investigation to investigate also the affairs of

(a) any other body corporate which is, or has at any relevant time been, the company's subsidiary or holding company, or a subsidiary of its holding company, or a holding company of its subsidiary ;

(b) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company, or;

(c) any other body corporate which is, or has at any relevant time been, managed by the company or whose board of directors comprises of nominees of the company or is

accustomed to act in accordance with the directions or instructions of

- (i) the company, or
- (ii) any of the directors of the company, or
- (iii) any company, any of whose directorships is held by the employees or nominees of those having the control and management of the first-mentioned company ; or

(d) any person who is or has at any relevant time been the company's managing director or manager,

the inspector shall, subject to the provisions of sub-section (2), have power so to do and shall report on the affairs of the other body corporate or of the managing director or manager, so far as he thinks that the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

(5) In the case of any body corporate or person referred to in clause a, (b), (c) or (d) of sub-section (4), the inspector shall not exercise his power of investigating into, and reporting on, its or his affairs without first having obtained the prior approval of the Central Government thereto :

Provided that before according approval under this sub-section, the Central Government shall give the body corporate or the person a reasonable opportunity to show cause why such approval should not be accorded.

(6) It shall be the duty of all officers and other employees and agents of the company, and where the affairs of any other body corporate are investigated by virtue of this section all officers and other employees and agents of such body corporate -

(a) to preserve and to produce to an inspector or any person authorised by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the company or, as the case may be, or of relating to the other body corporate, which are in their custody or power ; and

(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(7) The inspector may, with the previous approval of the Central Government, require any body corporate other than a body corporate referred to in sub-section (4) to furnish such information to, or produce such books and papers before, him or any person authorised by him in this behalf with the previous approval of that Government as he may consider necessary if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(8) The inspector may keep in his custody any books and papers produced under sub-section (6) or sub-section (7) for six months and thereafter shall return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers are produced :

Provided that the inspector may call for the books and papers if they are needed again :

Provided further that if certified copies of the books and papers produced under sub-section (7) are furnished to the inspector, he shall return those books and papers to the body corporate concerned.

(9) An inspector may examine on oath

(a) any of the persons referred to in sub-section (6) ; and

(b) with the previous approval of the Central Government, any other person,

in relation to the affairs of the company or other body corporate, as the case may be ; and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(10) If any person fails without reasonable cause or refuses

(a) to produce to an inspector or any person authorised by him in this behalf with the previous approval of the Central Government any book or paper which it is his duty under sub-section (6) or sub-section (7) to produce ; or

(b) to furnish any information which it is his duty under sub-section (7) to furnish ; or

(c) to appear before the inspector personally when required to do so under sub-section (9) or to answer any question which is put to him by the inspector in pursuance of that sub-section ; or

(d) to sign the notes of any examination referred to in sub-section (9) he shall be punishable under the Act.

(11) Notes of any examination under sub-section (9) 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.

(12) Any action or proceeding of the Central Government under this section shall not be called in question or no injunctions shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred on the Central Government under this section.

(13) In this section:

(a) the expression " officers ", in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate ;

(b) the expression " agent ", in relation to any company, body corporate or person, means, any one acting or purporting to act for or on behalf of such company, body corporate or person, and includes the bankers and legal advisers of, and persons

employed as auditors by, such company, body corporate or person ; and

(c) any reference to officers and other employees, agents or partners shall be construed as a reference to past as well as present officers and other employees, agents or partners, as the case may be.

(14) Where in the course of investigation under this section, the inspector has reasonable ground to believe that the books and papers of, or relating to, any company or other body corporate or managing director or manager of such company or other body corporate may be destroyed, mutilated, altered, falsified or secreted, the inspector may make an application to the Magistrate of the First Class or, as the case may be, the Presidency Magistrate, having jurisdiction for an order for the seizure of such books and papers.

(15) After considering the application and hearing the inspector, if necessary, the Magistrate may by order authorise the inspector

(a) to enter, with such assistance, as may be required, the place or places where such books and papers are kept ;

(b) to search that place or those places in the manner specified in the order ; and

(c) to seize books and papers he considers necessary for the purposes of his investigation after allowing to take copies of, or extracts therefrom.

(16) The inspector shall keep in his custody the books and papers seized under this section for such period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return :

Provided that the inspector may, before returning such books and papers as aforesaid, place identification marks on them or any part thereof.

(17) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches or seizures made under that Code.

(18) The inspector(s) may, and if so directed by the Central Government shall, make interim reports to that Government, and on the conclusion of the investigation, shall make a final report to the Central Government. Any such report shall be written or printed, as the Central Government may direct.

(19) The Central Government

(a) shall forward a copy of any report (other than an interim report) made by the inspector(s) to the company at its registered office, and also to any body corporate dealt with in the report by virtue of this section ;

(b) may, if it thinks fit, furnish a copy thereof or cause the report to be published

subject to such conditions as may be prescribed.

(20) A copy of any report of any inspector or inspectors appointed under this section authenticated in such manner, if any, as may be prescribed, shall be admissible in any legal proceeding as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report.

(21) If, from any report made under this section, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate whose affairs have been investigated by virtue of this section, been guilty of any offence for which he is criminally liable, the Central Government may, after taking such legal advice as it thinks fit, prosecute such person for the offence ; and it shall be the duty of all officers and other employees and agents of the company or body corporate, as the case may be (other than the accused in the proceedings), to give the Central Government all assistance in connection with the prosecution which they are reasonably able to give.

92. Consequences of Investigation

(1) If any such company or other body corporate is liable to be wound up under this Act and it appears to the Central Government from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in section 90, the Central Government may, unless the company or body corporate is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorised by the Central Government in this behalf

(a) a petition for the winding up of the company, body corporate on the ground that it is just and equitable that it should be wound up ;

(b) an application for an order under section 97; or

(c) both a petition and an application as aforesaid.

(2) If from any such report as aforesaid, it appears to the Central Government that the proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated in pursuance of section 91.

(a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate ; or

(b) for the recovery of any property of such company, or body corporate, which has been misapplied or wrongfully retained ;

the Central Government may itself bring the proceedings for that purpose in the name of such company or body corporate.

The Central Government shall indemnify such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of this sub-section.

(3) The expenses of and incidental to an investigation by an inspector appointed by the Central Government under section 91 shall be defrayed in the first instance by the Central Government ; but the Central Government may recover such expenses from

such persons and in such manner as may be prescribed . Such recovery shall be made from the persons who are liable, as an arrear of land revenue.

(4) Where it appears to the Central Government that there is good reason so to do so or where the Tribunal, in a course of any proceeding before it, declares by an order that the affairs of the company are to be investigated as regards to the membership of the company and other matters relating to the company, it may appoint one or more inspectors to investigate and report on the membership of any company and other matters relating to the company, for the purpose of determining the true persons

(a) who are or have been financially interested in the success or failure, whether real or apparent, of the company ; or

(b) who are or have been able to control or materially to influence the policy of the company.

(5) When appointing an inspector under sub-section (1), the Central Government may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures.

(6) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant to the purposes of his investigation.

(7) For the purposes of any investigation under this section, provisions of sections 91 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate :

Provided that the said sections shall apply in relation to all persons (including persons concerned only on behalf of others) who have been, or whom the inspector has reasonable cause to believe to be or to have been,

(i) financially interested in the success or failure, or the apparent success or failure, of the company, of any other body corporate whose membership or constitution is investigated with that of the company ; or

(ii) able to control or materially to influence the policy of such company, body corporate, as they apply in relation to officers and other employees and agents of the company, of the other body corporate, as the case may be :

Provided further that the Central Government shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof, if it is of opinion that there is good reason for not divulging the contents of the report or of parts thereof ; but in such a case, the Central Government shall cause to be kept by the Registrar a copy of any such report, or as the case may be, of the parts thereof, as respects which it is not of that opinion.

(8) The expenses of any investigation under this section shall be defrayed by the

Central Government out of moneys provided by Parliament, unless the Central Government directs that the expenses or any part thereof should be paid by the persons on whose application the investigation was ordered.

(9) Where it appears to the Tribunal, whether on a reference made to it by the Central Government in connection with any investigation under section 91 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities (whether issued or to be issued) and the Tribunal is of the opinion that such facts cannot be found out unless the restrictions as may be prescribed or imposed, the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.

(10) Where a transfer of securities in a company has taken place or the Tribunal has reasonable ground to believe that transfer of securities in a company is likely to take place and as a result thereof a change in the composition of the board of directors of the company is likely to take place and the Tribunal, is of the opinion that any such change would be prejudicial to the public interest, it may, by order, give such direction, for a period not exceeding three years, as it may deem fit.

(11) The Tribunal may, by order at any time, vary or rescind any order made by it under this section.

(12) Any order made by the Tribunal under this section shall be served on the company within fourteen days of the making of the order.

(13) Where securities in any company are issued or transferred or acted upon in contravention of the orders of the Tribunal, any person who exercises any right in connection with the subject securities in contravention of this section or of the order of the Tribunal, such person, the company, and every officer of the company who is in default, shall be punishable under the Act.

(14) A prosecution shall not be instituted under this section except by, or with the consent of, the Central Government.

(15) An investigation may be initiated under section 91 notwithstanding that

(a) an application has been made for an order under section 97 ; or

(b) the company has passed a special resolution for voluntary winding up, and no investigation so initiated shall be stopped or suspended by reason only of the fact that an application referred to in clause (a) has been made or a special resolution referred to in clause (b) has been passed.

(16) Nothing in section 91 shall require the disclosure to Tribunal or to the Central Government or to the Registrar or to an Inspector appointed by Central Government

(a) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client ; or

(b) by the bankers of any company, body corporate or other person, referred to in the sections aforesaid, as such bankers, of any information as to the affairs of any of their

customers other than such company, body corporate or person.

(17) Where it appears to the Central Government that there are good reasons to do, it may appoint one or more inspectors to investigate and report as to whether the provisions of section 44 have been complied with regard to any share, and thereupon the provisions of section 91 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.

CHAPTER XIV

MATTERS RELATING TO MERGER, DEMERGER, COMPROMISE & ARRANGEMENTS.

93. (1) Definition

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

(b) the expression "arrangement" includes a re-organisation 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 or by adopting any of the methods; but excludes reduction of share capital.

(c) unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

(d) " transferee company " does not include any company other than a company within the meaning of this Act ; but "transferor company " includes any body corporate.

(e) " 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.

94. Power to compromise or make arrangements with creditors and members.

(1) Where a compromise or arrangement is proposed

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

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

such an arrangement or compromise shall be implemented only on the confirmation of the Tribunal.

(2) The Tribunal may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such

manner as the Tribunal directs.

Provided that the Tribunal may dispense with the meeting of creditors of any class or members or any class of them or all the creditors or all the creditors of any class or all the members holding not less than one per cent. of the voting power or members of any class holding one per cent. of the total voting power, as the case may be, by an affidavit, confirm their consent to the compromise or arrangement:

Provided further that the Tribunal may, at its discretion, waive the requirement of notices to be issued to the creditors or any class of them for such meeting so long as specific notices are sent to all the creditors and a general notice is issued by a publication in one English and one vernacular newspaper, circulating at the place where the company's registered office is located.

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

Provided that no order sanctioning any compromise or arrangement shall be made by the Tribunal unless the Tribunal is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditors' report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under section 91.

(4) An order made by the Tribunal under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar and registered by him.

(5) (a) Every copy of the memorandum of the company, issued after the certified copy of the order has been filed as aforesaid, shall disclose brief particulars of the order made by the Tribunal and contained a statement to the effect that the full text of the order would be available to every member or creditor requiring the same.

(b) If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable under the Act.

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

(7) Where a Tribunal makes an order under this section sanctioning a compromise or an arrangement in respect of a company, it

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

; and

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

(8) If the Tribunal aforesaid is satisfied that a compromise or arrangement sanctioned under this section cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order for winding up the company, and such an order shall be deemed to be an order made under section 136 of this Act.

(9) The manner of conducting the meeting of the creditors or any class of creditors or of members or any class of members or debenture holders including issue of notices for such meetings shall be as prescribed.

(10) Where an application is made to the Tribunal under this section for the sanctioning of a compromise or arrangement proposed between a company whether or not such a company is a scheduled undertaking within the meaning of the Industries (Development and Regulation) Act, 1951, and any such persons as are mentioned in that section, and it is shown to the Tribunal

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies ; and

(b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a " transferor company ") is to be transferred to another company (in this section referred to as the " transferee company ") ;

the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the matters as may be prescribed and in the manner the Tribunal may deem fit.

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

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

(12) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to

be filed with the Registrar for registration subject to extension of time granted by the Court for filing.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable under the Act.

(13) The Tribunal shall give notice of every application made to it under this part to the Central Government, and shall take into consideration the representations, if any, made to it by the Government before passing any order under any of these sections

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

95. Power to acquire shares of dissenting share holders

(1) Where a scheme or contract involving the transfer of shares to another company, has been approved by the holders of not less than nine-tenth in value of the shares whose transfer is involved, the transferee company be entitled and bound to acquire the shares of the dissenting shareholders, on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company subject to such conditions as may be prescribed.

Provided where nine-tenth in value of the shares or the shares of that class in the transferor company is held by the transferee company or by a nominee for the transferee company or its subsidiary then the transferee company shall give notice of the fact in the manner prescribed to the holders of the remaining shares and shall be entitled and bound to acquire those shares on the terms on which, under the scheme of contract, the shares of the approving shareholders were transferred to it.

Provided further that no transfer of the assets and liabilities to the transferee company shall be made without obtaining the approval of the Tribunal under section 94 of the Act.

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

96. Power of Central Government to provide for amalgamation

(1) Where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, then, notwithstanding

anything contained in this part but subject to the provisions of this sub-section, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution ; with such property, powers, rights, interests, authorities and privileges ; and with such liabilities, duties, and obligations ; as may be specified in the order.

(2) The order aforesaid may provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and may also contain such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

(3) Every member or creditor (including a debenture holder) of each of the companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the company resulting from the amalgamation as he had in the company of which he was originally a member or creditor ; and to the extent to which the interest or rights of such member or creditor in or against the company resulting from the amalgamation are less than his interest in or rights against the original company, he shall be entitled to compensation which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette. The compensation so assessed shall be paid to the member or creditor concerned by the company resulting from the amalgamation.

(4) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal.

(5) No order shall be made under this section, unless

(a) a copy of the proposed order has been sent in draft to each of the companies concerned ;

(b) the time for preferring an appeal under sub-section (4) has expired, or where any such appeal has been preferred, the appeal has been finally disposed of ; and

(c) the Central Government has considered, and made such modifications, if any, in the draft order as may seem to it desirable in the light of any suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

(6) The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission, the Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the first-mentioned company or its

amalgamation or the acquisition of its shares.

CHAPTER XV

OPPRESSION AND MISMANAGEMENT

97. Oppression and Mismanagement

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

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

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

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

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

(3) Any member of a company who complains

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

(b) that a material change has taken place in the management or control of the company, in respect of such matters as may be notified by the Central Government and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ;

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

(4) If, on any application under sub-section (3), the Tribunal is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the Tribunal may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

(5) The Central Government may prescribe rules regarding the eligibility of members

who have a right to apply to the Tribunal under this section.

(6) The Central Government may itself apply to the Tribunal for an order under sub sections (1)& (2) of this section or cause an application to be made to the Tribunal for such an order by any person authorised by it in this behalf.

(7) The Tribunal shall give notice of every application made to it under sub-sections (1) &(2) of this section to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing final order under that section.

(8) (a) Without prejudice to the generality of the powers of the Tribunal under sub-sections (1) or (2) of this section any order under either section may provide for the regulation of the conduct of the company's affairs in future including purchase of the shares of any members, termination or modification of any agreement and consequences thereof or such other order as the Tribunal may deem it just and equitable, a certified copy of which shall be filed with the Registrar who shall register the same.

(b) In case of default in complying with the provisions of this sub-section, the company and every officer of the company who is in default shall be punishable under the Act.

(c) Pending the making by it of a final order under sub section (1) or (2), as the case may be, the Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable.

(d) Subject to the provisions of sub-section (1), the alterations made by the order shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions.

(9) The provisions of Sections 191 to 195 relating to falsification of books, frauds by officers, not keeping proper accounts, fraudulent conduct of business by the delinquent directors or Officers of the Company contained in the Act shall apply to this Section.

98. Powers of Government to prevent oppression or mismanagement

(1) Notwithstanding anything contained in this Act, the Central Government may appoint such number of persons as the Tribunal may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interests to hold office as directors thereof for such period, not exceeding three years on any one occasion, as it may think fit, if the Tribunal, on a reference made to it by the Central Government or on an application of not less than one hundred members of the company or of the members of the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest :

Provided that in lieu of passing an order as aforesaid, the Tribunal may, if the company has not availed itself of the option given to it under sub-section (6) of section 64, direct the company to amend its articles in the manner provided in that

section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the Tribunal.

(2) In case the Tribunal passes an order under this section it may, if it thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, such number of persons as the Tribunal may, by order, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest, shall hold office as additional directors of the company and on such directions, the Central Government shall appoint such additional directors.

(3) For the purposes of reckoning two-thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Central Government under this section shall not be taken into account.

(4) A person appointed under this section to hold office as a director or a person directed under this section to hold office as an additional director, shall not be liable to determination by retirement of directors by rotation ; but any such director or additional director may be removed by the Central Government from his office at any time and another person may be appointed by the Government in his place to hold office as a director or, as the case may be, an additional director.

(5) No change in the board of directors made after a person is appointed or directed to hold office as a director or additional director under this section shall, so long as such director or additional director holds office, have effect unless confirmed by the Tribunal.

(6) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any person is appointed by the Central Government to hold office as director or additional director of a company in pursuance of this section, the Central Government may issue such directions to the company as it may consider necessary or appropriate in regard to its affairs and such directions may include directions to remove an auditor already appointed and to appoint another auditor in his place or to alter the articles of the company, and upon such directions being given, the appointment, removal or alteration, as the case may be, shall be deemed to have come into effect as if the provisions of this Act in this behalf have been complied with without requiring any further act or thing to be done.

(7) The Central Government may require the persons appointed as directors or additional directors in pursuance of this section to report to the Central Government from time to time with regard to the affairs of the company.

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

or in the memorandum or articles of the company, or in any agreement with, or any resolution passed in general meeting by, or by the board of directors of, the company.

(9) The Tribunal shall have power when any such complaint is received by it, to make an interim order to the effect set out in this section before making or completing the inquiry aforesaid.

99. Miscellaneous provisions

(1) Any money or security, not being the receipt for monies deposited with a company, deposited with a company by any of its employee in pursuance of his contract of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit in the manner as may be prescribed and no portion of such moneys or securities shall be utilised by the company except for the purposes agreed to in the contracts 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 received or accruing by way of interest or otherwise to such fund shall, within fifteen days from the date of contribution, receipt or accrual, shall be deposited or invested in the manner as may be prescribed.

(3) No employee shall be entitled to receive, in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of this section, interest at a rate exceeding the rate of interest yielded by such investment.

(4) The employee shall be entitled to obtain advances from or to withdraw money standing to his credit in the fund in the manner as may be prescribed.

(5) Where a trust has been created by a company with respect to any provident fund referred to in this section, the company shall be bound to collect the contribution of the employees concerned and pay such contribution as well as its own contribution, if any, to the trustees within fifteen days from the date of collection; but in other respects, the obligations laid on the company by this section shall devolve on the trustees and shall be discharged by them instead of by the company.

(6) An employee shall be entitled, on request made in this behalf to the company, or to the trustees referred to in this section, to see the bank's receipt for any money or security such as is referred to in this section.

(7) Any officer of a company, or any such trustee of a provident fund as is referred to in this section, who, knowingly, contravenes, or authorises or permits the contravention of the provisions above, shall be punishable under the Act.

(8) Every receiver of the property under a power conferred by any instrument or any person appointed to manage the property of the company by the Tribunal and who has taken possession, shall once in every half year while he remains in possession, and

also on ceasing to act as receiver or manager, file with the Registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates.

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

(10) If default is made in complying with the requirements of this section, the company, and every officer of the company who is in default, shall be punishable under the Act.

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

100. Certification

The Registrar having jurisdiction over a company may issue such certificate to that company, based on the records filed with him, in such format and on payment of such fee as may be prescribed.

Chapter XVI

NATIONAL COMPANY LAW TRIBUNAL

101. Constitution of National Company Law Tribunal

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

102. Composition of Tribunal

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

103. Qualification, Appointment and other terms and conditions of the office of President and Members.

(1) The President and Members of the Tribunal shall possess such qualification and experience as may be prescribed.

(2) The appointment of members of the Tribunal shall be made by a Search and Selection Committee constituted by the Central Government, the constitution of which shall be as prescribed.

(3) The Central Government shall also prescribe the other terms and conditions of the office of the President and Members such as salary and allowances, other

perquisite/benefits, age, tenure of office, filling up of vacancy, resignation, suspension and removal, conditions of service etc.

104. Officers and employees of Tribunal

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

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

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

105. Benches of Tribunal

(1) Subject to the provisions of this section, the powers of the Tribunal may be exercised by Benches, constituted by the President of the Tribunal, out of which one shall be a Judicial Member and another shall be a Technical Member referred to in the rules framed under section 102.

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

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

(2) The President of the Tribunal shall, for the disposal of any case relating to rehabilitation, restructuring or winding up of the companies, constitute one or more Special Benches consisting of three or more Members, each of whom shall necessarily be a Judicial Member, a Technical Member appointed under the rules framed under section 102.

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

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

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

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

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

any such proceedings for any reason:

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

106. Order of Tribunal

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

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

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

107. Power to review

The Tribunal shall have power to review its own orders.

108. Delegation of powers

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

109. Power to seek assistance of Chief Metropolitan Magistrate and District Magistrate

(1) The Tribunal or any operating agency, on being directed by the Tribunal may, in order to take into custody or under its control all property, effects and actionable claims to which a sick industrial company is or appears to be entitled, request, in writing, the Chief Metropolitan Magistrate or the Chief Judicial Magistrate or the District Magistrate within whose jurisdiction any property, books of account or any other document of such sick industrial company, be situate or be found, to take possession thereof, and the Chief Metropolitan Magistrate or the Chief Judicial Magistrate or the District Magistrate, as the case may be, shall, on such request being made to him,—

- (a) take possession of such property, books of account or other documents; and
- (b) cause the same to be entrusted to the Tribunal or the operating agency.

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

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

110. Appeal from order of Tribunal

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

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

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

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

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

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

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

111. Constitution of Appellate Tribunal

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

(2) The Central Government may prescribe the qualifications, experience and other terms and conditions of the office of the Chairperson and Members such as salary and allowances, other perquisite/benefits, age, tenure of office, filling up of vacancy, resignation, suspension and removal etc.

112. Selection Committee

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

of a Selection Committee consisting of—

(a) Chief Justice of India or his nominee Chairperson;

(b) Secretary in the Ministry of Finance and Company Affairs Member;

- (c) Secretary in the Ministry of Labour Member;
- (d) Secretary in the Ministry of Law and Justice (Department of Legal Affairs or Legislative Department) Member;
- (e) Secretary in the Ministry of Finance and Company Affairs (Department of Company Affairs) Member.
- (2) The Joint Secretary in the Ministry or Department of the Central Government dealing with this Act shall be the Convenor of the Selection Committee.
- (3) The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal and six months before the superannuation or end of tenure of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal, make a reference to the Selection Committee for filling up of the vacancy.
- (4) The Selection Committee shall recommend within one month a panel of three names for every vacancy referred to it.
- (5) Before recommending any person for appointment as the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal, the Selection Committee shall satisfy itself that such person does not have financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal or President or Member of the Tribunal, as the case may be.
- (6) No appointment of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be invalidated merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

113. Chairperson, etc., to be public servants

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

114. Protection of action taken in good faith

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

115. Procedure and powers of Tribunal and Appellate Tribunal

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

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1980) while trying a suit in respect of the following matters, namely:—

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

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

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

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

116. Power to punish for contempt

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

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

117. Staff of Appellate Tribunal

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

(2) The officers and other employees of the Appellate Tribunal shall discharge their

functions under the general superintendence of the Chairperson of the Appellate Tribunal.

(3) The salaries and allowances and other conditions of service of the Tribunal shall be as prescribed.

118. Civil court not to have jurisdiction

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

119. Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings

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

120. Right to legal representation

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

Explanation— For the purposes of this section, “legal practitioner” means an advocate defined under the Advocate’s Act.

121. Limitation

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

122. Appeal to Supreme Court

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

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

Chapter XVII

Revival and Rehabilitation of Sick Industrial Companies.



123. Reference to Tribunal

(1) Where an industrial company, has become a sick industrial company, the Board of directors of such company shall make a reference to the Tribunal, and prepare a scheme of its revival and rehabilitation and submit the same to the Tribunal along with an application containing such particulars as may be prescribed, for determination of the measures which may be adopted with respect to such company:

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

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

Provided also that any reference can be made to the Tribunal where financial assets have been acquired by any securitisation company or reconstruction company under sub-section (1) of section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002, only with the consent of all the secured creditors.

Provided also that where a reference has been made before the Tribunal under this section and such reference is pending before it, such reference shall abate if the secured creditors representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors have taken any measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002.”.

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

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

(b) the default in repayment of its debt making such company a sick industrial company, as the case may be.

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

Provided that a reference shall not be made under this sub-section in respect of any industrial company by—

(a) the Government of any State unless all or any of the industrial undertakings belonging to such company are situated in such State;

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

(4) A reference under sub-section (1) or sub-section (3) shall be made to the Tribunal within a period of one hundred and eighty days from the date on which the Board of directors of the company or the Central Government or the Reserve Bank

of India or a State Government or a public financial institution or a State level institution or a scheduled bank, as the case may be, come to know, of the relevant facts giving rise to causes of such reference or within sixty days of final adoption of accounts, whichever is earlier.

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

124. Inquiry into working of sick industrial companies

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

(a) upon receipt of a reference with respect to such company under section 123; or

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

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

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

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

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

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

Explanation.—For the purposes of this sub-section, an inquiry shall be deemed to have commenced upon the receipt by the Tribunal of any reference or information or upon its own knowledge reduced to writing by the Tribunal.

(5) The Tribunal may, if it is of the opinion, that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order, direct such company not to dispose of, except with the prior approval of the Tribunal, any of its assets during the period of inquiry under this section or during the period of preparation or consideration of the scheme under section 125.

(6) On receipt of reference under section 123, the Tribunal may call for any periodic information from the company as to the steps taken by the company to make its net worth exceed the accumulated losses or to make repayment of its debts referred to in that section, as the case may be, and the company shall furnish such information.

(7) Where the Tribunal deems it fit to make an inquiry or to cause an inquiry to be

made into any industrial company under sub-section (1) or, as the case may be, under sub-section (2), it may appoint one or more persons who possess knowledge, experience and expertise in management and control of the affairs of any other company to be a special director or special directors on the board of such industrial company on such terms and conditions as may be prescribed for safeguarding its financial and other interests or in the public interest.

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

(9) The Tribunal may issue such directions to a special director appointed under sub-section (7) as it may deem necessary or expedient for proper discharge of his duties.

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

(11) Any special director appointed under sub-section (5), shall—

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

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

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

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

125. Powers of Tribunal to make suitable order on completion of inquiry

(1) If after making an inquiry under section 124, the Tribunal is satisfied that a company has become a sick industrial company, the Tribunal shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make its net worth exceed the accumulated losses or make the repayment of its debts referred to in clause (b) of sub-section (2) of section 123 within a reasonable time.

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

(3) If the Tribunal decides under sub-section (1) that it is not practicable for a sick industrial company to make its net worth exceed the accumulated losses or make the repayment of its debts referred to in clause (b) of sub-section (2) of section 123, within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in section 125 in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation to such company.

(4) The Tribunal may,—

(a) if any of the restrictions or conditions specified in an order made under sub-section (2) are not complied with by the company concerned, or if the company fails to revive in pursuance of the said order, review such order on a reference in that behalf from any agency referred to in sub-section (3) of section 123 or on its own motion and pass a fresh order in respect of such company under sub-section (3);

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

126. Preparation and sanction of schemes

(1) Where an order is made under sub-section (3) of section 125 in relation to any sick industrial company, the operating agency specified in the order shall prepare as expeditiously as possible and ordinarily within a period of sixty days from the date of such order, having regard to the guidelines framed by the Reserve Bank of India in this behalf, a scheme with respect to such company providing for any one or more of the following measures, namely:—

(a) the financial reconstruction of such industrial company;

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

(c) the amalgamation of—

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

(ii) any other company with such industrial company (hereafter in this section, in the case of sub-clause (i), the other company, and in the case of sub-clause (ii), such industrial company, referred to as “transferee-company”;

(d) the sale or lease of a part or whole of any industrial undertaking of such industrial company;

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

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

(g) repayment of debt;

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

(a) to (g):

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

(2) The scheme referred to in sub-section (1) subject to the procedural compliance of the provisions of the Act may provide for any one or more of the following, namely:—

(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, duties and obligations of the sick industrial company or, as the case may be, of the transferee company;

(b) the transfer to the transferee company of the business, properties, assets and liabilities of the sick industrial company on such terms and conditions as may be specified in the scheme;

(c) any change in the Board of directors, or the appointment of a new Board of directors, of the sick industrial company and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of directors or of any director, the period for which such appointment shall be made;

(d) the alteration of the memorandum or articles of association of the sick industrial company or, as the case may be, of the transferee company for the purpose of altering the capital structure thereof, or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;

(e) the continuation by or against the sick industrial company or, as the case may be, the transferee company of any action or other legal proceeding pending against the sick industrial company immediately before the date of the order made under sub-section (3) of section 125;

(f) the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as the Tribunal considers necessary in the interests of the reconstruction, revival or rehabilitation or repayment of debts of such sick industrial company or for the maintenance of the business of such industrial

company

(g) the allotment to the shareholders of the sick industrial company, of shares in such company or, as the case may be, in the transferee company and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholder, the payment of cash to those shareholders in full satisfaction of their claims—

(i) in respect of their interest in shares in the sick industrial company before its reconstruction or amalgamation; or

(ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

(h) any other terms and conditions for the reconstruction or amalgamation of the sick industrial company;

(i) sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified, to any person, including a co-operative society formed by the employees of such undertaking and fixing of reserve price for such sale;

(j) lease of the industrial undertaking of the sick industrial company to any person, including a co-operative society formed by the employees of such undertaking;

(k) method of sale of assets of the industrial undertaking of the sick industrial company such as by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor;

(l) issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of such sick industrial company;

(m) such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.

(3)(a) The scheme prepared by the operating agency shall be examined by the Tribunal and a copy of the scheme with modification, if any, made by the Tribunal shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Tribunal may publish or cause to be published the draft scheme in brief in such daily newspapers as the Tribunal may consider necessary, for suggestions and objections, if any, within such period as the Tribunal may specify.

(b) The complete draft scheme shall be kept at the place where registered office of the company is situated or at such places as mentioned in the advertisement.

(c) The Tribunal may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the

sick industrial company and the operating agency and also from the transferee company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies.

Provided that where the scheme relates to amalgamation, the said scheme shall be laid before the company other than the sick industrial company in the general meeting for the approval of the scheme by its shareholders and classes of its creditors and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of the transferee company and agreed upon by majority of each class of creditors in number representing three-fourth in value of creditors or class of creditors present and voting either in person or where proxies are allowed as per rules prescribed.

(4) The scheme may thereafter be sanctioned, within sixty days by the Tribunal (hereinafter referred to as the sanctioned scheme) and shall come into force on such date as the Tribunal may specify in this behalf:

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

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

(5) The Tribunal may, on the recommendations of the operating agency or otherwise, review any sanctioned scheme and make such modifications as it may deem fit or may by order in writing direct any operating agency specified in the order, having regard to such guidelines including the guidelines framed by the Reserve Bank of India in this behalf in order to prepare a fresh scheme providing for such measures as the operating agency may consider necessary.

(6) When a fresh scheme is prepared under sub-section (5), the provisions of sub-sections (3) and (4) shall apply in relation thereto as they apply to in relation to a scheme prepared under sub-section (1).

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

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

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

(10) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies.

(11) The creditors of a sick industrial company may also prepare a scheme for revival or rehabilitation of such sick industrial company and submit the same to the Tribunal for its sanction:

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

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

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

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

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

(16) Where the whole or substantial assets of the undertaking of the sick industrial company is sold under a sanctioned scheme, the Tribunal may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of section 181 and other provisions of this Act.

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

127. Rehabilitation by giving financial assistance

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

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

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

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

(5) The financial institution and the bank designated under sub-section (4) shall forthwith and not later than 30 days from the date of agreement referred therein proceed to release the financial assistance to the sick industrial company in fulfilment of the requirement in this regard.

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

128. Arrangement for continuing operations, etc., during inquiry

(1) At any time before completion of the inquiry under section 124, the sick industrial company or the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank or any other institution, bank or authority providing or intending to provide any financial assistance by way of loans or advances or guarantees or reliefs, or concessions to such industrial company may make an application to the Tribunal—

- (a) agreeing to an arrangement for continuing the operations of the sick industrial company; or
- (b) suggesting a scheme for the financial reconstruction of the sick industrial company.

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

129. Winding up of sick industrial company

(1) Where the Tribunal, after making inquiry under section 124 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of the opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record its findings and order winding up of the company.

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

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and pass orders for distribution in accordance with the provisions of section 181, and other provisions of this Act.

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

130. Operating agency to prepare complete inventory, etc.

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

- (a) with respect to a company a complete inventory of—
- (i) all assets and liabilities of whatever nature;
 - (ii) all books of account, registers, maps, plans, records, documents of title or ownership of property and all other documents of whatever nature relating thereto;
- (b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and unsecured creditors;
- (c) a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of a part or whole of the industrial undertaking of the company or for fixation of the lease rent or share exchange ratio;

(d) an estimate of reserve price, lease rent or share exchange ratio;

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

131. Misfeasance proceedings

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

(a) has misapplied or retained, or become liable or accountable for, any money or property of the sick industrial company; or

(b) has been guilty of any misfeasance, malfeasance or non-feasance or breach of trust in relation to the sick industrial company, the Tribunal may, by order, direct him to repay or restore the money or property or without interest, as it thinks just, or to contribute such sum to the assets of the sick industrial company or the other person, entitled thereto by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Tribunal thinks just, and also report the matter to the Central Government for any other action which that Government may deem fit.

(2) If the Tribunal is satisfied on the basis of the information and evidence in its possession with respect to any person who is or was a director or an officer or other employee of the sick industrial company, that such person by himself or along with others had diverted the funds or other property of such company for any purpose other than a bona fide purpose of the company or had managed the affairs of the company in a manner highly detrimental to the interests of the company, the Tribunal shall by order, direct the public financial institutions, scheduled banks and State level institutions not to provide, during a period of ten years from the date of the order, any financial assistance to such person or any firm of which such person is a partner or any company or other body corporate of which such person is a director (by whatever name called).

(3) An application under sub-section (1) shall be made within one year from the date of such direction given by the Tribunal by such officer as may be authorized by the Tribunal.

(4) No order shall be made by the Tribunal under this section against any person unless such person has been given an opportunity for making his submissions.

(5) This section shall apply notwithstanding that the matter is one for which the person may be criminally liable.

132. Penalty for certain offences

(1) Whoever violates the provisions of this Part or any scheme, or any order, of the Tribunal or the Appellate Tribunal or makes a false statement or gives false evidence to the Tribunal or the Appellate Tribunal, and attempts to tamper the records of reference or appeal filed under this Act, he shall be punishable under the Act.

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

Chapter XVIII **Corporate Winding up and Dissolution**

133. Modes of winding up

(1) The winding up of a company may be either -

- (a) by the Court/Tribunal; or
- (b) voluntary;

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

134. Liability as contributories of present and past members -

(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject also to the rules framed by the Central Government and also subject to the following qualifications, namely,

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up ;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member ;
- (c) no past member shall be liable to contribute unless it appears to the Tribunal that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act ;

(d) in the case of a company limited by shares, no contribution shall be required from any past or present member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member ;

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

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

(g) a sum due to any past or present member of the company in his character as such, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member, in a case of competition between himself and any creditor claiming otherwise than in the character of a past or present member of the company ; but any such sum shall be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

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

(3) The liability of a contributory including the liability of such contributory on his death or insolvency or where the contributory is a body corporate would be subject to such limits, conditions, claims and action as may be prescribed.

135. Obligation of directors and managers whose liability is unlimited

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

Provided that :

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

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

(c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution, unless the Court deems it necessary to require the

contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

136. Circumstances in, which company may be wound up by Tribunal and when it will be deemed to unable to pay its debts.

(1) A company may be wound up by the Tribunal, —

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

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

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

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

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

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

(g) if the Tribunal is of the opinion that the company should be wound up under the circumstances specified in section 136.

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

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

(2) A company shall be deemed to be unable to pay its debts referred to in clause (d) of sub-section;

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

(ii) if execution or other process issued on a decree or order of any Tribunal or Tribunal 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 Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall

take into account the contingent and prospective liabilities of the company.

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

137. Provision as to application for winding up

(1) An application to the Tribunal for the winding up of a company shall be by petition presented, subject to the provisions of this section,

(a) by the company ; or

(b) by any creditor or creditors, including any contingent or prospective creditor or creditors ; or

(c) by any contributory or contributories ; or

(d) by all or any of the parties specified in clauses (a), (b) and (c), whether together or separately ; or

(e) by the Registrar or such authority authorized by the Central Government; or

(f) in a case falling under section 91, by any person authorised by the Central Government in that behalf; or

(g) in a case falling under clause (g) of section 136, by the Central Government or the State Government.

(h) where a company is being wound up voluntarily a petition for its winding up may be presented by the Official Liquidator or Company Liquidator as the case may be or the Voluntary Liquidator or any person authorized to do so under this section. However, the Tribunal shall not make an order for winding up on a petition presented to it under this section unless it is satisfied that the voluntary winding up can not be continued with due regard to the interest of the creditors or contributories or both.

(i) By the SEBI in respect of companies dealing with collective investment schemes regulated by them; or

(ii) By the Reserve Bank of India in respect of non-banking financial companies to the extent not specifically covered under chapter IIIB of the Reserve Bank of India Act, 1934

(2) A secured creditor, the holder of any debentures, whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and the trustee for the holders of debentures, shall be deemed to be creditors within the meaning of clause (b) of

sub-section (1).

(3) A contributory shall be entitled to present a petition for winding up a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all, or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities.

(4) A contributory shall not be entitled to present a petition for winding up a company unless

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

(b) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up, or have devolved on him through the death of a former holder.

(5) Except, in the case where he is authorized in pursuance of clause (e) of sub-section (1), the Registrar shall be entitled to present a petition for winding up a company only on the grounds specified in clauses (b), (c), (d) and (f) of section 136:

Provided that the Registrar shall not present a petition on the ground specified in clause (d) aforesaid, unless it appears to him either from the financial condition of the company as disclosed in its balance sheet or from the report of a special auditor appointed under section 60 or an inspector appointed under section 91, that the company is unable to pay its debts:

Provided further that the Registrar shall obtain the previous sanction of the Central Government to the presentation of the petition on any of the grounds aforesaid.

(6) The Central Government shall not accord its sanction in pursuance of the foregoing proviso, unless the company has first been afforded an opportunity of making its representations, if any.

(7) Before a petition for winding up a company presented by a contingent or prospective creditor is admitted, the leave of the Tribunal shall be obtained for the admission of the petition and such leave shall not be granted

(a) unless, in the opinion of the Tribunal, there is a prima facie case for winding up the company ; and

(b) until such security for costs has been given as the Tribunal thinks reasonable.

138. Statement of affairs to be filed on winding up of a company.

Every company presenting or opposing any petition for its winding up shall file with the Tribunal a statement of its affairs in such form as may be prescribed under section 153 of this Act along with such other information the Tribunal may require in the prescribed form, verified by an affidavit by one or more of the persons who are at the relevant date the directors and by the person who is at that date the manager, secretary or other chief

officer of the company.

139. Commencement of winding up by Tribunal

(1) Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.

140. Levy and collection of cess on turnover or gross receipts of companies and Crediting to consolidated fund of India

(1) There shall be levied and collected, for the purposes of rehabilitation or revival or protection of assets of the sick industrial company, a levy by way of cess at such rate not less than 0.005 per cent. And not more than 0.1 percent on the value of annual turnover of every company or its annual gross receipt, whichever is more as the Central Government may, from time to time, specify by notification in the Official Gazette.

(2) Every company shall pay to the Central Government the cess referred to in sub-section (1) within three months from the close of every financial year.

(3) Every company shall furnish, in such form as may be prescribed, to the Central Government and the Tribunal the details of its turnover and gross receipts with payment of cess under sub-section (1).

(4) The Central Government may, by rules made in this behalf, specify the manner in which the cess shall be paid under sub-section (2).

(5) The proceeds of the cess levied and collected under this section shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Tribunal, from time to time, out of such proceeds (after deducting the cost of collection), such sums of money as it may think fit for being utilised for the purposes of the Fund.

141. Rehabilitation and revival Fund

(1) There shall be formed for the purposes of rehabilitation or revival or protection of assets of a sick industrial company, a Fund to be called the Rehabilitation and Revival Fund.

(2) There shall be credited to the Fund —

(a) all amounts paid under section 140;

(b) any amount given as grants by the Central Government for the purposes of this Fund;

(c) any amount given to the Fund from any other source;

- (d) any income from investment of the amount in the Fund;
- (e) amount refunded by the company under section 145.

142. Application of Fund

The Fund shall be applied by the Tribunal for the purpose of—

- (a) making interim payment of workmen's dues pending the revival or rehabilitation of the sick industrial company; or
- (b) payment of workmen's dues due to the workmen, referred to in sub-section (a) of section 181, of the sick industrial company; or
- (c) protection of assets of sick industrial company; or
- (d) revival or rehabilitation of sick industrial company;

which in the opinion of the Tribunal are necessary or expedient for the said purposes.

143. Power to call for information

The Central Government or Tribunal may require any company to furnish for the purposes of rehabilitation or revival or protection of assets of sick industrial companies, such statistical and other information in such form and within such period as may be prescribed.

144. Recovery of cess

(1) If any cess payable by a company under section 140 is not paid in accordance with the provisions of that section, it shall be deemed to be in arrears and the same shall be recovered by the Tribunal in such manner as may be prescribed.

(2) The Tribunal may, after such inquiry as it deems fit, impose on the company, which is in arrears under sub-section (1), costs not exceeding ten times the amount in arrears:

Provided that before imposing such penalty, such company shall be given a reasonable opportunity of being heard, and if, after such hearing, the Tribunal is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this sub-section.

145. Recoupment of fund in certain cases

(1) Where the fund has been applied by the Tribunal for any of the purposes specified in clauses (a) to (d) of section 142, such amount of fund shall be recovered from the company after its revival or rehabilitation or out of sale proceeds of its assets after discharging the statutory liabilities and payment of dues to creditors.

146. Power of Tribunal on hearing petition and stay winding up.

- (1) On hearing a winding up petition, the Tribunal may—
- (a) dismiss it, with or without costs; or

- (b) adjourn the hearing conditionally or unconditionally; or
- (c) make any interim order that it thinks fit; or
- (d) make an order for winding up the company with or without costs, or any other order that it thinks fit:

Provided that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) The Tribunal may at any time after making a winding up order, on the application either of the Official Liquidator or Company Liquidator as the case may be or of any creditor or contributory, and on proof to the satisfaction of the Tribunal that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Tribunal thinks fit.

(4) On any application under this section, the Tribunal may, before making an order, give notice of every application made under sub-section (3) by persons other than the Official Liquidator or Company Liquidator as the case may be and require the Official Liquidator or Company Liquidator as the case may be to furnish to the Tribunal a report, with respect to any facts or matters which are in his opinion relevant to the application.

(5) A certified copy of every order made under this section shall forthwith and in any case within thirty days of the date of the order be filed by the company with the Registrar who shall make a minute of the order in his books relating to the company.

147. Winding up order to be communicated to Official Liquidator or Company Liquidator as the case may be and Registrar and effect of winding up order.

(1) Where the Tribunal makes an order for the winding up of the company, the Tribunal, shall within a period not exceeding two weeks from the date of passing of the order, cause intimation thereof to be sent to the Official Liquidator or Company Liquidator as the case may be and the Registrar who shall make a minute thereof in his books relating to the company and shall notify in the Official Gazette that such an order has been made.

(2) (i) On the making of a winding up order, it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the Registrar a certified copy of the order, within thirty days from the date of the making of the order

If default is made in complying with the foregoing provision, the petitioner, or as the case may require, the company, and every officer of the company who is in default, shall be punishable under the Act.

(ii) Such order shall be deemed to be notice of discharge to the officers and employees of

the company, except when the business of the company is continued.

(iii) An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if it had been made out on the joint petition of a creditor and of a contributory.

148. Suits stayed on winding up order.

(1) When a winding up order has been made or the Official Liquidator or Company Liquidator as the case may be has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Tribunal and subject to such terms as the Tribunal may impose.

(2) The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of

(a) any suit or proceeding by or against the company ;

(b) any claim made by or against the company (including claims by or against any of its branches in India) ;

(c) any application made under section 94 by or in respect of the company ;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company ;

whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960).

(3) Nothing in sub-section (1) or sub-section (2) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court and also to any proceeding initiated against the directors of the company which has been ordered to be wound up or where the Official Liquidator or Company Liquidator as the case may be has been appointed as the Provisional Liquidator of the company.

149. Appointment of Official Liquidator or Company Liquidator

(1) For the purposes of this Act, so far as it relates to the winding up of a company by the Tribunal, there shall be an Official Liquidator who

(a) may be a whole-time or a part-time officer appointed by the Central Government ;

or Company Liquidator who

(b) may be appointed from a panel of professional firms of chartered accountants, advocates, company secretaries, costs and works accountants or firms having a combination of these professions, with exposure and experience in insolvency laws as may be prescribed, which the Tribunal may constitute;

(c) may be a body corporate consisting of such professionals as may be approved by the Tribunal from time to time; or

(2) The terms and conditions for the appointment of the Official Liquidator or Company Liquidator as the case may be including Provisional Liquidator of a company shall be subject to such conditions as may be prescribed.

(3) Where the Official Liquidator is an officer appointed by the Central Government under clause (a) of sub-section (1), the Central Government may also appoint, if considered necessary, one or more Deputy Official Liquidator or Assistant Official Liquidator to assist the Official Liquidator in the discharge of his functions, and the terms and conditions for the appointment of such Official Liquidator and the remuneration payable to them shall also be in accordance with the rules made by the Central Government.

(4) All references to the "Official Liquidator or Company Liquidator" in this Act shall be construed as reference to the Official Liquidator or Company Liquidator as the case may be specified in sub-section (1), or to the Joint or Additional or Deputy Official Liquidator or Assistant Official Liquidator referred to in sub-section (3), as the case may be.

(5) On a winding up order being made in respect of a company, the Official Liquidator or Company Liquidator as the case may be shall, by virtue of his office, become the liquidator of the company.

(6) A liquidator shall be described by the style of "The Official Liquidator or Company Liquidator as the case may be" of the particular company in respect of which he acts, and not by his individual name.

(7) A receiver shall not be appointed of assets in the hands of a liquidator except by, or with the leave of the Tribunal.

150. Appointment and powers of provisional liquidator.

(1) At any time after the presentation of a winding up petition and before the making of a winding up order, the Tribunal may appoint the Official Liquidator or Company Liquidator as the case may be to be liquidator provisionally subject to the condition that provisional liquidator shall continue for twelve months or till winding up of order whichever is earlier, subject to further extension as may be granted by the Tribunal on such terms and conditions.

Provided however the provisional liquidator shall move the Tribunal for an order for winding up thereafter.

(2) Before appointing a provisional liquidator, the Tribunal shall give notice to the company and give a reasonable opportunity to it to make its representations, if any, unless, for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such

notice.

(3) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or by a subsequent order ; but otherwise he shall have the same powers as a liquidator.

(4) The Official Liquidator or Company Liquidator as the case may be shall cease to hold office as provisional liquidator, and shall become the liquidator, of the company, on a winding up order being made.

151. General provisions as to liquidators.

(1) The liquidator shall conduct the proceedings in winding up the company and perform such duties in reference thereto as the Tribunal may impose.

(2) Where the Official Liquidator or Company Liquidator as the case may be becomes or acts as liquidator, there shall be paid to the Central Government out of the assets of the company such fees as may be prescribed.

(3) The acts of a liquidator shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification:

Provided that nothing in this sub-section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

152. Books of Accounts

The directors and other officers of every company shall ensure that books of account of the company are completed and audited up to date of winding up order made by the Tribunal and submitted to it at the cost of the company, failing which such directors and officers shall be liable for punishment under the Act.

153. Statement of affairs to be made to Official Liquidator or Company Liquidator as the case may be .

(1) Where the Court has made a winding up order or appointed the Official Liquidator or Company Liquidator as the case may be as provisional liquidator, unless the Court in its discretion otherwise orders, there shall be made out and submitted to the Official Liquidator or Company Liquidator as the case may be a statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely :-

(a) the assets of the company, stating separately the cash balance in hand and at the bank, if any, and the negotiable securities, if any, held by the company ;

(b) its debts and liabilities ;

(c) the names, residences and occupations of its creditors, stating separately the amount of secured and unsecured debts ; and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which

they were given ;

(d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof ;

(e) such further or other information as may be prescribed, or as the Official Liquidator or Company Liquidator as the case may be may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the manager, secretary or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned, as the Official Liquidator or Company Liquidator as the case may be , subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons--

(a) who are or have been officers of the company ;

(b) who have taken part in the formation of the company at any time within one year before the relevant date ;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are, in the opinion of the Official Liquidator or Company Liquidator as the case may be , capable of giving the information required ;

(d) who are or have been within the said year officers of, or in the employment of, a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within twenty-one days from the relevant date, or within such extended time not exceeding three months from that date as the Official Liquidator or Company Liquidator as the case may be 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 Company Liquidator as the case may be 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 or Company Liquidator as the case may be may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable under the Act.

(5A) Upon receiving a complaint made by the Official Liquidator or Company Liquidator as the case may be or the Provisional Liquidator as the case may be, the Court can take cognizance of an offence under sub-section (5) upon receiving a complaint of facts constituting such an offence and trying the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure 1898 (5 of 1898), for the trial of summons cases by magistrates.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code, 1860 (45 of 1860) ; and shall, on the application of the Official Liquidator or Company Liquidator as the case may be , be punishable accordingly.

(8) In this section, the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding up order.

154. Report by Official Liquidator or Company Liquidator as the case may be .

(1) In a case where a winding up order is made, the Official Liquidator or Company Liquidator as the case may be shall, as soon as practicable after receipt of the statement to be submitted under section 153 and not later than six months from the date of the order or such extended period as may be allowed by the Court, or in a case where the Court orders that no statement need be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court--

(a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, giving separately, under the heading of assets, particulars of (i) cash and negotiable securities ; (ii) debts due from contributories ; (iii) debts due to the company and securities, if any available in respect thereof ; (iv) movable and immovable properties belonging to the company ; and (v) unpaid calls ;

(b) if the company has failed, as to the causes of the failure ; and

(c) whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The Official Liquidator or Company Liquidator as the case may be may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any officer of the company in relation to the company since the formation thereof, and any other matters which, in his opinion, it is desirable to bring to the notice of the Court.

(3) If the Official Liquidator or Company Liquidator as the case may be states in any such further report that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in section 167.

155. Custody of company's property.

(1) Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control, all the property, effects and actionable claims to which the

company is or appears to be entitled.

(1A) For the purpose of enabling the liquidator or the provisional liquidator, as the case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator or the provisional liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may thereupon, after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the liquidator or the provisional liquidator.

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

(2) All the property and effects of the company shall be deemed to be in the custody of the Tribunal as from the date of the order for the winding up of the company.

156. Powers of liquidator.

(1) The liquidator in a winding up by the Court shall have power, with the sanction of the Court,-

(a) to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company ;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company ;

(c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels ;

(d) to raise on the security of the assets of the company any money requisite ;

(e) Appoint one or more Chartered Accountants or Company Secretaries or Cost Accountant or legal practitioner entitled to appear before the Tribunal under section 120 to assist him in the performance of his duties.

(f) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(2) The liquidator in a winding up by the Court shall have power -

(i)(a) 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 ;

(b) to inspect the records and returns of the company on the files of the

Registrar without payment of any fee ;

(ii) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors ;

(iii) to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi or note had been drawn, accepted, made or endorsed by, or on behalf of the company in the course of its business ;

(iv) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself :

Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator-General.

(v) to appoint an agent to do any business which the liquidator is unable to do himself.

(3) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court; and any creditor or contributory may apply to the Court with respect to the exercise or proposed exercise of any of the powers conferred by this section.

(4) The Tribunal may, however, by order, provide that the liquidator may exercise any of the powers referred to in sub-sec.(1) of this Section without the sanction or intervention from the Tribunal.

Provided that all the exercise by the liquidator of such powers shall be subject to the control of the Tribunal.

(5) Further to the above, the Liquidator may:-

(a) with the sanction of the Tribunal when the company is being wound up by the Tribunal; and

(b) with the sanction of special resolution of the company, in the case of a voluntary winding up,-

(i) pay any classes of creditors in full;

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future,

certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable; or

(iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertain or sounding only in damages, subsisting or alleged to subsist between the company and contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such calls, debt, liability or claims, and give a complete discharge in respect thereof.

(6) Notwithstanding any thing contained in sub-section (1), in the case of a winding up by the Tribunal the Supreme Court may make rules under section 281 providing that the liquidator may, under such circumstances, if any, and subject to such conditions, restrictions and limitations, if any, as may be specified in the rules, exercise any of the powers referred to in sub clause(ii) or sub-clause (iii) of sub section (1) without the sanction of the Tribunal.

(7) In the case of a voluntary winding up, the exercise by the liquidator of the powers conferred by sub-section (1) shall be subject to the control of the Tribunal.

(8) Any creditor or contributory may apply to the Tribunal with respect to any exercise or proposed exercise of any such power.

157. Exclusion of certain time in computing periods of limitation.

Notwithstanding anything in the Indian Limitation Act, 1908 (9 of 1908) or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on behalf of a company which is being wound up by the Tribunal, the period from the date of commencement of the winding up of the company to the date on which the winding up order is made (both inclusive) and a period of one year immediately following the date of the winding up order shall be excluded.

158. Exercise and control of liquidators' powers.

Subject to such provisions of this Act, the liquidator shall in the administration of the winding up of the company exercise such powers as prescribed and the Official Liquidator or Company Liquidator as the case may be may apply to the Tribunal for any such directions or order, as may be deemed necessary for the winding up of the company.

159. Books to be kept by the liquidator and audit of liquidator's accounts.

The liquidator shall keep and maintain such books prescribed and get them duly audited not less than twice in each year in such manner and file a copy of the account with the Tribunal and the other shall be delivered to the Registrar for filing which shall be available for inspection by any creditors, contributories or persons interested.

160. Control of Central Government over liquidators.

(1) The Central Government shall take cognizance of the conduct of liquidators of companies which are being wound up by the Court/Tribunal, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by this Act, or by the Indian Companies Act, 1913 (7 of 1913), the rules there under, or otherwise, with respect to the performance of his duties, or if any complaint is made to the Central Government by any creditor or contributory in regard thereto, the Central Government shall inquire into the matter, and take such action thereon as it may think expedient :

Provided that where the winding up of a company has commenced before the commencement of this Act, the Court/Tribunal may, on the application of the Central Government, appoint in place of such liquidator the Official Liquidator or Company Liquidator as the case may be as the liquidator in such winding up.

(2) The Central Government may at any time require any liquidator of a company which is being wound up by the Court/Tribunal to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Central Government thinks fit, apply to the Court/Tribunal to examine him or any other person on oath concerning the winding up.

(3) The Central Government may also direct a local investigation to be made of the books and vouchers of the liquidators.

161. Settlement of list of contributories and application of assets.

(1) As soon as may be after making a winding up order, the Tribunal shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities :

Provided that, where it appears to the Tribunal that it will not be necessary to make calls on, or adjust the rights of, contributories, the Tribunal may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the Tribunal shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.

(3) The Tribunal may, at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(4) The Tribunal, in making such an order, may :-

(a) in the case of an unlimited company, allow to the contributory, by way of set-off, any money due to him or to the estate which he represents, from the company, on any independent dealing or contract with the company, but not any money due to him as a

member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited, or to his estate, the like allowance.

(5) In the case of any company, whether limited or unlimited, when all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

(6) The Tribunal may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company,

(a) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Tribunal considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves ; and

(b) make an order for payment of any calls so made.

(7) In making a call, the Tribunal may take into consideration the probability that some of the contributories may, partly or wholly, fail to pay the call.

(8) An order made by the Tribunal on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(9) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

(10) The Tribunal shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

162. Payment into bank of moneys due to company.

(1) The Tribunal may order any contributory, purchaser or other persons from whom any money is due to the company to pay the money into the public account of India in the Reserve Bank of India instead of to the liquidator.

(2) Any such order may be enforced in the same manner as if the Court had directed payment to the liquidator

(3) All moneys, bills, hundis, notes and other securities paid or delivered into the Reserve Bank of India in the course of the winding up of a company by the Court, shall be subject in all respects to the orders of the Court.

163. Delivery of property to liquidator.

The Tribunal may, at any time after making a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Tribunal directs, to the liquidator, any money, property or books and papers in his custody or under his control to which the company is prima facie entitled.

164. Power to order costs.

The Tribunal may, in the event of the assets being insufficient to satisfy the liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority inter se as the Tribunal thinks just.

165. Power to exclude creditors not proving in time.

The Tribunal may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts or claims are proved.

166. Power to summon persons suspected of having property of company, etc.

(1) The Court/Tribunal may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any officer of the company and any contributory, trustee, receiver, banker, agent or any person known or suspected to have in his possession any property or books or papers, of the company, or known or suspected to be indebted to the company, or any person whom the Court/Tribunal deems capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.

(2) The Court/Tribunal may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories ; and may, in the former case, reduce his answers to writing and require him to sign them.

(3) The Court/Tribunal may require any officer or person so summoned to produce any books and papers in his custody or power relating to the company ; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court/Tribunal shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any officer or person so summoned, after being paid or tendered a reasonable sum

for his expenses, fails to appear before the Tribunal at the time appointed, not having a lawful impediment (made known to the Court/Tribunal at the time of its sitting and allowed by it), the Tribunal may cause him to be apprehended and brought before the Court/Tribunal for examination.

(5) If, on his examination, any officer or person so summoned admits that he is indebted to the company, the Court/Tribunal may order him to pay to the provisional liquidator or, as the case may be, the liquidator at such time and in such manner as to the Court/Tribunal may seem just, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court/Tribunal thinks fit, with or without costs of the examination.

(6) If, on his examination, any such officer or person admits that he has in his possession any property belonging to the company, the Court/Tribunal may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as to the Court/Tribunal may seem just.

(7) Orders made under sub-sections (5) and (6) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908 (5 of 1908), respectively.

(8) Any person making any payment or delivery, in pursuance of an order made under sub - section (5) or sub-section (6) shall by such payment or delivery be, unless otherwise directed by such order, discharged from all liability whatsoever in respect of such debt or property.

167. Power to order public examination of promoters, directors, etc.

(1) When an order has been made for winding up a company by the Court/Tribunal, and the Official Liquidator or Company Liquidator as the case may be has made a report to the Court/Tribunal under this Act, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any officer of the company in relation to the company since its formation, the Court/Tribunal may, after considering the report, direct that that person or officer shall attend before the Court/Tribunal on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as an officer thereof.

(2) The Official Liquidator or Company Liquidator as the case may be shall take part in the examination, and for that purpose may, if specially authorized by the Court/Tribunal in that behalf, employ such legal assistance as may be sanctioned by the Court/Tribunal.

(3) Any creditor or contributory may also take part in the examination either personally or by chartered accountants or company secretaries or legal practitioners entitled to appear before the Court and Tribunal under section 120.

(4) The Court/Tribunal may put such questions to the person examined as it thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court/Tribunal may put, or allow to be put, to him.

(6) A person ordered to be examined under this section--

(a) shall, before his examination, be furnished at his own cost with a copy of the Official Liquidator or Company Liquidator as the case may be 's report ; and

(b) may at his own cost employ, an advocate, attorney or pleader entitled to appear before the Court/Tribunal, who shall be at liberty to put to him such questions as the Court/Tribunal may deem just for the purpose of enabling him to explain or qualify any answers given by him.

(7) (a) If any such person applies to the Court/Tribunal to be exculpated from any charges made or suggested against him, it shall be the duty of the Official Liquidator or Company Liquidator as the case may be to appear on the hearing of the application and call the attention of the Court/Tribunal to any matters which appear to the Official Liquidator or Company Liquidator as the case may be to be relevant.

(b) If the Court/Tribunal, after hearing any evidence given or witnesses called by the Official Liquidator or Company Liquidator as the case may be , grants the application, the Court/Tribunal may allow the applicant such costs as it may think fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined ; and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) The Court/Tribunal may, if it thinks fit, adjourn the examination from time to time.

(10) An examination under this section may, if the Court/Tribunal so directs and subject to any rules made in this behalf, be held before any District Judge, or before any officer of the High Court/Tribunal, being an Official Referee, Master, Registrar or Deputy Registrar.

(11) The powers of the a Court/Tribunal under this section as to the conduct of the examination, but not as to costs, may be exercised by the Judge or officer before whom the examination is held in pursuance of sub-section (10).

168. Power to arrest absconding contributory.

At any time either before or after making a winding up order on a complaint filed by the Official Liquidator or Company Liquidator as the case may be or such officer authorized by the Tribunal may, on proof of probable cause for believing that a contributory is about to quit India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, cause-

(a) the contributory to be arrested and safely kept until such time as the Tribunal may order ; and

(b) his books and papers and movable property to be seized and safely kept until such time as the Court may order.

169. Saving of existing powers of Tribunal.

Any powers conferred on the Court/Tribunal by this Act shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

170. Dissolution of company.

(1) When the affairs of a company have been completely wound up or when the Court/Tribunal is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made, the Court/Tribunal shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall within thirty days from the date thereof, be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in forwarding a copy as aforesaid, he shall be punishable under the Act.

171. Order made in any Court to be enforced by other Courts and Appeals from orders..

(1) Any order made by a Court/Tribunal for, or in the course of, winding up a company shall be enforceable at any place in India, other than that over which such Court has jurisdiction, by the Court/Tribunal which would have had jurisdiction in respect of the company if its registered office had been situated at such other place, and in the same manner in all respects as if the order had been made by that Court.

(2) Appeals from any order made, or decision given in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction.

172. Circumstances in which company may be wound up voluntarily.

A company may be wound up voluntarily:

(a) When the period, if any, fixed for the duration of the company by the articles has expired, or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved, and

(b) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily;

The matters relating to voluntary winding up whether by members or creditors shall be proceeded with as per the rules framed by the Central Government subject to control of Tribunal and dissolution of such companies shall require approval of Tribunal.

173. Application of section 153 to voluntary winding up-

The provisions of section 153 shall, so far as may be, apply to every voluntary winding up as they apply to the winding up by the Tribunal except that references to _

- (a) the Tribunal shall be omitted
- (b) the Official Liquidator or Company Liquidator as the case may be or the provisional liquidator shall be construed as references to the liquidator; and
- (c) the “relevant date” shall be construed as references to the date of commencement of the winding up.

174. Power of Tribunal to appoint and remove liquidator in voluntary winding up and notice by liquidator of his appointment.

- (1) If from any cause whatever, there is no liquidator acting, the Tribunal may appoint the Official Liquidator or Company Liquidator as the case may be or any other person as a liquidator.
- (2) The Tribunal may, on cause shown, remove a liquidator and appoint the Official Liquidator or Company Liquidator as the case may be or any other person as a liquidator in place of the removed liquidator.
- (3) The Tribunal may also appoint or remove a liquidator on the application made by the Registrar in this behalf.
- (4) If the Official Liquidator or Company Liquidator as the case may be is appointed as liquidator under section 149 or under this section, the remuneration to be paid to him shall be fixed by the Tribunal and shall be credited to the Central Government.
- (5) The liquidator shall, within thirty days after his appointment publish in the Official Gazette, and deliver to the Registrar for registration, a notice of his appointment in the form prescribed.
- (6) If the Liquidator fails to comply with sub-section 5, he shall be punishable, as may be prescribed.

175. Arrangement when binding on company and creditors.

- (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company and on the creditors if it is sanctioned by a special resolution of the company and acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Tribunal against it and the Tribunal may thereupon, as it thinks just, amend, vary, confirm or set aside the arrangement

176. Power to apply to Tribunal to have questions determined or powers exercised.

(1) The liquidator or any contributory or creditor may apply to the Tribunal

(a) to determine any question arising in the winding up of a company ; or

(b) to exercise, as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Tribunal might exercise if the company were being wound up by the Tribunal.

(2) The liquidator or any creditor or contributory may apply to the Tribunal specified in sub-section (3) for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

(3) The Tribunal, if satisfied on an application under sub-section (1) or (2) that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(4) A copy of an order staying the proceedings in the winding up, made by virtue of this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

177. Application of liquidator to Tribunal for public examination of promoters, directors, etc.

(1) The liquidator may make a report to the Tribunal stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation; and the Tribunal may, after considering the report, direct that person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.

(2) The provisions of sub-sections (2) to (11) of section 167 shall apply in relation to any examination directed under sub-section (1) as they apply in relation to an examination directed under sub-section (1) of section 167 with references to the liquidator being substituted for references to the Official Liquidator or Company Liquidator as the case may be in those provisions.

178. Costs of voluntary winding up.

All costs, charges and expenses properly incurred in the winding up, secured creditors, if

any, be payable out of the assets of the company in priority to all other claims.

179. Debts of all descriptions to be admitted to proof.

In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

180. Application of insolvency rules in winding up of insolvent companies.

(1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to

(a) debts provable ;

(b) the valuation of annuities and future and contingent liabilities ; and

(c) the respective rights of secured and unsecured creditors ; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent :

Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debts opts to realise his security,

(a) the liquidator shall be entitled to represent the workmen and enforce such charge ;

(b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues ; and

(c) so much of the debts due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank pari passu with the workmen's dues for the purposes of section 181.

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section :

Provided that if a secured creditor instead of relinquishing his security and proving for his debts proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realization by the secured creditor.

Explanation.- For the purposes of this proviso, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay

shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security ;

(3) For the purposes of this section, sections 181 and section 182,

(a) " workmen ", in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947) ;

(b) " workmen's dues ", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely :-

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947) ;

(ii) all accrued holiday remuneration becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution ;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company ;

(iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company ;

(c) " workmen's portion ", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of

(i) the amount of workmen's dues ; and

(ii) the amounts of the debts due to the secured creditors.

181. Overriding preferential payments.

(1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company,

(a) workmen's dues ; and

(b) debts due to secured creditors to the extent such debts rank under clause

(c) of the proviso to sub-section (1) of section 180 pari passu with such dues, shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

182. Preferential payments.

(1) In a winding up, subject to the provisions of section 181 there shall be paid such amount as may be prescribed in priority to all other debts

(a) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months next before that date ;

(b) all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date subject to the limit specified in sub-section (2)

(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution ;

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act, 1948 (34 of 1948), or any other law for the time being in force ;

(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company ;

(f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by the company ; and

(g) the expenses of any investigation held in pursuance of section 91, in so far as they are payable by the company.

(2) The sum to which priority is to be given under clause (b) of sub-section (1), shall not, in the case of any one claimant, exceed such sum * as may be notified by the Central

Government in the Official Gazette

(3) Where any compensation under the Workmen's Compensation Act, 1923 (8 of 1923) is a weekly payment, the amount due in respect thereof shall, for the purposes of clause (e) of sub-section (1), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) Where any payment has been made to any employee of a company,

(i) on account of wages or salary ; or

(ii) to him, or in the case of his death, to any other person in his right, on account of accrued holiday remuneration,

out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) The foregoing debts shall

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions ; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by clause (d) of sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof.

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(8) For the purposes of this section

(a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to

the company during that period ;

(b) the expression " accrued holiday remuneration " includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any enactment), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday ;

(bb) the expression " employee " does not include a workman ; and

(c) the expression " the relevant date " means

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date ; and

(ii) in any case where sub-clause (i) does not apply, the date of the passing of the resolution for the voluntary winding up of the company.

(9) This section shall not apply in the case of a winding up where the date referred to in sub-section (5) of section 230 of the Indian Companies Act, 1913 (7 of 1913), occurred before the commencement of this Act, and in such a case, the provisions relating to preferential payments which would have applied if this Act had not been passed, shall be deemed to remain in full force.

183. Fraudulent preference liabilities and rights of fraudulently preferred persons.

(1) Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or against a company within six months before the commencement of its winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly :

Provided that, in relation to things made, taken or done before the commencement of this Act, this sub-section shall have effect with the substitution, for the reference to six months, of a reference to three months.

(2) For the purposes of sub-section (1), the presentation of a petition for winding up in the case of a winding up by the Tribunal or the passing of a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond to the act of insolvency in the case of an individual

(3) Where, in the case of a company which is being wound up, any thing made, taken or done after the commencement of this Act is invalid as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision), the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had

undertaken to be personally liable as surety for the debt, to the extent of the mortgage or charge on the property or the value of his interest, whichever is less.

(4) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the mortgage or charge for the company's debt was then subject.

(5) On any application made to the Tribunal with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Tribunal shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

This sub-section shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments of money.

184. Avoidance of voluntary transfer.

Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrance in good faith and for valuable consideration, if made within a period of one year before the presentation of petition for winding up by the Tribunal or passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.

185. Transfers for benefit of all creditors to be void.

Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void

186. Effect of floating charge.

Where a company is being wound-up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate as may be prescribed and notified from time to time by the Central Government in this behalf .

Provided that in relation to a charge created more than three months before the commencement of this Act, this section shall have effect with the substitution, for references to twelve months of references to three months

187. Disclaimer of onerous property in case of a company which is being wound up.

(1) Where any part of the property of a company which is being wound up consists of

- (a) land of any tenure, burdened with onerous covenants ;
- (b) shares or stock in companies ;
- (c) any other property which is unsaleable or is not readily saleable, by reason of its binding the possessor thereof either to the performance of any onerous act or to the payment of any sum of money ; or
- (d) unprofitable contracts ;

the liquidator of the company, notwithstanding that he has endeavored to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, or done anything in pursuance of the contract, may, with the leave of the Tribunal and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Tribunal, disclaim the property :

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Tribunal.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court/Tribunal, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Tribunal thinks just.

(4) The liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the Court/Tribunal, given notice to the applicant that he intends to apply to the Tribunal for leave to disclaim ; and in case the property is a contract, if the liquidator, after such an application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The Court/Tribunal may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the

Tribunal thinks just ; and any damages payable under the order of any such person may be proved by him as a debt in the winding up.

(6) The Court/Tribunal may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property, and after hearing any such persons as it thinks fit, make an order for the vesting of the property in, or the delivery of the property to, any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court/Tribunal thinks just ; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose :

Provided that, where the property disclaimed is of a leasehold nature, the Court/Tribunal shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee or holder of a charge by way of demise, except upon the terms of making that person

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up ;
or

(b) if the Court/Tribunal thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date ;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order ; and any mortgage or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court/Tribunal shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of the injury, and may accordingly prove the amount as a debt in the winding up

188. Avoidance of transfers, etc., after commencement of winding up.

(1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by the Court/Tribunal, any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Tribunal otherwise orders, be void

189. Avoidance of certain attachments, executions, etc., in winding up by

Court/Tribunal

(1) Where any company is being wound-up by the Court/Tribunal

(a) any attachment, distress or execution put in force, without leave of the Tribunal, against the estate or effects of the company, after the commencement of the winding up ; or

(b) any sale held, without leave of the Court/Tribunal, of any of the properties or effects of the company after such commencement ;

shall be void.

(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.

190. Offences by officers of companies in liquidation.

(1) If any person, being a past or present officer of a company which, at the time of the commission of the alleged offence, is being wound-up, whether by the Tribunal /Court or voluntarily, or which is subsequently ordered to be wound-up by the Court/Tribunal or which subsequently passes a resolution for voluntary winding up,

(a) does not, to the best of his knowledge and belief, fully and truly discover to the liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;

(b) does not deliver up to the liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control, and which he is required by law to deliver up ;

(c) does not deliver up to the liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up ;

(d) within the twelve months next before the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of one hundred rupees or upwards, or conceals any debt due to or from the company ;

(e) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards ;

(f) makes any material omission in any statement relating to the affairs of the company;

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the liquidator thereof ;

(h) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company ;

(i) within the twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company ;

(j) within the twelve months next before the commencement of the winding up or at any time thereafter makes, or is privy to the making of, any false entry in any book or paper affecting or relating to, the property or affairs of the company ;

(k) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with altering, or making of any omission in, any book or paper affecting or relating to the property or affairs of the company ;

(l) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses ;

(m) within the twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ;

(n) within the twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ;

(o) within the twelve months next before the commencement of the winding up or at any time thereafter, pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary course of the business of the company ; or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up ;

he shall be punishable under the Act.

Provided that it shall be a good defence

(i) to a charge under any of the clauses (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud ; and

(ii) to a charge under any of the clauses (a), (h), (i), and (j), if he proves that he had no intent to conceal the true state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (o) of sub-section (1), every person who takes in pawn or pledges or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable under the Act.

(3) For the purposes of this section, the expression " officer " shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

191. Penalty for falsification of books.

If with intent to defraud or deceive any person, any officer or contributory of a company which is being wound up

(a) destroys, mutilates, alters, falsifies or secrets, or is privy to the destruction, mutilation, alteration, falsification or secreting of, any books, papers or securities ; or

(b) makes, or is privy to the making of, any false or fraudulent entry in any register book of account or document belonging to the company ;

he shall be punishable under the Act.

192. Penalty for frauds by officers.

If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up,

(a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company ; or

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company ; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company, or within two months before that date ;

he shall be punishable under the Act. .

193. Liability where proper accounts not kept

(1) Where a company is being wound up, if it is shown that proper books of accounts were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable under the Act.

(2) For the purpose sub-section(1), it shall be deemed that proper books of account have not been kept in the case of any company, if there have not been kept

(a) such books or accounts as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day to day in sufficient detail of all cash received and all cash paid; and

(b) Where the business of the company has involved dealings in goods, statements of the annual stock taking and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased showing the goods and the buyers and the sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

194. Liability for fraudulent conduct of business

(1) If in the course of the winding up of a company, it appears that any business of the company has been carried on, with intent to defraud creditors of the company or any other persons, or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator or Company Liquidator as the case may be, or the liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct. On the hearing of an application under this sub-section, the Official Liquidator or Company Liquidator as the case may be or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) (a) Where the Tribunal makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

(b) In particular, the Tribunal may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or only person acting on his behalf.

(c) The Tribunal may, from time to time, make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(d) For the purpose of this sub-section, the expression " assignee " includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be punishable under the Act.

(4) This section shall apply, notwithstanding that the person concerned may be criminally

liable in respect of the matters on the ground of which the declaration is to be made.

(5) Where a declaration or order under this section is or may be made in respect of a firm or body corporate, the Tribunal shall also have power to make a declaration under this section, or pass an order under this section as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate.

195. Power of Court/Tribunal to assess damages against delinquent directors, etc.

(1) If in the course of winding up a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, liquidator or officer of the company other than the Official Liquidator or Company Liquidator as the case may be

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the company ; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company ;

the Court/Tribunal may, on the application of the Official Liquidator or Company Liquidator as the case may be , of the liquidator, or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of the person, director, manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof, respectively, with interest at such rate as the Tribunal thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Court/Tribunal thinks just.

(2) An application under sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.

Provided that in respect of companies ordered to be wound up by the Tribunal after the commencement of this Act, An application under sub-section (1) shall be made within three years from the date of the order for winding up or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.

(3) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable.

(4) Where a declaration under sec.194 or an order under this section is or may be made in respect of a firm or body corporate, the Tribunal shall also have power to make a declaration under section 194, or pass an order under this section as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate.

196. Prosecution of delinquent officers and members of the company.

(1) If it appears to the Court/Tribunal in the course of a winding up by the Court/Tribunal, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, the Court/Tribunal may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Registrar.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the liquidator and relating to the matter in question, as the Registrar may require.

(3) Where any report is made under sub-section (2) to the Registrar, he may, if he thinks fit, refer the matter to the Central Government for further inquiry. The Central Government shall thereupon investigate the matter and may, if it thinks it expedient, apply to the Court/Tribunal for an order conferring on any person designated by the Central Government for the purpose, with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court/Tribunal.

(4) If on any report to the Registrar under sub-section (2), it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the Court/Tribunal, the liquidator may himself take proceedings against the offender.

(5) If it appears to the Court/Tribunal in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Registrar under sub-section (2), the Court/Tribunal may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2).

(6) If, where any matter is reported or referred to the Registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government ; and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute proceedings :

Provided that no report shall be made by the Registrar under this sub-section without first giving the accused person an opportunity of making a statement in writing to the Registrar and of being heard thereon.

(7) When any proceedings are instituted under this section, it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably able to give. For the purposes of this sub-section, the expression "

agent ", in relation to a company, shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor.

(8) If any person fails or neglects to give assistance in the manner required by sub-section (7), the Court/Tribunal may, on the application of the Registrar, direct that person to comply with the requirements of that sub-section.

(9) Where any such application is made with respect to a liquidator, the Court/Tribunal may, unless it appears that the failure or neglect was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally

197. Notification that a company is in liquidation

(1) Where a company is being wound up, whether by the Tribunal or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company, and every one of the following persons who willfully authorizes or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be punishable under the Act.

198. Books and papers of company to be evidence.

Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

199. Inspection and disposal of books and papers of company.

(1) At any time after the making of an order for the winding up of a company by or subject to the supervision of the Court, any creditor or contributory of the company may, if the Supreme Court, by rules prescribed so permit and in accordance with and subject to such rules but not further or otherwise, inspect the books and papers of the company.

(2) Nothing in sub-section (1) shall be taken as excluding or restricting any rights conferred by any law for the time being in force

(a) on the Central or a State Government ; or

(b) on any authority or officer thereof ; or

(c) on any person acting under the authority of any such Government or of any such authority or officer.

(3) When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers and those of the liquidator may be disposed of as follows,

that is to say :

(a) in the case of a winding up by or subject to the supervision of the Court, in such manner as the Court directs ;

(b) in the case of a members' voluntary winding up, in such manner as the company by special resolution directs ; and

(c) in the case of a creditors' voluntary winding up, in such manner as the committee of inspection or, if there is no such committee, as the creditors of the company may direct.

(4) After the expiry of five years from the dissolution of the company, no responsibility shall rest on the company, the liquidator, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(5) The Central Government may, by rules,

(a) prevent for such period (not exceeding five years from the dissolution of the company) as the Central Government thinks proper, the destruction of the books and papers of a company which has been wound up and of its liquidator ; and

(b) enable any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (a) and to appeal to the Court from any direction which may be given by the Central Government in the matter.

(6) If any person acts in contravention of any such rules or of any direction of the Central Government thereunder, he shall be punishable under the Act.

200. Information as to pending liquidations.

(1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in the prescribed form and containing the prescribed particulars duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation,-

(a) in the case of a winding up by the Tribunal, in the Tribunal and

(b) in the case of a winding up by the Court, in Court

(c) and

(d) in the case of a voluntary winding up, with the Registrar :

Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 159 apply.

(2) When the statement is filed in Tribunal or Court under clause (a) of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

(2A) Where a statement referred to in sub-section (2) relates to a Government company in liquidation, the liquidator shall forward a copy thereof,-

(a) to the Central Government, if that Government is a member of the Government company ; or

(b) to any State Government, if that Government is a member of the Government company ; or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company.

(3) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or an extract therefrom.

(4) Any person untruthfully stating himself to be a creditor or contributory for the above purpose shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code (45 of 1860), and shall, on the application of the liquidator, be punishable accordingly.

(5) If a liquidator fails to comply with any of the requirements of this section, he shall be punishable under the Act.

Provided that if the liquidator makes wilful default in causing the statement referred to in sub-section (1) to be audited by a person qualified to act as auditor of the company, the liquidator shall be punishable under the Act.

201. Official Liquidator or Company Liquidator as the case may be to make payments into the public account of India.

(1) Every Official Liquidator or Company Liquidator as the case may be shall, in such manner and at such times as may be prescribed, pay the moneys received by him as liquidator of any company, into the public account of India in the Reserve Bank of India or such bank notified by Central Government.

(2) Neither the Official Liquidator nor any other Liquidator of a company shall pay any moneys received by him in his capacity as such into private banking account

202. Voluntary liquidator to make payments into Scheduled Bank.

(1) Every liquidator of a company, not being an Official Liquidator, shall, in such manner and at such times as may be prescribed, pay the moneys received by him in his capacity as such into a Scheduled Bank to the credit of a special banking account opened by him in that behalf, and called

" the Liquidation Account of Company Limited "

Company Private

Limited "

Company "

Provided that if the Court is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason, it is to the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Court may authorise the liquidator to make his payments into or out of such other bank as the Court may select ; and thereupon those payments shall be made in the prescribed manner and at the prescribed time into or out of such other bank.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the Court may, on the application of the liquidator, authorise him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall

(a) pay interest on the amount so retained in excess, at the rate of twelve per cent per annum and also pay such penalty as may be determined by the Registrar ;

(b) be liable to pay any expenses occasioned by reason of his default ; and

(c) also be liable to have all or such part of his remuneration as the Court may think just disallowed, and to be removed from his office by the Court.

203. Unpaid dividends and undistributed assets to be paid into the Companies Liquidation Account.

(1) Where any company is being wound up, if the liquidator has in his hands or under his control any money representing

(a) dividends payable to any creditor which had remained unpaid for six months after the date on which they were declared, or

(b) assets refundable to any contributory which have remained undistributed for six months after the date on which they become refundable, the liquidator shall forthwith pay the said money into the public account of India in the Reserve Bank of India or such bank notified by the Central Government in a separate account to be known as the Companies

Liquidation Account.

(2) The liquidator shall, on the dissolution of the company, similarly pay into the said account any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution.

(3) The liquidator shall, when making any payment referred to in sub-sections (1) and (2), furnish to such officer as the Central Government may appoint in this behalf, a statement in the prescribed form, setting forth, in respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(4) The liquidator shall be entitled to a receipt from the Reserve Bank of India or such bank notified by the Central Government for any money paid to it under sub-sections (1) and (2) ; and such receipt shall be an effectual discharge of the liquidator in respect thereof.

(5) Where the company is being wound up by the Tribunal, the liquidator shall make the payments referred to in sub-sections (1) and (2) by transfer from the account referred to in section 201.

(6) Where the company is being wound up voluntarily or by the Tribunal, the liquidator shall, when filing a statement in pursuance of sub-section (1) of section 200, indicate the sum of money which is payable to the Reserve Bank of India under sub-sections (1) and (2) of this section which he has had in his hands or under his control during the six months preceding the date to which the said statement is brought down, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Companies Liquidation Account.

(7) (a) Any person, claiming to be entitled to any money paid into the Companies Liquidation Account (whether paid in pursuance of this section or under the provisions of any previous companies law) may apply to the Tribunal for an order for payment thereof, and the Tribunal, if satisfied that the person claiming is entitled, may make an order for the payment to that person of the sum due :

Provided that before making such an order, the Tribunal shall cause a notice to be served on such officer as the Central Government may appoint in this behalf, calling on the officer to show cause within one month from the date of the service of the notice why the order should not be made.

(b) Any person claiming as aforesaid may, instead of applying to the Tribunal, apply to the Central Government for an order for payment of the money claimed ; and the Central Government may, if satisfied whether on a certificate by the liquidator or the Official Liquidator or Company Liquidator as the case may be or otherwise, that such person is entitled to the whole or any part of the money claimed and that no application made in pursuance of clause (a) is pending in the Tribunal, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.

(8) Any money paid into the Companies Liquidation Account in pursuance of this section,

which remains unclaimed thereafter for a period of seven years, shall be transferred to the Fund referred to in sub-section (3) of section 49 on and after the commencement of this Act.

(9) Any liquidator retaining any money which should have been paid by him into the Companies Liquidation Account under this section shall

(a) pay interest on the amount retained at the rate of twelve per cent per annum, and also pay such penalty as may be determined by the Registrar :

Provided that the Central Government may in any proper case remit either in part or in whole the amount of interest which the liquidator is required to pay under this clause ;

(b) be liable to pay any expenses occasioned by reason of his default; and

(c) where the winding up is by the Tribunal/Court, also be liable to have all or such part of his remuneration as the Tribunal/Court may think just to be disallowed, and to be removed from his office by the Tribunal/Court.

204. Supplementary powers of Tribunal

(1) In all matters relating to the winding up of a company, the Tribunal may give such directions or make an order whether on an application of a contributory or a creditor or Registrar to enforce the filing, delivery, or making of return, account or other documents as provided under law within such time and subject to such condition as may be specified in the order.

(2) The Tribunal may also direct holding meeting of creditors or contributories on an application of the Official Liquidator or Company Liquidator as the case may be to ascertain their wishes in a manner and subject to such conditions as may be prescribed on any matter relating to administration of the winding up of a company.

205. Court or person before whom affidavit may be sworn.

(1) Any affidavit required to be sworn under the provisions, or for the purposes, of this Part may be sworn

(a) in India, before any Court, Judge or person lawfully authorised to take and receive affidavits ; and

(b) in any other country, either before any Court, Judge or person lawfully authorised to take and receive affidavits in that country or before an Indian Consul or Vice-Consul.

(2) All Courts, Judges, Justices, Commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this part.

206. Power of Tribunal to declare dissolution of company void.

(1) Where a company has been dissolved, whether in pursuance of this Part or of section

93 or otherwise, the Tribunal may at any time within two years of the date of the dissolution, on application by the liquidator of the company or by any other person who appears to the Tribunal to be interested, make an order, upon such terms as the Tribunal thinks fit, declaring the dissolution to have been void ; and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within thirty days after the making of the order or such further time as the Tribunal may allow, to file a certified copy of the order with the Registrar who shall register the same; and if such person fails so to do, he shall be punishable under the Act.

207. Power of Registrar to strike defunct company off register.

Where the Registrar has reasonable cause to believe either on an application made by a company and its directors as may be prescribed or otherwise that a company is not carrying on business or in operation, in accordance with the provisions of this Act, the name of a company may be struck off the register of the companies as per such procedure as may be prescribed.

Chapter XIX

Organisations authorised to register under the Act

208. Organisation capable of being registered.

(1) With the exceptions and subject to the provisions contained in this section, any organization formed in pursuance of any Act of Parliament other than this Act or of any other Indian Law (including a law in force in a Part B State), or Letters Patent in force in India, or being otherwise duly constituted according to law, and consisting of two or more members; may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up.

Provided that-

(i) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State, shall not register as an unlimited company or as a company limited by guarantee.

(2) An organisation shall not register in pursuance of this section without the assent, in writing, of all members.

(3) Where an organization is about to register as a company limited by guarantee or an unlimited company the assent to its being so registered shall be accompanied by an undertaking of each member to contribute to the assets of the company, in the

event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount or an affidavit giving assent that the liability of the members will be unlimited, as the case may be.

209. Requirements for registration of companies under this part.

(1) The requirements for registration of companies under this part shall be as prescribed but shall include a copy of any Act of Parliament or other Indian law, Letters Patent, deed of settlement, deed of partnership or other instrument constituting or regulating the company;

(2) The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any organisation proposing to be registered is in existence or not.

(3) On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Schedule _____, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

(4) When a company registers in pursuance of this Part with limited liability, the word "Limited" or the words "Private Limited", as the case may be, shall form, and be registered as, the last word or words of its name:

Provided that this section shall not be deemed to exclude the operation of section 13.

210. Vesting of property on registration.

(1) All property, movable and immovable (including actionable claims) belonging to or vested in an organization at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

(2) The registration of a company in pursuance of this Part shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the organization before registration.

(3) All suits and other legal proceedings taken by or against the organization, or any public officer or member thereof, which are pending at the time of the registration of an organization in pursuance of this Part, may be continued in the same manner as if the registration had not taken place.

Provided that execution shall not issue against the property or persons of any individual member of the company on any decree or order obtained in any such suit

or proceeding; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

211. Effect of registration under Part.

(1) When a company is registered in pursuance of this Part, sub-sections (2) to (7) shall apply.

(2) All provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the undertaking declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows:---

(a) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

(b) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

(4) The provisions of this Act with respect to----

(a) the registration of an unlimited as a limited company;

(b) the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the

event of winding up;

shall apply, notwithstanding any provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorize the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorized to be altered by this Act.

(6) None of the provisions of this Act [apart from those of sub-section(8) of section 97] shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.

(7) In this section, the expression “instrument” includes deed of settlement, deed of partnership, and Letters Patent.

212. Power of Court to stay or restrain proceedings and suits stayed on winding up order.

(1) The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

(2) Where an order has been made for winding up, or a provisional liquidator has been appointed for, a company registered in pursuance of this Part, no suit or other legal proceeding shall be proceeded with or commenced against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court and except on such terms as the Court may impose.

Chapter XX

PRODUCER COMPANIES.

213. Exclusions and definitions

(1) The provisions of this Part shall have effect notwithstanding anything inconsistent therewith contained in this Act or any other law for the time being in force or any instrument having effect by virtue of any such law; but the provisions of any such Act or law or instrument insofar as the same are not varied by, or are inconsistent with, the provisions of this Part shall apply to the Producer Company.

(2) All the limitations, restrictions and provisions of this Act other than those specified in this part, applicable to a private company, shall, as far as may be, apply to producer company, as if it is a private limited company, under this Act, in so far as they are not in conflict with the provisions of this part.

(3) Definitions

In this part, unless the context otherwise requires,-

(a) “Active Member” means a member who fulfils the quantum and period of patronage of the Producer Company as may be required by the articles;

(b) “Chief Executive” means an individual appointed as such under this part;

(c) “Limited Return” means the maximum dividend as may be specified by the articles;

(d) “Member” means a person or Producer institution (whether incorporated or not) admitted as a Member of a Producer Company and who retains the qualifications necessary for continuance as such;

(e) “Inter-State co-operative society” means a multi-State co-operative society as defined in clause (p) of section 3 of the Multi-State Co-operative Societies Act, 2002 (39 of 2002) and includes any co-operative society registered under any other law for the time being in force, which has, subsequent to its formation, extended any of its objects to more than one State-by enlisting the participation of persons or by extending any of its activities outside the State, whether directly or indirectly or through an institution of which it is a constituent;

(f) “Officer” includes any director or Chief Executive or Secretary or any person in accordance with whose directions or instructions part or whole of the business of the Producer Company is carried on;

(g) “Patronage” means the use of services offered by the Producer Company to its Members by participation in its business activities;

(h) “Patronage bonus” means payments made by a Producer Company out of its surplus income to the Members in proportion to their respective patronage;

(i) “Primary produce” means—

(i) produce of farmers, arising from agriculture (including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products), or from any other primary activity or service which promotes the interest of the farmers or consumers; or

(ii) produce of persons engaged in handloom, handicraft and other cottage industries;

(iii) any product resulting from any of the above activities, including by-products of such products;

(iv) any product resulting from an ancillary activity that would assist or promote any of the aforesaid activities or ‘anything ancillary thereto’;

(v) any activity which is intended to increase the production of anything referred to in sub-clauses (i) to (iv) or improve the quality thereof;

(j) “Producer” means any person engaged in any activity connected with or relatable to any primary produce;

(k) “Producer Company” means a body corporate having objects or activities specified in Rules under section 214 and registered as Producer Company under this Act;

(l) “Producer institution” means a Producer Company or any other institution having

only producer or producers or Producer Company or Producer Companies as its member whether incorporated or not having any of the objects referred to in Rules under section 214 and which agrees to make use of the services of the Producer Company or Producer Companies as provided in its articles.

- (m) 'Special right' means any right relating to supply of additional produce by the active member or any other right relating to his produce which may be conferred upon him by the Board.
- (n) "Withheld price" means part of the price due and payable for goods supplied by any Member to the producer Company; and as withheld by the Producer Company for payment on a subsequent date.

214. Objects of Producer Company

- (1) The objects of the Producer Company shall relate to all or any of the matters as may be prescribed.
- (2) Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in the Rules prescribed under sub-section (1) of this Section.

215. Formation of Producer Company and its registration

(1) Any ten or more individuals, each of them being a producer or any two or more Producer institutions, or a combination of ten or more individuals and Producer institutions, desirous of forming a Producer Company having its objects specified in the Rules prescribed under Section 209 and otherwise complying with the requirements of this Part and the provisions of this Act in respect of registration, may form a Company as a Producer Company under this Act.

(2) There shall be presented, for registration to the Registrar of the State in which the Registered Office of the Producer Company is, stated by the Memorandum of Association, to be situate –

- (a) The Memorandum of the Producer Company
- (b) Its Articles,
duly signed by the subscribers of the Memorandum.

(3) The contents of the Memorandum and Articles of the Producer Company shall be as prescribed.

(4) If the Registrar is satisfied that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, he shall, within thirty days of the receipt of the documents requires for registration, register the memorandum, the articles and other documents, if any, and issue certificate of incorporation under this Act.

(5) When an inter-State co-operative society is registered as a Producer Company, the words "Producer Company Limited" shall form part of its name with any word or expression to show its identity preceding it.

(6) A Producer Company so formed shall have the liability of its Members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them and be termed a company limited by shares.

(7) On registration under sub-section (4), the Producer Company shall be incorporated as a Private Limited Company

Provided the provisions of Private Limited Companies with reference to the limit to the number of members shall not apply to a company registered under this part.

Provided further that a Producer Company shall not, under any circumstance whatsoever, become a Public Limited Company under this Act.

216. Option to inter-State co-operative societies to become Producer Companies

(1) Notwithstanding anything contained in sub-section (1) of section 215, any inter-State co-operative society with objects not confined to one State may make an application to the Registrar for registration as Producer Company under this Part.

(2) Every application under sub-section (1) shall be accompanied by such documents as may be prescribed.

(3) On compliance with the requirements of sub-sections (1) & (2), the Registrar shall, within a period of thirty days of the receipt of application, certify under his hand that the inter-State co-operative society applying for registration is registered and thereby incorporated as a Producer Company under this Part.

(4) A co-operative society formed by producers, by federation or union of co-operative societies of producers or co-operatives of producers, registered under any law for the time being in force which has extended its objects outside the State, either directly or through a union or federation of co-operatives of which it is a constituent, as the case may be, and any federation or union of such co-operatives, which has so extended any of its objects or activities outside the State, shall be eligible to make an application under sub-section (1) and to obtain registration as a Producer Company under this Part.

(5) The inter-State co-operative society shall, upon registration under sub-section (1), stand transformed into a Producer Company, and thereafter shall be governed by the provisions of this Part to the exclusion of the law by which it was earlier governed, save in so far as anything done or omitted to be done before its registration as a Producer Company, and notwithstanding anything contained in any other law for the time being in force, no person shall have any claim against the co-operative institution or the company by reason of such conversion or transformation.

(6) Every shareholder of the inter-State co-operative society immediately before the date of registration of Producer Company (hereafter referred to as the transformation date)

shall be deemed to be registered on and from that date as a shareholder of the Producer Company to the extent of the face value of the shares held by such shareholder.

(7) Upon registration as a Producer Company, the Registrar of Companies who registers the company shall forthwith intimate the Registrar with whom the erstwhile inter-State co-operative society was earlier registered for appropriate deletion of the society from its register.

217. Vesting of undertaking in Producer Company

(1) All properties and assets, movable and immovable, of, or belonging to, the inter-State co-operative society as on the transformation date, shall vest in the Producer Company.

(2) All the rights, debts, liabilities, interests, privileges and obligations of the inter-State co-operative society as on the transformation date shall stand transferred to, and be the rights, debts, liabilities, interests, privileges and obligations of, the Producer Company.

(3) Without prejudice to the provisions contained in sub-section (2), all debts, liabilities and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for, the society as on the transformation date for or in connection with their purposes, shall be deemed to have been incurred, entered into, or engaged to be done by, with or for, the Producer Company.

(4) The amount representing the capital of the erstwhile inter-State co-operative society shall form part of the capital of the Producer Company.

(5) Any reference to the inter-State co-operative society in any law other than this Act or in any contract or other instrument, shall be deemed to be reference to the Producer Company.

(6) If, on the transformation date, there is pending any suit, arbitration, appeal or other legal proceeding of whatever nature by or against the inter-State co-operative society, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the incorporation of the Producer Company under section 215 or transformation of the inter-State co-operative society as a Producer Company under section 216, as the case may be, but the suit, arbitration, appeal or other proceeding, may be continued, prosecuted and enforced by or against the Producer Company in the same manner and to the same extent as it would have, or may have been continued, prosecuted and enforced by or against the inter-State co-operative society as if the provisions contained in this Part had not come into force.

(7) With effect from the transformation date, all fiscal and other concessions, licenses, benefits, privileges and exemptions granted to the inter-State co-operative society in connection with the affairs and business of the inter-State co-operative society under any law for the time being in force shall be deemed to have been granted to the Producer Company.

218. Amendment of Memorandum and Articles

(1) A Producer Company may, by special resolution, alter the place of its Registered Office from one state to another, objects specified in its Memorandum and its Articles.

Provided that the alteration of the objects of the Producer Company shall not be inconsistent with the objects prescribed under section 214.

Provided further that the alteration of the provisions of Memorandum relating to transfer of registered office from one state to another shall not take effect unless it is confirmed by the Central Government.

(2) A copy of the special resolution shall be filed with the Registrar along with the copy of the **amended** Memorandum or Articles of Association, as the case may be, in such manner as may be prescribed.

219. Share Capital, special user rights, transferability thereof and benefits to members

1. The share capital of producer company shall consist of equity shares and the shares held by a member, shall as far as may be, be in proportion to the patronage of that company.

2. The producers who are active members may, subject to the provision in the articles, have special rights and the producer company may issue appropriate instruments to them in respect of such special rights.

3. A member of a producer company may, after obtaining the previous approval of the board, transfer the whole or part of the shares along with any special rights to an active member at par value.

4. Subject to provisions in the articles, the surrender of shares to together with special rights to the producer company and nomination for shares shall be as prescribed.

5. Any producer company may, subject to such conditions as may be prescribed, issue bonus shares by capitalization of reserves in proportion to the shares held by the members on the date of such issue.

6. Subject to the provisions in the article, every member shall on the share capital receive a fixed return, as may be determined by the board.

7. The surplus of the withheld price over the fixed return may be disbursed as patronage bonus, in the manner determined by the general meeting, amongst the members in proportion to their participation in the business.

220. Membership, voting rights of Members of Producer Company.

(1) In a case where the membership consists solely of individual members, the voting rights shall be based on single vote for every member, irrespective of his shareholding or patronage of the Producer Company.

(2) In a case where the membership consists of producer institutions only, the voting rights of producer institutions shall be based on the basis of the shareholding by such producer institutions during the first year of registration

and on the basis of the participation in the previous year's business during the subsequent years.

- (3) In a case where the membership consists of individuals and producer institutions, the voting rights shall be computed on the basis of single vote for every member.
- (4) Save as otherwise provided in sub-sections (1) to (3), the Chairman shall have a casting vote except in the case of election of Chairman.

221. General Meeting

(1) Every Producer Company shall in each year, hold, in addition to any other meetings, a general meeting, as its Annual General Meeting and not more than fifteen months shall elapse between the date of one Annual General Meeting of a Producer Company and that of the next.

Provided that the Producer Company shall hold its first Annual General Meeting within a period of ninety days from the date of its incorporation.

Provided further that the Registrar may for any special reason permit extension of time for holding any Annual General Meeting except the first Annual General Meeting by a period not exceeding three months.

(2) The contents of the notice of the Annual General Meeting, business to be transacted at the Annual General Meeting, manner of conducting the meeting and the quorum for any general meeting shall be as prescribed.

(3) The Producer Company shall also call a general meeting on a requisition made in writing, by one third of the members entitled to vote in any general meeting in accordance with provisions contained in Section 40 of the Act.

222. Finance, Accounts and Audit

(1) The provisions of section 51, 52, 53, 54, 55, 56, 57, 58 and 59 shall apply to producer companies with such modifications as may be prescribed.

(2) Every producer company shall have internal audit of its accounts by a Chartered Accountant at such intervals and in such manner as may be prescribed.

(3) (a) Every producer company shall maintain a general reserve, in addition to any reserve maintained by it, as may be specified in the articles.

(b) In case where the producer company does not have surplus in any financial year for transfer to the reserves, the contribution to the reserve shall be shared amongst the members in proportion to their patronage in the business of that company in that year.

223. Donations, loans and investments

(1) A producer company may by special resolution make donation or subscription to any institution for the purpose of promoting social and economic welfare of producer members or producer or general public but not for any political purpose whether directly

or indirectly, subject to such conditions as may be prescribed.

(2) A producer company may provide financial assistance to the members of the producer company subject to such conditions as may be prescribed.

Provided that any loan or advance to any director or his relative shall be granted only after the approval of the members in the general meeting.

(3) A producer company shall apply its general reserves for investment in such of the approved securities, as may be prescribed, or by a special resolution or for promotion of its objectives by acquiring the shares of another producer company whether by formation of a subsidiary or by joint venture or in any other manner .

(4) Any producer company, either by itself or together with its subsidiaries may invest, by way of subscription purchase or otherwise, shares in any other company, other than a producer company, specified under sub-section (3) for an amount not exceeding such percent of the aggregate of its paid up capital and free reserves as may be prescribed.

Provided that a producer company may, by special resolution passed in its general meeting and with the prior approval of the Central Government, invest in excess of the limits prescribed.

(5) Every producer company shall maintain a register containing such particulars and kept at the registered office of the producer company for inspection as may be prescribed.

(6) The board of the producer company may, with the previous approval of the member by special resolution dispose of any of its investments referred to in sub-sections (3) & (4).

224. Directors, Other Employees, Appointment, powers and functions, vacation of office.

(1) Every Producer Company shall have at least five and not more than fifteen Directors except in the case of inter-State co-operative society, incorporated as a Producer Company, which may have more than fifteen directors for a period of one year from the date of incorporation of the Producer Company.

(2) The appointment of first and subsequent directors, election of directors, the period of their office, circumstances under which the office of the directors shall become vacant, the powers and functions of the Board shall be as prescribed.

(3) Notwithstanding anything contained in rules prescribed under sub-section(2), all the directors in the Inter-State Co-operative Society before the incorporation of the producer company shall continue in office for a period of one year from the transformation date.

(4) No director of the board , chairman, managing director or any other person entitled to manage the whole or substantial part of the business and affairs of the Inter-state Co-operative Society shall be entitled to any compensation against such society or the producer company for the loss of office or for the premature termination of any contract of management entered into by him with the co-operative society.

(5) The details regarding continuity of employment of the other offices and employees of the Inter-State Co-operative Society, payment or otherwise of loss of employment, terms and conditions of settlement of their dues shall be as prescribed.

225. Liability of Directors

- (1) When the directors vote for a resolution, or approve by any other means, anything done in contravention of the provisions of this Act or any other law for the time being in force or articles, they shall be jointly and severally liable to make good any loss or damage suffered by the Producer Company.
- (2) Without prejudice to the provisions contained in sub-section (1), the Producer Company shall have the right to recover from its director—
 - (a) where such director has made any profit as a result of the contravention specified in sub-section (1), an amount equal to the profit so made;
 - (b) where the Producer Company incurred a loss or damage as a result of the contravention specified in sub-section (1), an amount equal to that loss or damage;
- (3) The liability imposed under this section shall be in addition to and not in derogation of a liability imposed on a director under this Act or any other law for the time being in force.

226. Meetings of Board

- (1) A meeting of the board shall be held in such a manner that not more than three months shall lapse between two consecutive meetings.
- (2) The Chief Executive shall give notice of every meeting of the board, in writing, to every director for the time being in India, not less than seven days prior to the meeting of the board.
- (3) The quorum for a meeting of the board shall be one third of the total strength of the director subject to a minimum of three.
- (4) Subject to provisions in the articles the directors including co-opted directors may be paid such fees and allowances for attendance of the meetings of the board, as may be decided by the members in general meeting.
- (5) The Board may constitute such number of Committees as it may deem fit for the purposes of assisting the Board in the efficient discharge of its functions but shall not delegate any of its powers or assign the powers of the Chief Executive to any Committee. The functions of the Committee, co-option of members to the Committee, fees and allowances to be paid to the members of the Committee shall be as prescribed.

227. Chief Executive, his functions and the Company Secretary.

- (1) Every Producer Company shall have full time Chief Executive, to be appointed by the Board from amongst persons other than members who shall function under the general superintendence, direction and control of the Board
- (2) The Chief Executive shall be entrusted with substantial powers of management as the board may determine, and be accountable for the performance of the Producer Company.
- (3) The conditions of appointment and powers and functions of the Chief Executive shall be as prescribed.
- (4) Every Producer Company having an average annual turn over of such sum as may be

prescribed, shall have a whole time Secretary.

(5) For any default in complying with the sub-sections (1) & (4), the company and its officers in default are punishable under the Act.

228. Penalty for contravention

(1) If any person, other than a Producer Company registered under this Part, carries on business under any name which contains the words “Producer Company Limited”, he shall be punishable under the Act.

(2) If a director or an officer of a Producer Company, who willfully fails to furnish any information relating to the affairs of the Producer Company required by a Member or a person duly authorised in this behalf, he shall be liable to penal action under the Act.

(3) If a director or officer of a Producer Company—

(a) makes a default in handing over the custody of books of account and other documents or property in his custody to the Producer Company of which he is a director or officer; or

(b) fails to convene annual general meeting or other general meetings,
he shall be punishable under the Act.

229. Amalgamation, merger or division, etc., to form new Producer Companies

(1) A Producer Company may, by a resolution passed at its general meeting,—

(a) decide to transfer its assets and liabilities, in whole or in part, to any other Producer Company, which agrees to such transfer by a resolution passed at its general or special meeting, for any of the objects prescribed in section 214;

(b) divide itself into two or more new Producer Companies.

(2) Any two or more Producer Companies may, by a resolution passed at any general meeting of its Members, decide to—

(a) amalgamate and form a new Producer Company; or

(b) merge one Producer Company (hereafter referred to as “merging company”) with another Producer Company (hereafter referred to as “merged company”).

Every resolution of a Producer Company under this section shall be passed at its general meeting by a majority of total Members, with right of vote not less than two-thirds of its Members present and voting and such resolution shall contain all particulars of the transfer of assets and liabilities, or division, amalgamation, or merger, as the case may be.

(4) The period of notice for the meeting to creditors and members, manner of service of such notice, exercise of option of the creditors or members not consenting to the proposed merger or amalgamation to cease to be a member or creditor and satisfaction of such members and creditors shall be as prescribed.

(5) A resolution passed by a Producer Company under this section shall not take

effect until the expiry of one month or until the assent thereto of all the Members and creditors has been obtained, whichever is earlier.

(6) The resolution referred to in sub- section (2) shall provide for such matters as may be prescribed.

(7) When a resolution passed by a Producer Company under this section takes effect, the resolution shall be a sufficient conveyance to vest the assets and liabilities in the transferee.

(8) Where the whole of the assets and liabilities of a Producer Company are transferred to another Producer Company in accordance with the provisions of sub- section (7), or where there is merger under sub-section (2), the registration of the first mentioned Company or the merging company, as the case may be, shall stand cancelled and that Company shall be deemed to have been dissolved and shall cease to exist forthwith as a corporate body.

(9) Where two or more Producer Companies are amalgamated into a new Producer Company in accordance with the provisions of sub-section (2) and the Producer Company so formed is duly registered by the Registrar, the registration of each of the amalgamating companies shall stand cancelled forth with on such registration and each of the Companies shall thereupon cease to exist as a corporate body.

(10) Where a Producer Company divides itself into two or more Producer Companies in accordance with the provisions of clause (b) of sub-section (1) and the new Producer Companies are registered in accordance with the rules prescribed under this section, the registration of the erstwhile Producer Company shall stand cancelled forthwith and that Company shall be deemed to have been dissolved and cease to exist as a corporate body.

(11) The amalgamation, merger or division of companies under the foregoing sub-sections shall not in any manner whatsoever affect the pre-existing rights or obligations and any legal proceedings that might have been continued or commenced by or against any erstwhile company before the amalgamation, merger or division, may be continued or commenced by, or against, the concerned resulting company, or merged company, as the case may be.

(12) The Registrar shall strike off the names of every Producer Company deemed to have been dissolved under this section.

(13) Any member or creditor or employee aggrieved by the transfer of assets, division, amalgamation or merger may, within thirty days of the passing of the resolution, prefer an appeal to the Tribunal.

(14) The Tribunal shall, after giving a reasonable opportunity to the person concerned, pass such orders thereon as it may deem fit.

(15) Where an appeal has been filed under sub-section (14), the transfer of assets, division, amalgamation or merger of the Producer Company shall be subject to the decision of the Tribunal.

230. Disputes

(1) Where any dispute relating to the formation, management or business of a Producer Company arises—

(a) amongst Members, former Members or persons claiming to be Members or nominees of deceased Members; or

(b) between a Member, former Member or a person claiming to be a Member, or nominee of deceased Member and the Producer Company, its Board of directors, office-bearers, or liquidator, past or present; or

(c) between the Producer Company or its Board, and any director, office bearer or any former director, or the nominee, heir or legal representative of any deceased director of the Producer Company,

such dispute shall be settled by conciliation or by arbitration as provided under the Arbitration and Conciliation Act, 1996 (26 of 1996) as if the parties to the dispute have consented in writing for determination of such disputes by conciliation or by arbitration and the provisions of the said Act shall apply accordingly.

Explanation.—For the purposes of this section, a dispute shall include—

(a) a claim for any debt or other amount due;

(b) a claim by surety against the principal debtor, where the Producer Company has recovered from the surety amount in respect of any debtor or other amount due to it from the principal debtor as a result of the default of the principal debtor whether such debt or amount due be admitted or not;

(c) a claim by Producer Company against a Member for failure to supply produce as required of him;

(d) a claim by a Member against the Producer Company for not taking goods supplied by him.

(2) If any question arises whether the dispute relates to formation, management or business of the Producer Company, the question shall be referred to the arbitrator, whose decision thereon shall be final.

231. Strike off name of Producer Company

(1) Provisions of section 207 for strike off of name of companies under this Act, shall apply mutatis mutandis to a producer company.

(2) Any Member of a Producer Company, who is aggrieved by an order made under sub-section (1) may appeal to the Tribunal within sixty days of the order.

(3) Where an appeal is filed under sub-section (2), the order striking off the name shall not take effect until the appeal is disposed of .

232. Reconversion of Producer Company to inter-State co-operative society

(1) Any Producer Company, being an erstwhile inter-State co-operative society, formed and registered under this Part, may make an application—

(a) after passing a resolution in the general meeting by not less than two-third of its Members present and voting; or

(b) on request by its creditors representing three-fourth value of its total creditors, to the Tribunal for its re-conversion to the inter-State co-operative society .

(2) The Tribunal shall, on the application made under sub-section (1), direct holding meeting of its Members or such creditors, as the case may be, to be conducted in such manner as it may direct.

(3) If a majority in number representing three- fourths in value of the creditors, or Members, as the case may be, present and voting in person at the meeting conducted in pursuance of the directions of the Tribunal under sub-section (2), agree for re-conversion, if sanctioned by the Tribunal, be binding on all the Members and all the creditors, as the case may be, and also on the company which is being converted:

Provided that no order sanctioning re-conversion shall be made by the Tribunal unless the Tribunal is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 91 & 92, and the like.

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

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

(6) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable under the Act.

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

(8) Every Producer Company which has been sanctioned re-conversion by the Tribunal, shall make an application, under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) or any other law for the time being in force for its registration as multi-State co-operative society or co-operative society, as the case may be, within six months of sanction by the Tribunal and file a report thereof to the Tribunal and the registrar of companies and to the Registrar of the co-operative societies under which it has been registered as a multi-State co-operative society or co-operative society, as the case may be.

233. Power to modify Act in its application to Producer Companies

(1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act (other than those contained in this Part) specified in the said notification—

(a) shall not apply to the Producer Companies or any class or category thereof; or

(b) shall apply to the Producer Companies or any class or category thereof with such exception or adaptation as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be

laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses

Chapter XXI

COMPANIES INCORPORATED OUTSIDE INDIA

234. Interpretation of expressions under this part

- (a) The expression “certified” means certified in the prescribed manner to be a true copy or a correct translation;
- (b) the expression “director”, in relation to a company, includes any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
- (c) the expression “place of business” includes a share transfer or share registration office;
- (d) the expression “prospectus” has the same meaning as when used in relation to a company incorporated under this Act; and
- (e) the expression “secretary” includes any person occupying the position of secretary, by whatever name called.
- (f) the expression “agent” means the name of some one or more persons resident in India authorized to accept on behalf of the company service of process and any notices or other documents required to be served on the company.
- (g) The expression “principal place of business” means the place of business in India which the company notified to the Registrar at the time of registration or as altered by the company from time to time.

235. Provisions as to establishment of places of business in India

(1) Application of sections 235 to 243 to foreign companies.

The provisions contained in the Part shall apply to all foreign companies, that is to say, also to the establishment of place of business in India and companies falling under the following two classes, namely:-

- (a) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act; and
- (b) companies incorporated outside India which, after the commencement of this Act,

establish a place of business within India.

(2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business of India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India or by one or more citizens of India, and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.

236. Documents etc. to be delivered to Registrar by foreign companies carrying on business in India -

(1) Foreign companies which, after the commencement of this Act, establish a place of business within India shall, within thirty days of such establishment, deliver to the Registrar for registration such documents and such other particulars as may be prescribed and the Registrar shall register the same.

(2) Foreign companies, who had established a place of business in India before the commencement of this Act and had not delivered to the Registrar the documents and other particulars prescribed in sub-section(1) shall continue to be subject to the obligation to deliver those documents and particulars in accordance with this Act.

(3) If any alteration is made or occurs in the charter, statutes, or memorandum and articles of a foreign company or other documents or particulars filed with the Registrar for registration, the company shall within the prescribed time deliver to the Registrar for registration a return containing the prescribed particulars of alteration.

237. Obligation to state name of foreign company, whether limited, and country where incorporated

Every foreign company shall –

(a) in every prospectus inviting subscriptions in India for its shares or debentures, state the country in which the company is incorporated;

(b) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate

(c) cause the name of the and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill, heads and letter paper, and in all notices, and other official publications of the company; and

(d) if the liability of the members of the company is limited, cause notice of that fact-

- (i) to be stated in every such prospectus as aforesaid and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
- (ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the languages or one of the language in general use in the locality in which the office or place is situate.

238. Applicability of provisions of this Act to foreign companies -

The provisions of this Act relating to registration of charges, creating of debenture trust, filing of annual return, maintenance of books of account, inspection, investigation, special audit, cost audit and such other provisions as may be notified from time to time shall apply mutatis mutandis to the foreign companies as they apply to companies incorporated in India.

239. Accounts of foreign company.

- (1) Every foreign company shall, in respect of every Financial year,-
 - (a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents (including, in particular, documents relating to every subsidiary of the foreign company) as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting; and
 - (b) deliver three copies of those documents to the Registrar:

Provided that the Central Government may, by notification, direct that, in the case of any foreign companies, or class of foreign companies the requirements of clause (a) shall not apply, or shall apply, subject to such exceptions and modifications as may be specified in the notification.

- (2) If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof.

- (3) Every foreign company shall send to the Registrar with the documents required to be delivered to him under sub-section (1), three copies of a list in the prescribed form of all places of business established by the company in India as at the date within reference to which the balance sheet referred to in sub-section (1) is made out.

240. Service on a foreign company.

- (1) Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person who has been authorised to accept service on behalf of the foreign company and whose name has been delivered to the Registrar under the foregoing provisions of this Part and left at, or sent by post or any other means of communication to, the address or to such other identity as the case may be, which has been so delivered:

Provided that –

- (a) where any such company makes default in delivering to the Registrar the name and address of a person resident in India who is authorised to accept on behalf of the company service of process; notices or other documents;
- (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company or for any reason, cannot be served, a document may be served on the company by

leaving it at, or sending it by post or any other means of communication as the case may be, to any place of business established by the company in India.

241. Jurisdiction of Registrar on foreign companies

(1) Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over the principal place of business of such foreign company in India .

(2) If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

242. Power to wind up foreign companies, although dissolved.

Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

243. Penalties

If any foreign company fails to comply with any of the foregoing provisions of this Part, the company, and every officer or agent of the company who is in default, shall be punishable under the Act.

Chapter XXII

REGISTRATION OFFICES, OTHER OFFICES AND FEES

244. Registration Offices, Regional Directors, Director General of Inspection and Investigation and other officers. –

(1) For the purpose of registration of companies under this Act, there shall be offices

at such places, with such jurisdictions as the Central Government may specify by notification.

(2) The Central Government may, by notification, appoint such Registrars, as it may think fit for registration of company, and for performing such other functions as are or may be provided by this Act and rules made thereunder.

(3) The Central Government may by notification, appoint such number of Regional Directors as it may consider necessary for exercising the powers and performing the functions of Regional Directors under the provisions of the Act and for performing such other functions as are or may be provided under this Act and rules made thereunder, with such jurisdictions as the Central Government may specify by notification.

(4) The Regional Director shall exercise such powers of supervision and control over the Registrar of the Companies and Company Liquidators, within his jurisdiction, as may be specified by the Central Government.

(5) The Central Government may, by notification, appoint a Director General of Inspection and Investigation (hereinafter referred to as "Director General") and as many Additional, Joint, Deputy or Assistant Directors General of Inspection and Investigation as it may think necessary, to assist the Director General for exercising powers of inspection and investigation as contained in this Act.

(6) The Director General shall be responsible for the conduct of all inspections and investigations under this Act and shall exercise such supervision and control over all the inspections or investigations made under this Act and to perform such functions and discharge such duties as may be given to him by the Central Government.

Provided that the Director General shall perform his functions under the general supervision of the Central Government.

(7) The salaries and allowances payable to and other terms and conditions of service of the Registrars, Regional Directors, Director General of Inspection and Investigation and the other officers mentioned in this section shall be such as may be fixed by the Central Government.

(8) The Central Government may direct a seal or seals to be prepared for the authentication of document required for, or connected with, the registration of companies.

(9) Whenever any act is by this Act directed to be done to or by the Registrar or the Regional Director, it shall, until the Central Government otherwise directs, be done to or by the existing Registrar of companies or joint stock companies or the Regional Director, as the case may be, or in his absence, to or by such person as the Central Government may for the time being authorise:

Provided that in the event of the Central Government altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place, with reference to the local situation of the registered offices of the companies concerned as the Central Government may appoint.

245. Inspection, production and evidence of documents kept by Registrar and admissibility of micro films, etc., as evidence.

- (1) Save as otherwise provided elsewhere in this Act, any person may-
- (a) inspect any documents kept by the Registrar, in accordance with the rules made under the Destruction of Records Act, 1917 (5 of 1917) being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of such fee as may be prescribed;
 - (b) require a copy or extract of any document or certificate or any part of a document to be certified by the Registrar, on payment of such fee as may be prescribed:

Provided that the rights conferred by this sub-section shall be exercisable –

- (i) in relation to documents delivered to the Registrar with a prospectus in pursuance of section 17, only during the fourteen days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and
 - (ii) in relation to documents so delivered only during the fourteen days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.
- (2) No process for compelling the production of any document kept by the Registrar shall issue from any Court or the National Company Law Tribunal except with the leave of that Court or the National Company Law Tribunal; and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the Court or the National Company Law Tribunal.
- (3) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy under the hand of the Registrar whose official position it shall not be necessary to prove, shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

246. Admissibility of documents etc. as evidence -

- (1) Notwithstanding anything contained in any other law for the time being in force, -
- (a) a copy of any document maintained in electronic form or medium capable of being retrieved or reproduced by electronic or any other means as may be prescribed ; or
 - (b) a facsimile copy of a document; or**
 - (c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a “computer printout”), if the conditions mentioned in sub-section (2) are satisfied,**

be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence should be admissible.

The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely: -

- (a) the information contained in the statement reproduces or is derived from returns and document filed by the company on paper or on computer**

network, floppy, diskette, magnetic cartridge tape, CD-rom or any other computer readable media;

(b) while receiving returns or documents on computer media, necessary checks by scanning the documents filed on computer media will be carried out and media will be duly authenticated by the Registrar; and

(c) the Registrar shall also take due care to preserve the computer media by duplicating, transferring, mastering or storage without loss of data.

247. Fees

(1) There shall be paid to the Registrar in respect of several matters mentioned under this Act such fees and in such manner as may be prescribed.

(2) Any document required or authorised by this Act to be filed or registered, or any fact required or authorised by this Act to be registered, with the Registrar on payment of the fee specified therefor, may, without prejudice to any other liability, be filed or registered after the time, if any, specified in this Act for its filing or registration on payment of such fee for belated filing or registration in such manner as may be prescribed.

(3) All fees, charges, and other sums paid to any Registrar or any other officer of the Central Government in pursuance of this Act shall be paid into the Public Account of India in such manner as may be prescribed.

(4) The Central Government may, by order notified in the Official Gazette, reduce the amount of any fee, charge, or other sum specified in any provision contained in this Act, as payable in respect of any matter, either to the Central Government or to any Registrar, or any other officer of the Central Government; and thereupon such provision shall, during the period for which the order is in force, have effect as if the reduced fee had been substituted for the fee specified in such provision.

248. Filing of applications and returns etc. through electronic mode -

(1) Notwithstanding anything contained in this Act, the Central Government may, by notification, require that-

(a) all applications, documents and returns required to be filed under this Act or rules made thereunder, shall be filed from such date as may be specified in the notification only through electronic mode;

(b) all inspections of the applications, documents or returns referred to in clause (a) or any other record maintained under this Act which is otherwise available for such inspection may also be made by members of the public through electronic mode;

(c) all fees, charges or other sum payable under this Act or rules made thereunder shall be paid in the manner as may be specified in the notification, only through the electronic mode.

(2) The Central Government may, by notification, specify an agency for maintaining and upgrading the computer facilities for filing the applications, documents and returns referred to in clause (a), facilitate inspection referred to in clause (b) and payment of fees referred to in clause (c) and performing such other services as may be specified in the notification by the Central Government.

(3) Notwithstanding anything contained in sub-section (1), any company or person

who is filing applications, returns, documents, or accessing or inspecting documents through electronic mode or paying fees, charges or other sum through electronic mode shall pay such service charges as may be prescribed by the Central Government from time to time which will be collected, retained and appropriated by the agency which may be designated by the Central Government.

Explanation.- For the purposes of this section “agency” includes any individual, company, private agency, partnership firm or any other body .”’.

249. Enforcement of duty of company to make returns, etc., to Registrar. -

(1) If a company, having made default in complying with any provision of this Act, which requires it to file or register with or deliver or send to the Registrar, any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the NCLT may, on an application made to it by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any provisions in this or any other Act imposing penalties on a company or its officers in respect of any such default as aforesaid.

250. Power of court trying offences under the Act to direct the filing of documents with Registrar. -

(1) Any Court trying an offence for a default in compliance with any provision of this Act which requires a company or its officers to file or register with, or deliver or send to, the Registrar, any return, account or other document, may at the time of sentencing, acquitting or discharging the accused, direct by order, if it thinks fit to do so, any officer or other employee of the company to file or register with, deliver or sent to, the Registrar on payment of the fee including the additional fee required to be paid under section 221, such return, account or other document within such time as may be specified in the order.

(2) Any officer or other employee of the company who fails to comply with an order of the Court under sub-section (1) shall be punishable under the Act.

Chapter XXIII

Information from companies and special types of companies

251. Power of Central Government to direct companies to furnish information or statistics.

(1) The Central Government may, by order, require, through a publication of the order in the official gazette, companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, in such manner, within such time and subject to such conditions as may be specified in the order.

(2) The Central Government may also, by order, direct an inquiry to be made by any person or persons named in the order for such purposes and in such manner as may be prescribed who shall, for the purposes of such inquiry, have such powers as may be prescribed.

(3) If any company fails to comply with an order made under sub-section (1) or (2), or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company, and every officer thereof who is in default, shall be punishable under the Act..

(4) An order requiring any information or statistics to be furnished by a company may also be addressed to any person who is, or has at any time been, an officer or employee of the company, and all the provisions of this section, so far as may be, shall apply in relation to such persons as they apply in relation to the company :

Provided that no such person shall be punishable under sub-section (3) unless the Court is satisfied that he was in a position to comply with the order and made wilful default in doing so.

(5) Where a body corporate incorporated outside India and having established an office within India, carries on business in India, all references to a company in this section shall be deemed to include references to the body corporate in relation, and only in relation, to such business.

252. Application of Act to insurance, banking, electricity supply and other companies governed by special Acts.

The provisions of this Act shall apply

(a) to insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (4 of 1938) ;

(b) to banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Companies Act, 1949 (10 of 1949) ;

(c) to companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Indian Electricity Act, 1910 (9 of 1910), or the Electricity Supply Act, 1948 (54 of 1948) ;

(d) to any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act ;

(e) to such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification in the Official Gazette, specify in this behalf, subject to such exceptions, modifications or adaptations, as may be specified in the notifications.

253. Application of sections 55 to 58 to Government companies.

(1) In the case of a Government company the following provisions shall apply, notwithstanding anything contained in sections 55 to 58.

(2) The auditor of a Government company shall be appointed or re-appointed by the Comptroller and Auditor-General of India in such manner and subject to such conditions as may be prescribed.

254. Annual reports on Government companies.

(1) Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be

(a) prepared within three months of its annual general meeting before which the audit report is placed under section 59; and

(b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and any comments upon, or supplement to, the audit report, made by the Comptroller, and Auditor-General of India.

(2) Where in addition to the Central Government, any State Government is also a member of a Government Company, that State Government shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments or supplement referred to in sub-section (1).

(3) Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual

report on the working and affairs of the company to be

(a) prepared within the time specified in sub-section (1) ; and

(b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature with a copy of the audit report and comments or supplement referred to in sub-section (1).

(4) The provisions of this section shall, so far as may be, apply to a Government Company in liquidation as they apply to any other Government company.

255. Provisions of section 59 to apply to certain companies.

The provisions of section shall apply to a company in which not less than fifty-one per cent of the paid-up share capital is held by one or more of the following or any combination thereof, as if it were a Government company, namely :

(a) the Central Government and one or more Government companies ;

(b) any State Government or Governments and one or more Government companies ;

(c) the Central Government, one or more State Governments and one or more Government companies ;

(d) the Central Government and one or more corporations owned or controlled by the Central Government ;

(e) the Central Government, one or more State Governments and one or more corporations owned or controlled by the Central Government ;

(f) one or more corporations owned or controlled by the Central Government or the State Government ;

(g) more than one Government company.

256. Power to modify Act in relation to Government , private and other companies.

(1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act (other than section 59) specified in the notification :

(a) shall not apply to any Government company, Private Company, *Nidhi or Mutual Benefit Society*, a company licenced under section 13 of this Act and class or classes of private companies; or

(b) shall apply to any Government company, Private Company, *Nidhi or Mutual Benefit Society*, and a company licenced under section 13 of this Act only with such exceptions, modifications and adaptations, as may be

specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(3) A copy of every notification issued under sub-section (1) shall be laid as soon as may be after it is issued, before each House of Parliament.

CHAPTER XXIV
OFFENCES AND PENALTIES

257. Penalty in Schedule .

(1) A company or a person who –

- (a) does that which under this Act he is prohibited to do;
- (b) does not do that which under this Act he is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence under this act.

(2) A company or a person who is guilty of an offence under this Act shall be liable, on conviction, to a punishment with imprisonment and also with fine , with imprisonment or fine or both, with imprisonment or fine or only with fine as specified in the Schedule.

(3) If a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in the Act or any condition, limitation or restriction subject to which any approval, sanction, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable under the Act.

258. Offences against Act to be cognizable only on complaint by Registrar, shareholder or Government.

(1) No court shall take cognizance of any offence against this Act (other than an offence with respect to which proceedings are instituted under section 184), which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorised by

the Central Government in that behalf :

Provided that nothing in this sub-section shall apply to a prosecution by a company or any of its officers.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, where the complainant under sub-section (1) is the Registrar or a person authorised by the Central Government, the personal attendance of the complainant before the Court trying the offence shall not be necessary unless the Court for reasons to be recorded in writing requires his personal attendance at the trial.

(3) Sub-section (1) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters included in sections 134 to 189 or in any other provisions of this Act relating to the winding up of the companies.

(4) A liquidator of a company shall not be deemed to be an officer of the company, within the meaning of sub-section (1).

(5) Any order made by a Court under this Act may be enforced in the same manner as a decree made by the Court in a suit pending therein.

(6) Where any order made by one Court is required to be enforced by another Court, a certified copy of the order shall be produced to the proper officer of the Court required to enforce the order.

(7) The production of such certified copy shall be sufficient evidence of the order.

(8) Upon the production of such certified copy, the Court shall take the requisite steps for enforcing the order, in the same manner as if it had been made by itself.

(9) Where any order made by the Company Law Board or Tribunal is required to be enforced by a Court, a certified copy of the order shall be produced to the proper officer of the Court required to enforce the order and the provisions of sub-sections (6) and (7) shall, as far as may be, apply to every such order in the same manner and to the same extent as they apply to an order made by a Court.

259. Composition of certain offences

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), any offence punishable under this Act (whether committed by a company or any officer thereof), not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by the Central Government on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sum as that Government may prescribe:

Provided that the sum prescribed shall not, in any case, exceed the maximum

amount of the fine, and not less than the minimum amount of fine, which may be imposed for the offence so compounded:

Provided further that in prescribing the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 247 shall be taken into account.

(2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation.—For the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(3) No application for compounding of an offence shall be entertained unless the offence complained of has either ceased to subsist or the default has been made good.

(4) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon to the Central Government.

(b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the Registrar in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973:

(a) any offence which is punishable under this Act with imprisonment or with fine, or with both, shall be compoundable with the permission of the Court before which any prosecution for such offence is pending, in accordance with the procedure laid down in that Act for compounding of offences;

(b) any offence which is punishable under this Act (2 of 1974) with imprisonment only or with imprisonment and also with fine shall not be compoundable.

(6) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.”.

260. Jurisdiction to try offences, trial and nature of certain offences.

(1) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction shall try any offence against this Act.

(2) If any offence against this Act which is punishable with fine only is committed by any person within a Presidency town, such person may be tried summarily and punished by any Presidency Magistrate of that Presidency Town.

(3) Notwithstanding anything in the Code of Criminal Procedure, 1974 (5 of 1974), every offence against this Act shall be deemed to be non-cognizable within the meaning of the said Code.

261. Power of Central Government to appoint company prosecutors and appeal against acquittal.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (5 of 1974) the Central Government may appoint generally, or in any case, or for any specified class of cases in any local area, one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act ; and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code on Public Prosecutors, appointed under that Code.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government may, in any case arising out of this Act, direct any company prosecutor or authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any Court other than a High Court and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate Court.

262. Payment of compensation in cases of frivolous or vexatious prosecution.

(1) In respect of any case instituted upon the complaint of a shareholder against the company or any officer thereof in pursuance of section 1, provisions of Section 250 of the CPC 1973 (2 of 1974), shall not apply, and the following provisions shall apply instead.

(2) If the Magistrate by whom any such case is heard discharges or acquits all or any of the accused and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the shareholder upon whose complaint the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused, or to each or any of such accused when there is more than one, or if such shareholder is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(3) The Magistrate shall record and consider any cause which such shareholder may

show ; and if the Magistrate is satisfied that the accusation was false and either frivolous or vexatious, he may, for reasons to be recorded, direct that compensation to such amount as he may determine be paid by such shareholder to the accused or to each or any of them, not exceeding one thousand rupees in all.

(4) The Magistrate may, by the order directing payment of the compensation under sub-section (3), further order that, in default of payment, the shareholder ordered to pay such compensation shall suffer imprisonment for a term not exceeding two months.

(5) When any person is imprisoned under sub-section (4), the provisions of sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

(6) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made by him :

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) A complainant who has been ordered to pay compensation under sub-section (3) by a Magistrate may appeal from the order, in so far as it relates to the payment of compensation, as if such complainant had been convicted on a trial held by such Magistrate.

(8) Where an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal under sub-section (7) has elapsed ; or, if an appeal is presented, before the appeal has been decided.

263. Application of fines.

The Court or Tribunal imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information or at whose instance the fine is recovered.

264. Production and inspection of books where offence suspected.

(1) If, on an application made to a Judge of a High Court in Chambers or Tribunal, as the case may be by the Public Prosecutor of the State or by the Central Government, or by a company prosecutor appointed under section 262 it is shown that there is reasonable cause to believe that any person has, while he was an officer of a company, committed an offence in connection with the management of the company's affairs, and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made

(i) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating, and obtaining evidence of the commission of, the

offence ; or

(ii) requiring the manager of the company or such other officer thereof as may be named in the order, to produce the said books or papers or any of them to a person, and at a place and time, named in the order.

(2) Sub-section (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in clause (ii) thereof shall be made by virtue of this sub-section.

(3) No appeal shall lie from the decision of a Judge of the High Court or Tribunal, as the case may be under this section.

265. Penalty for false statements.

If in any return, report, certificate, balance sheet, prospectus, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement

(a) which is false in any material particular, knowing it to be false ; or

(b) which omits any material fact, knowing it to be material ;

he shall, save as otherwise expressly provided in this Act, be punishable under the Act.

266. Penalty for false evidence.

If any person intentionally gives false evidence

(a) upon any examination upon oath or solemn affirmation, authorised under this Act ; or

(b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act ;

he shall be punishable under the Act.

267. Penalty for wrongful withholding of property.

(1) If any officer or employee of a company

(a) wrongfully obtains possession of any property of a company ; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised

by this Act ;

he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to ten thousand rupees.

(2) The Court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years.

CHAPTER XXV

MISCELLANEOUS PROVISIONS

268. Appointment of Advisory Committee.

For the purpose of advising the Central Government and the Tribunal on such matters arising out of the administration of this Act as may be referred to it by that Government or the Tribunal, the Central Government may constitute an Advisory Committee consisting of such number of persons with such qualification as may be prescribed.

269. 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 or Tribunal having jurisdiction in the matter may, if there is reason to believe that the company will be unable to pay the costs of the defendant if he is successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

270. Power of Court to grant relief in certain cases.

(1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the Court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the Court may relieve him, either wholly or partly, from his liability on such terms as it may think fit :

Provided that in a criminal proceeding under this sub-section, the Court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

(2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a Court before which a proceeding against that officer for negligence, default, breach of

duty, misfeasance or breach of trust had been brought under sub-section (1).

(3) No Court shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

271. Enforcement of orders of one Court by other Courts.

(1) Where any order made by one Court is required to be enforced by another Court, a certified copy of the order shall be produced to the proper officer of the Court required to enforce the order.

(2) The production of such certified copy shall be sufficient evidence of the order.

(3) Upon the production of such certified copy, the Court shall take the requisite steps for enforcing the order, in the same manner as if it had been made by itself.

(4) Where any order made by the Company Law Board or Tribunal is required to be enforced by a Court, a certified copy of the order shall be produced to the proper officer of the Court required to enforce the order and the provisions of sub-sections (2) and (3) shall, as far as may be, apply to every such order in the same manner and to the same extent as they apply to an order made by a Court.

272. Protection of acts done in good faith.

No suit, prosecution or other legal proceedings shall lie against the Government or any officer of Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer of any report, paper or proceedings.

273. Non-disclosure of information in certain cases.

Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of Government or any other person shall not be compelled to disclose to any Court, tribunal or other authority whence he got any information which

(a) has led the Central Government to direct a special audit under section 60 or to order an investigation under section 91; or

(b) is or has been material or relevant in connection with such special audit or investigation.

274. Protection of employees during investigation by inspector or pendency of

proceeding before Appellate Tribunal in certain cases.

(1) If

(a) during the course of any investigation of the affairs and other matters of or relating to a company, body or person under section 91 or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, body or person, under section 91; or

(b) during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under this Act;

such company, body or person proposes

(i) to discharge, or

(ii) to punish, whether by dismissal, removal, reduction in rank or otherwise, any employee, the company, body or person, as the case may be, shall send by post to the Tribunal previous intimation in writing of the action proposed against the employee and if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, body or person concerned.

(2) If the company, body or person concerned does not receive within thirty days of the sending of the previous intimation of the action proposed against the employee, any notice of the objection from the Tribunal, then and only then, the company, body or person concerned may proceed to take against the employee the action proposed.

(3) If the company, body or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in the prescribed manner and on payment of the prescribed fee.

(4) The decision of the Appellate Tribunal on such appeal shall be final and be binding on the Tribunal and on the company, body or person concerned.

(5) For the removal of doubt, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force.

275. Reduction of fees, charges, etc., payable to company.

(1) A company which is entitled to any specified fee, charge or other sum by virtue of any provision contained in this Act or in its articles, may reduce the amount thereof to such extent as it thinks fit ; and thereupon such provision shall, so long as the reduction is in force, have effect as if the reduced amount had been substituted for the fee, charge

or sum specified in such provision.

(2) Any reduction made under sub-section (1) may, at any time, be cancelled or varied by the company.

276. Delegation by Central Government of its powers and functions under Act.

(1) The Central Government may, by notification in the Official Gazette, and subject to such conditions, restrictions and limitations as may be specified therein, delegate any of its powers or functions under this Act to such authority or officer as may be specified in the notification.

(2) The powers and functions which cannot be delegated under sub-section (1) are those as may be prescribed.

(3) A copy of every notification issued under sub-section (1) shall, as soon as may be after it is issued, be placed before both Houses of Parliament. Grant of approval, etc., subject to conditions and levy of fees on applications

277. Power of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications

(1) Where the Central Government or Tribunal is required or authorised by any provision of this Act,—

(a) to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter; or

(b) to give any direction in relation to any matter; or

(c) to grant any exemption in relation to any matter,

then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government or Tribunal may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(2) Save as otherwise expressly provided in this Act, every application which may be, or is required to be, made to the Central Government or Tribunal under any provision of this Act—

(a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or Tribunal to, or in relation to, any matter; or

(b) in respect of any direction or exemption to be given or granted by that Government or Tribunal in relation to any matter; or

(c) in respect of any other matter,

shall be accompanied by such fee as may be prescribed :

Provided that different fees may be prescribed for applications in respect of different matters or in case of applications by companies, for applications by different classes of companies.”.

278. Annual report by Central Government.

The Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before both Houses of Parliament, within one year of the close of the year to which the report relates.

279. Power to alter Schedules.

(1) Subject to the provisions of this section, the Central Government may, by notification in the Official Gazette, alter any of the regulations, rules, tables, forms and other provisions contained in any of the Schedules to this Act.,.

(2) Any alteration notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs :

Provided that no such alteration in Table A of Schedule I shall apply to any company registered before the date of such alteration.

(3) Every alteration made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

280. Power of Central Government to make rules.

(1) In addition to the powers conferred by section 641, the Central Government may, by notification in the Official Gazette, make rules

(a) for all or any of the matters which by this Act are to be, or may be, prescribed by the Central Government; and

(b) generally to carry out the purposes of this Act.

(2) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

(3) Every rule made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

281. Power of Central Government to make rules relating to winding up

(1) The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908 (5 of 1908), providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters as may be prescribed.

(2) In particular, and without prejudice to the generality of the forgoing power, such rule may provide for all or any of the following matters, namely:—

- (i) as to the mode of proceedings to be held for winding up of a company by the Tribunal;
- (ii) for the voluntary winding up of companies, whether by members or by creditors;
- (iii) for the holding of meetings of creditors and members in connection with proceedings under section 94;
- (iv) for giving effect to the provisions of this Act as to the reduction of the capital;
- (v) generally for all applications to be made to the Tribunal under the provisions of this Act;
- (vi) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (vii) the settling of lists of contributories and the rectifying of the register of members where required and collecting and applying the assets;
- (viii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (ix) the making of calls; and
- (x) the fixing of a time within which debts and claims shall be proved.

(3) All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of the this Act, and in force at such commencement, shall continue to be in force, in so far as they are not inconsistent with the provisions of this Act, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.”.

282. Matters to be administered by Securities and Exchange Board of India

(1) The provisions contained in Sections 17 to 27, 30, 31 and sections 48 to 50 so far as they relate to issue and transfer of securities and non payment of dividend, shall, be administered by the Securities and Exchange Board of India.

- (a) in the case of listed public companies
- (b) in case of those public companies which intend to get their securities listed on any recognized stock exchange of India.

(2) The books of accounts and other books and paper of every company referred to in sub-section (1) shall be open to inspection in respect of matters covered under sub-section (1) by such officers of the Securities and Exchange Board of India as may be authorized by it who shall submit the report to the Securities and Exchange Board of India.

(3) The person making inspection under sub-section(2) shall have the same powers as that of the person making inspection under section 90.

(4) The Court may take cognizance of offence relating to issue, transfer of securities and non-payment of dividend on a complaint in writing by a person authorized by Securities and Exchange Board of India.

283. Saving of orders, rules, etc., in force at commencement of Act.

(1) Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done, under or in pursuance of any previous companies law ; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue to be in force, and so far as it could have been made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act, shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act.

(2) Any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment in this Act.

(3) Any register kept under the provisions of any previous companies law shall be deemed to be part of the register to be kept under the corresponding provisions of this Act.

284. Transfer of winding up proceedings to Tribunal

All proceedings (including proceedings relating to arbitration, compromises,

arrangements and reconstruction and winding up of a company) pending before the commencement of this Act before any Court of competent jurisdiction, or the Insurance Act, 1938 (4 of 1938) or any other law for the time being in force other than under the Banking Regulation Act, 1949 (10 of 1949), shall continue before the same Court.

285. Reference of winding up of companies in any law

Unless the context otherwise requires,—

- (a) any reference to the winding up of a company by a Court or High Court or winding up of a company subject to supervision of a Court or High Court in any law (except the Banking Regulation Act, 1949) (10 of 1949) shall, in so far as it relates to winding up of a company, be construed as winding up of a company by the Tribunal in accordance with the provisions of this Act;
- (b) any reference to the Company Law Board in any law, so far as it relates to the Company Law Board, shall be construed as the Tribunal under this Act.

286. Repeal of Act.

The Companies Act, 1956 (1 of 1956) is hereby repealed.

287. Construction of references to former enactments in documents. -

Notwithstanding the repeal of the Act, under section 286:

- (a) any document referring to any provision in the previous Companies laws shall be construed as referring to the corresponding provision in this Act;
- (b) any reference to an extraordinary resolution in the articles of a company, or in any resolution passed in general meeting by the company, or in any other instrument, or in any law in force immediately before the commencement of this Act, shall, with effect on and from such commencement, be construed as a reference to a special resolution;
- (c) any person appointed to any office under or by virtue of any previous companies law shall be deemed to have been appointed to that office under or by virtue of this Act;
- (d) the offices existing at the commencement of this Act for the registration of companies shall be continued as if they had been established under this Act;
- (e) any register kept under the provisions of any previous companies law shall be deemed to be part of the register

288. Saving of certain Tables under previous companies laws.

Nothing in this Act shall affect

- (a) Table B in the Schedule annexed to Act No. 19 of 1857, or any part thereof, so far as the same applies to any company existing at the commencement of this Act ;
- (b) Table A in the First Schedule annexed to the Indian Companies Act, 1882 (6 of 1882), or any part thereof, so far as the same applies to any

company existing at the commencement of this Act ;

(c) Table A in the First Schedule to the Indian Companies Act, 1913 (7 of 1913), either as originally contained in that Schedule or as altered in pursuance of section 37 of that Act, so far as the same applies to any company existing at the commencement of this Act.

289. Section 6 of the General Clauses Act, 1897 (10 of 1897) to apply in addition to sections 258 of Act.

The mention of particular matters in section 201 or in any other provision of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with respect to the effect of repeals.

SCHEDULE OF PENALTIES

S.No.	Clause	Nature of Offence	Penalty
1.	4(3)	Associations exceeding certain number	Fine which may extend to Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
2.	6(6)	Improper use of the word 'limited'	Fine which may extend to Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
3.	7(3)	Non-compliance with the provisions of alteration of memorandum	Fine which may extend to Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
4.	8(3)	Non-compliance with the provisions relating to alteration of articles.	Fine which may extend to Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
5.	8(4)	Supply of copy without noting the alteration in the Memorandum of Association and Articles of Association	Fine upto Rupees Five Thousand subject to a minimum of Rupees Five Hundred.
6.	9(4)	Not having registered office, not filing Form No.18 and not keeping name board etc .	Fine of Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred and in the case of continuing offences with a fine of upto Rupees Five Hundred per day during which the default continues subject to minimum of Rupees Fifty per day.
7.	10(2)	Commencing business without obtaining Commencement of Business Certificate	Fine which may extend to Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred and in the case of continuing default fine which may extend to Rupees One Thousand per day during which the default continues.
8.	12(6)	Non-compliance with the directions for change of name	Fine which may extend to Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred and in the case of continuing default fine which may extend to Rupees One Thousand per day during which the default continues.
9.	13(8)	Non-compliance with section 25.	Fine which may extend to Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.

10.	17(12)	Non-compliance with the requirement of filing prospectus with Registrar of Companies and other non-compliances.	Fine which may extend to Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
11.	18	Criminal liability for mis-statements in prospectus	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakh subject to a minimum fine of Rupees Fifty Thousand.
12.	21	Fraudulent inducement to invest	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakh subject to a minimum fine of Rupees Fifty Thousand.
13.	22	Personation for acquisition of shares	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakh subject to a minimum fine of Rupees Fifty Thousand.
14.	30(8)(a)	Non-compliance with the provisions for transfer of shares and non-intimation to depositors	Fine which may extend to Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
15.	30(8)(b)	Personation of shareholder	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakh subject to a minimum fine of Rupees Fifty Thousand.
16.	30(14)	Default in complying with the orders of the tribunal for rectification of Register of Members.	Fine upto Rupees One Thousand per day subject to a minimum of Rupees One Hundred per day
17.	31(3)	Not making available copy of debenture trust deed for inspection and refusing to give copy	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day
18.	31(9)	Failure to comply with the order of the Tribunal to redeem the debentures	Imprisonment for a period of two years and fine upto Rupees Ten Lakhs subject to minimum fine of Rupees One Lakh.
19.	32(11)	Concealing name of creditor, etc. in reduction of capital	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakh subject to a minimum fine of Rupees Fifty Thousand.
20.	33(10)	Failure to comply with	Imprisonment for a period of two years and fine upto

		order of Tribunal	Rupees Ten Lakhs subject to minimum fine of Rupees One lakh.
21.	33(6)	Invitation/Acceptance of deposits in excess of limits and contravention of rules	Imprisonment for a period of two years and fine upto Rupees Ten Lakhs subject to minimum fine of Rupees One Lakh.
22.	33(7)	Failure to make repayment in accordance with the section or rules.	Imprisonment for a period of two years and fine upto Rupees Ten Lakhs subject to minimum fine of Rupees One Lakh.
23.	34(12)	Failure to file charge particulars to Registrar of Companies and non-compliance with section relating to charges.	Fine upto Rupees Five Hundred only per day subject to a minimum of Rupees Fifty per day.
24.	35(3)	Failure to file documents for appointment of Receiver.	Fine upto Rupees Five Hundred for every day subject to a minimum of Rupees Fifty per day.
25.	36(2)	Failure to make entry in the Register of Charges.	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
26.	36(4)	Failure to give inspection	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day.
27.	37(2)	Failure to maintain register of members.	Fine upto Rupees Twenty Five Thousand and in the case of continuing default Rupees Five Hundred for every day during which the default continues subject to a minimum of Rupees Two Thousand Five Hundred and further fine of Rupees Fifty per day during which the default continues
28.	38(2)	Failure to file annual return	Fine upto Rupees Five Hundred for every day subject to a minimum of Rupees Fifty per day
29.	38(4)(i)	Failure to give register or returns for inspection	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day.
30.	39(3)	Failure to hold Annual General Meeting or to comply with the direction of Central Govt. in holding Annual General Meeting	Fine upto Rupees Fifty Thousand and in the case of continuing default further fine which may extend to Rupees Two Thousand Five Hundred per day for every day after the first during which the default continues subject to a minimum penalty of Rupees Twenty Five Thousand.
31.	41(3)	Failure to send explanatory statement	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
32.	43(3)	Failure to circulate members' resolution as	Fine upto Rupees Twenty Five Thousand- subject to a minimum of Rupees Two Thousand Five Hundred.

		per the Act.	
33.	44(3)	Failure to declare beneficial interest and file return with Registrar.	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day.
34.	45(6)	Failure to file resolution with Registrar.	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day including the Liquidator.
35.	46(2)	Non-compliance with provisions relating to postal ballot and rules	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
36.	47(3)	Failure to maintain minutes	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
37.	47(5)	Circulation of report of any meeting unless the matter complies with the requirement of section 47.	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
38.	48(7)	Giving gifts in General Meeting	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
39.	48(6)	Failure to pay dividend as declared	Imprisonment for a period of two years and fine upto Rupees Ten Lakhs subject to minimum fine of Rupees One Lakh.
40.	49(4)	Failure to transfer the amount due for transfer to Investor Education and Protection Fund.	Fine upto Rupees Five Thousand for every day during which the default continues subject to a minimum of Rupees Five Hundred per day.
41.	51(3)	Failure to maintain proper books of accounts	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
42.	52(2)	Default in laying of annual accounts at the Annual General Meeting	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
43.	53(9)	Failure to prepare B/s and P& L A/c in the form and contents specified, not following Accounting Standards, not including particulars of subsidiary companies in the B/s of holding company and any other non-compliance of Section	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.

		53.	
44.	54(6)	Default in complying with the approval of the board's report and Non-compliance of authentication	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
45.	54(6)(b)	Improper issue, circulation or publication of B/s or P/L A/c	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
46.	55(2)	Failure to send to members, etc., copies of B/S, Auditors' report, etc., 21 days before the date of meeting	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
47.	55(5)	Failure to file with Registrar copies of B/S, etc.	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day.
48.	55(7)	Failure to make disclosure of payments, etc., to the company	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
49.	56(4)	Failure to give notice to the Central Govt. within 7 days	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
50.	59(10)	Non-compliance with any provision relating to audit and auditors	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
51.	59(11)	Liability for the auditors	Fine upto Rupees Five Lakhs subject to a minimum of Rupees Fifty Thousand.
52.	60(5)	Failure to comply with the order of the Central Government to furnish information to special audit.	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
53.	61(5)	Default in complying with the provisions of Cost Audit	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
54.	62(7)	Failure to comply with the provisions for constituting Audit Committee.	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
55.	66(3)	Functioning as a director after the office held by him has	Fine upto Rupees Five Lakhs subject to a minimum of Rupees Fifty Thousand.

		become vacant on account of any of the disqualification	
56.	68(5)	Director holding office in more no. of companies than prescribed	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
57.	69(2)	Failure to file the particulars contained in the Register of Directors with ROC.	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day.
58.	69(3)	Failure to produce the Register of Directors at AGM.	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
59.	69(5)	Refusal of company to give inspection of Register of Directors	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day.
60.	70(2)	Undischarged Insolvent managing Companies.	Fine upto Rupees Five Lakhs subject to a minimum of Rupees Fifty Thousand.
61.	71(7)	Fraudulent persons managing companies	Fine upto Rupees Five Lakhs subject to a minimum of Rupees Fifty Thousand.
62.	72(2)(b)	Not giving notice of meeting of Board.	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
63.	76(8)	Not complying with the provisions relating to Inter corporate loans & investments.	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
64.	77(6)	Failure to comply with the provisions relating to the requirement of investments to be held in company's own name.	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
65.	78(2)	Failure to disclose interest in a contract by the Director.	Fine upto Rupees Five Lakhs subject to a minimum of Rupees Fifty Thousand.
66.	79(3), 79(4)	Entering into contract with related parties without complying with the provisions of the Act.	Fine upto Rupees Ten lakhs subject to a minimum fine upto 1% of the value of the contract entered into without complying with the provisions of the Act
67.	80(2)	Participation in Board Meeting by interested Director.	Fine upto Rupees Five Lakhs subject to a minimum of Rupees Fifty Thousand.
68.	81(2)	Non-compliance with	Fine upto Rupees One Lakh subject to a minimum of

		the provisions with regard to Register of Contracts, companies & firms in which Directors are interested	Rupees Ten Thousand.
69.	81(3)	Failure by a Director, etc to inform change of his particulars.	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
70.	81(4)(b)	Failure to give notice of shareholding by Directors, etc.	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
71.	81(4)(d)	Failure to maintain Register of Director's shareholding	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
72.	81(6)	Failure to produce Register of Shareholding and Register of interest of Directors in AGM	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
73.	81(7)	Failure to provide inspection of Register of interest of Directors and Register of Directors' shareholding	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day.
74.	82(8)(c)	Failure to comply with the conditions prescribed for appointment of Managing Director/Whole Time Director/Manager.	Fine upto Rupees Five Lakhs subject to a minimum of Rupees Fifty Thousand.
75.	83(8)(a)	Violation of provisions of Section relating to appointment of Managerial Personnel	Fine upto Rs.One Lakh subject to a minimum of Rupees Ten Thousand
76.	83(8)(b)	Violation of provisions of Section relating to appointment of Managerial Personnel knowingly party to the violation	Fine upto Rupees Five Lakhs subject to a minimum of Rupees Fifty Thousand
77.	85(6)	Receipt of compensation by a Director for loss of office in connection with the transfer of	Fine upto Rupees Five Lakhs subject to a minimum of Rupees Fifty Thousand.

		shares.	
78.	87(4)	Non appointment of company secretary	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
79.	87(8)	Failure to furnish information in connection with secretarial compliance audit	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
80.	88(2)	Non appointment of chief accounts officer	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
81.	89(9)	Failure of Directors to produce books or assist the Inspecting Officer or respond to the summon issued	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakh subject to a minimum fine of Rupees Fifty Thousand.
82.	90(6)	Failure to furnish information/explanation or production of books or papers	Fine upto Rupees Five Lakhs subject to a minimum of Rupees Fifty Thousand.
83.	91(10)	Failure to produce documents or furnish information or appear before the Inspector	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakh subject to a minimum fine of Rupees Fifty Thousand.
84.	92(13)	Exercise of rights in respect of shares and debentures in violation of restriction imposed by Tribunal	Fine upto Rupees Five Lakhs subject to a minimum of Rupees Fifty Thousand.
85.	94(5)(b)	Failure to annex to the copy of Memorandum certified copy of the Tribunal's order sanctioning compromise.	Fine upto Rupees Five Thousand subject to a minimum of Rupees Five Hundred.
86.	94(12)	Failure to file with the Registrar, certified copy of the order of the Tribunal sanctioning compromise.	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day.
87.	97(8)(b)	Failure to file with the Registrar, certified copy of the order of the Tribunal providing regulation of the conduct of the	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day.

		company's affairs.	
88.	99(7)	Non-compliance with the requirements regarding Provident Fund.	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
89.	99(10)	Violation of provisions relating to appointment of Receiver to manage the property of the company.	Fine upto Rupees Twenty Five Thousand subject to a minimum of Rupees Two Thousand Five Hundred.
90.	132	Violation of provisions of the part relating to revival and rehabilitation of Sick Companies, any scheme or order of the Tribunal or Appellate Tribunal	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakh subject to a minimum fine of Rupees Fifty Thousand.
91.	147(2)(i)	Failure to file a copy of the winding up order with ROC.	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day.
92.	152	Failure of the Directors to ensure completion of Books of Accounts and Audit of Accounts upto date of winding up order.	Imprisonment for a period not exceeding one year and fine upto Rupees Five Lakhs subject to a minimum fine of Rupees Fifty Thousand.
93.	153(5)	Failure to comply with the provisions relating to statement of affairs.	Fine upto Rupees Five Thousand per day subject to a minimum of Rupees Five Hundred per day.
94.	170(3)	Failure of the Liquidator in forwarding a copy of the order of the Dissolution to the Registrar	Fine upto Rupees Five Hundred per day.
95.	174(6)	Default in giving notice of appointment of liquidators by the company to the Registrar	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day
96.	190(1)	Offences by officers of company in liquidation	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakhs subject to a minimum fine of Rupees Fifty Thousand.

97.	191(2)	Falsification of books	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakh subject to a minimum fine of Rupees Fifty Thousand.
98.	192	Frauds by officers of the company in liquidation	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakh subject to a minimum fine of Rupees Fifty Thousand.
99.	193(1)	Proper accounts in respect of company in liquidation not kept for the period commencing with incorporation & commencement	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakh subject to a minimum fine of Rupees Fifty Thousand.
100.	194(3)	Fraudulent conduct of business	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakh subject to a minimum fine of Rupees Fifty Thousand.
101.	197(2)	Failure to include a statement of the company being in liquidation in every invoice, order, document, etc.	Fine upto Rupees Five Lakhs subject to a minimum of Rupees Fifty Thousand.
102.	199(6)	Default in allowing inspection of books of accounts and disposal of books and papers of the company in liquidation	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day.
103.	200(5)	Failure of the liquidator to furnish information on pending liquidation to Central Government	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
104.	200(5) proviso	Wilful default by the liquidator to cause the statement on pending liquidation to be audited.	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
105.	206(2)	Default in filing copy of the order declaring dissolution of the company void	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees Fifty per day.
106.	227(5)	Failure to appoint Chief Executive & company Secretary in a Producer	Fine upto Rupees Ten Thousand.

		Company	
107.	228(1)	Any person carrying on business under the name containing the word 'Producer Co. Ltd.' Without being a Producer Company	Fine upto Rupees Ten Thousand.
108.	228(2)	Failing to furnish the information relating to the affairs of the Producer Company	Fine upto Rupees Ten Thousand.
109.	228(3)(a)	Failure to handover custody of books and other documents to the Producer Company	Fine upto Rupees Ten Thousand.
110.	228(3)(b)	Failure to convene AGM.	Fine upto Rupees Ten Thousand.
111.	232(6)	Failure to file order of the Tribunal sanctioning reconversion.	Fine upto Rupees Five Hundred per day.
112.	241(a)	Failure to deliver to the Registrar the name & address of the person authorized to accept service on behalf of Foreign Company.	Fine upto Rupees Five Hundred per day subject to a minimum of Rupees One Hundred per day.
113.	243	Failure of Foreign Company to comply with the requirements of Chapter XXI	Fine upto Rupees Five Lakhs subject to a minimum of Rupees Fifty Thousand.
114.	250(2)	Failure to comply with the order of the Court directing filing of documents with ROC.	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
115.	252(3)	Failure to furnish information/statistics required by Central Government	Fine upto Rupees One Lakh subject to a minimum of Rupees Ten Thousand.
116.	258(3)	Penalty for offences for which no punishment is provided elsewhere in the Act.	Fine upto Rupees Twenty Five Thousand and where the contravention is a continuing one with a further fine which may extend to Rupees Five Hundred for every day after the first during which the contravention continues subject to a minimum fine of Rupees One lakh.

117.	266	Making false statements	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakhs subject to a minimum fine of Rupees Fifty Thousand.
118.	267	Giving false evidence	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakh subject to a minimum fine of Rupees Fifty Thousand.
119.	268	Wrongful withholding of property of the company	Imprisonment for a term which may extend to two years and also with a fine which may extend to Rupees Five Lakhs subject to a minimum fine of Rupees Fifty Thousand.

NOTE:

The mandatory levy of minimum penalty mentioned in Column 4 of the above Schedule is applicable only in respect of Public Limited Companies.
