CLARIFICATIONS AND CIRCULARS ON COMPANY LAW

Foreword and Introduction
by
SHRI K. K. RAY, I.A.S.
Secretary, Govt. of India
Ministry of Law, Justice and Company Affairs
(Deptt. of Company Affairs)
New Delhi

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
DEPARTMENT OF COMPANY AFFAIRS
GOVERNMENT OF INDIA
NEW DELHI
PREFACE

In 1962, the Department of Company Affairs had published a booklet, entitled "Guide for Departmental Officers", consisting mainly of clarifications and interpretations of various Sections of the Companies Act, 1956. This small book, as indicated by its title, was intended only for official use.

After 1962, several far-reaching changes have been made in the Companies Act by the Amending Acts of 1963, 1964, 1965, 1966, 1967, 1969, 1971 and 1974, enabling the Government to exercise greater control over the management of companies by requiring them to approach it for its approval, sanction or order in respect of a wide range of matters. The trend of such legislation has been towards the achievement of socio-economic welfare of the community through the medium of corporate sector. The enactment of the Monopolies and Restrictive Trade Practices Act, 1969, was also a major event in the regulation of the corporate sector and the administration of this Act was entrusted to the Department of Company Affairs. As a result of these developments, the working of the Department of Company Affairs had to be enlarged and activated and in the process many administrative and procedural changes have been made. It has all along been the aim of the Department to develop its capacity to tackle various problems that arise from time to time in administering the law and to help the officers to deal with the matters before them with promptness, care and intelligence. The major changes in the Company Law and its administration have thus given rise to many problems, requiring clarification and interpretation from time to time. Accordingly, numerous clarifications and instructions with regard to various Sections of the Companies Act, 1956 explaining their scope, meaning and their application have been issued on different occasions, both for the guidance of the officers who have to administer these provisions as well as for the guidance of the public, especially those who are engaged in trade and industry, corporate business and other professional people dealing with the corporate sector such as chartered accountants, cost and works accountants, company secretaries, auditors and lawyers. It has, therefore, been felt that these clarifications, which have been issued from time to time, should be compiled, edited and brought out in the form of a book so that the departmental officers as well as the public may have at their disposal a useful book of ready reference.

This compilation, of materials arranged sectionwise, brings out the thinking of the Department from time to time on various important provisions of the Companies Act. The volume contains important instructions issued to the field officers as well as the answers given to different Chambers of Commerce and various other representatives on the queries raised by them.

A perusal of these clarifications, circulars, instructions and orders will show that the Department has tried to take a broad and balanced view of the various issues in the light of the intention underlying the Statute and the accepted administrative policies of the Government relating to trade, industry and corporate management. It should, however, be noted that these clarifications etc., only reflect the thinking of the Department at the time when they were issued and do not bind it to that line of thinking. The Department has always an open mind and will be perfectly willing to change its thinking on
any particular aspect of the matter, if a better view is shown to be possible. These clarifications should not, therefore, be cited as an authority of a binding character as is usually done in courts.

Memoranda, notifications, notes and orders, and circulars issued up to the end of August, 1976 have been included in this book. Old and outdated materials have been shifted and left out while editing. It is proposed to issue a supplement in due course to bring this volume up-to-date. It is also the intention of this Department to bring out more of such publications dealing with different aspects of the administration of the Companies Act and other allied Acts with which this Department is concerned. Accordingly, we shall publish very soon companion volumes like 'Company Rules and Forms under the Companies Act', 'Monopolies and Restrictive Trade Practices Act', 'Rules & Regulations' etc. The Department also proposes to bring out an earlier publication, namely, "Selected Decisions of the Company Law Board", in an enlarged form by incorporating therein not only the appellate orders under Section 111 of the Companies Act, 1956, but also various orders made by the Company Law Board Benches as well as the orders made by the Company Law Board in exercise of its quasi-judicial powers under Sections 408 and 409 of the Companies Act, 1956. Steps have also been taken to publish all the orders made by the Central Government under the Monopolies and Restrictive Trade Practices Act, 1960 and Cost Audit Record Rules.

Many persons have made their contribution to the publication of this volume, which entailed considerable labour and knowledge, and it is not possible to name them individually. I shall, however, be failing in my duty if I do not specially acknowledge the work of Shri P. H. Ramchandani, Member, Company Law Board, Shri A. G. Sarsi and Shri Ch. S. Rao, Deputy Secretaries, Shri B. B. L. Mittal, Senior Librarian and Shri K. K. Harita, I.O. Without their help, a compilation of this nature for which I have been trying for some time, would not have been possible.

It is hoped that the book will be found useful not only the officials of this Department but also by others concerned with company law in various ways.

K. K. RAY,

Secretary to the Government of India,
and

Chairman, Company Law Board.

March 31, 1977.
INTRODUCTION

It appeared to me that the best way of introducing a book of this kind would be to give to the reader a view of the changing face of company law in the perspective of recent trends and developments, and also an idea of the functioning of the Company Law Board and the Central Government's Department of Company Affairs.

Since the Companies Act was enacted on April 1, 1956, replacing the Indian Companies Act, 1913, company law has undergone numerous amendments from time to time. Changes have been made in the law governing the corporate sector to keep pace with the changing times and make the purpose behind such law more effective and responsive to social needs. Sometime back, a Joint Select Committee of Parliament examined the various provisions of the Act and made its recommendations which have been embodied in the Companies (Amendment) Act, 1974. This Act, which has been brought into force with effect from 1st February, 1975, is a piece of comprehensive legislation and has introduced extensive and far-reaching changes in the Companies Act. Its enactment should impel us to take a look at the wide-ranging changes over the last 20 years and the raison d'être of such modification.

A special feature of the Companies Act, 1956, is that wide discretionary powers have been conferred on the Central Government to regulate the exercise of corporate powers and utilisation of corporate funds. There has been a growing awareness of the fact that any enterprise, private as well as public, has both rights and duties vis-à-vis the society, in some what the same way as has an individual. The reason is simple, namely, that an enterprise contributes to and benefits from its society. Society may be based on the local plane or it may be based on the national plane. Therefore, the accountability of the corporate sector is as much important as its status. Companies may be structured and organised in different patterns and yet they have a common denominator in terms of social goals and socio-economic progress of the country. The corporate sector has thus been increasingly brought under the control and administrative processes of the Government in order to subserve the common good.

It was a matter of considerable debate, at the time when the Companies Bill, 1953, was being considered, as to how the work of the Government was to be organised for discharging the responsibilities which were going to be assumed. Mr. C. D. Deshmukh was then of the view that the work of the Government should be performed departmentally rather than by means of a separate authority or agency because the work involved was of an administrative nature. However, Mr. T. T. Krishnamachari, who later became the Finance Minister, held the view that the administration of the Companies Act should be carried on largely by a Board to be appointed by the Government. The advantage of administering the law by means of such a Board was that it would be better "for two or more persons to deal with matters than one person only."

Another reason which commended itself to him was that the nature of the duties imposed upon the Government by the Act in most instances was "quasi-judicial" in character rather than strictly administrative. The Company Law Board was, however, expressly placed under the control of the Government in the matter of implementation of policies. The organisational structure is designed to ensure that in the exercise of its quasi-judicial functions,
the Board is free from interference by the Government, while dealing with individual cases. The practice of appointing the Secretary to the Government and Joint Secretaries to the Government in the Department of Company Affairs as Chairman and Members of the Company Law Board has stood the test of time as the most convenient arrangement within the scheme of the Act, delegating most of the powers to the Board and reserving to the Government only those which involve matters of policy.

The Companies (Amendment) Act, 1974, has brought about a qualitative change in the status of the Company Law Board. Certain functions of the High Court under the Companies Act have now been transferred to the Company Law Board. The most important of the powers of the Court thus transferred to the Company Law Board relate to alteration of the Memorandum of Association of companies and any change in the place of the registered office from one State to another. In order to allay, however, certain apprehensions voiced before the Joint Select Committee of Parliament, it was enacted that the Company Law Board should exercise the powers under Sections 2(18A), 17, 18 and 19, 79, 141 and 185 through direct entrustment and not indirectly by means of a delegation from the Central Government. These are matters relating to determination of what constitutes a group, alteration of the Memorandum of Association, issue of shares at a discount, rectification of register of charges and power of calling of meeting of companies. In view of these new functions which are now to be discharged by the Company Law Board, the strength of the Board has been statutorily increased from a maximum of five members to nine numbers, including the Chairman. The Central Government has accordingly added three more members to the Board, raising its actual strength from three to six members, besides the Chairman. Further, in pursuance of Section 10E(4B) of the Act, the Board, with the previous approval of the Central Government, has constituted several Benches which sit at all important places in India, like Delhi, Bombay, Calcutta, Madras and also in State capitals, so that a person who has to argue his case need not run to Delhi for relief.

The entrustment of the functions of the High Court has thus added a new dimension to the powers and responsibilities of the Company Law Board departing from the original scheme of the Companies Act. As such exercise of such powers under a statutory entrustment is quasi-judicial in a sense quite different from the one described earlier. It has been widely recognised that the Company Law Board has exercised its powers as a quasi-judicial body with fairness and competence. The Company Law Board, for instance, exercises power under Section 111 of the Companies Act, a power which has been described by the Supreme Court as a judicial function in itself, involving the determination of a dispute between parties. This power has been exercised right from the beginning of the Companies Act, 1956, without any case for public complaint. It may be stated that the success of any Government institution discharging quasi-judicial functions lies in inverse proportion to the quantum of its contribution to the reported body of decisions of the superior courts of the land by figuring as a party called upon to justify its actions or omissions before them. There have no doubt been occasions when the orders of the Company Law Board or the Central Government have been challenged in the High Court and the Supreme Court, but the Board has not attracted any adverse judicial notice in the conduct of its affairs although there might be room for taking a different view on the issues for determination in the individual cases. It is to be noted that in all matters coming up before it for consideration and determination the Board has been following the wholesome practice of passing what is known as "speaking orders".
The corporate sector seems to have generally recognised that in administrating the various provisions of the Companies Act, the authorities have approached with sympathy the complex problems of the vast number of companies (now over 45,000) standing under the umbrella of the Companies Act. It has not also been alleged that there has been an undue sense of antipathy on the part of the law-makers against management of companies. It is true that the provisions of the Companies (Amendment) Act, 1974, imposing restrictions upon the power of companies to accept deposits from the public contain a power of the court to impose as drastic a punishment as a fine not less than an amount equal to the amount of deposit accepted in contravention which may run into millions of rupees. This means that for the first time the legislature has thought it fit to provide a guideline for the Court trying an offence under the relevant provision of the Companies Act, 1956, namely, Section 58A. This is a co-ordinated approach as between the prosecuting authority and the deciding authority in respect of a major offence under the Companies Act. This provision should, therefore, reduce the chances of acceptance of deposits in contravention of the law to the utmost extent. Acceptance of public deposits by companies had tended in the past towards an abuse of power resulting in the dicing of investors (many of them small and gullible) on the one hand, and the sidetracking the anti-inflationary monetary policies of the Government on the other. The need for deterrent punishment has been felt in such cases and is in line with the seriousness with which economic offences are looked upon by the society. Imprisonment can now be imposed as punishment for the more serious offences as it has been felt that the law should be more effective in providing deterrence against such crimes.

It would be interesting to recall that the Companies Act conferred a significant right on the shareholders known as the preemptive right to acquire further issue of shares. In 1960, however, a serious inroad was made upon this right by making it permissible for a company to issue further shares to lending institutions stipulating for an option to acquire shares in lieu of the loans given by them to the company. The provision of such a stipulation in the loan agreements between the borrowing company and the lending institutions like the IDBI, IFC, ICICI, LIC, UTI, State Bank or other nationalised banks were conceived of in the public interest and the arrangement is meant to enable the financial institutions to build up a stake in the proper management of the companies. The dependence of companies for large-scale borrowings upon public financial institutions shows the potentiality of the option as an instrument of achieving socialisation of the companies whenever their development assumes a critical turn. The amendment to Section 81 brought in 1960 assumed a significant importance in the context of the joint sector concept as distinct from the private and the public sector. Where public financial institutions have lent money to companies belonging to the private sector of enterprise, such companies will attract special audit procedure under circumstances as laid down in the latest amendment of the law (Section 519B). This would ensure a greater degree of accountability which is desirable from the public point of view in as in the case of Government companies.

The concept of shareholders' democracy associated with the concept of a company has its inherent limitations and as such the approval of the Central Government as an independent authority capable of looking into matters of various nature has been insisted upon by the statute right from the beginning. The need for protection to the shareholders is great because generally they are widely scattered, and they can be quite helpless against the management. The
fiduciary responsibility of a director to the company, though traditionally recognised, is capable of enforcement only through a court of law whose proceedings are inevitably dilatory. Moreover, the courts have, in developing the doctrine of fiduciary responsibility, hedged it with safeguards for the management as in the well-known rule in *Foss vs Hope* or the equally well-known rule in *Perceval vs Wright*. Central Government approval over and above the need for obtaining approval at a general meeting of the company has, therefore, been prescribed in many instances in the public interest.

The Department of Company Affairs has evolved for itself guidelines, consistent with the policy of the Government on broad economic issues, in such matters as regulating managerial remuneration or permitting intercorporate loans. Such guidelines for performance of its duties under the Act have been reported to Parliament from time to time. In order to save the Department from the criticism that it acts arbitrarily in the exercise of its powers sanctioning remuneration to managerial personnel a whole set of principles have now been laid down in a new Section 637AA by the Companies (Amendment) Act, 1974. This would also remove the difficulties created by some decisions of High Courts on the applicability of an administrative ceiling within a statutory ceiling on permissible remuneration. Attention has also been given to public policy relating to the removal of disparities in income, to the extent possible. Under the latest amendment to Section 314 of the Act, power has been taken to scrutinise the cases of appointment of officers (not necessarily in the categories of managerial personnel specified in Section 197A) on a monthly remuneration of Rs. 3000 or more. The Directors’ report to the shareholders under Section 217 must now also include a statement on the names, qualifications and emoluments etc. of employees of the company drawing remuneration of Rs. 3000 per month and above. The shift from the emphasis merely on the need to protect the interests of shareholders to a much larger concept, namely, the need to attain our social goals has become conspicuous over the years since the inception of the Companies Act, 1956.

This shift in emphasis is also apparent from the provisions of the Companies (Amendment) Act, 1974 restricting the power of the management to draw money from the profits transferred to the reserves in earlier years for the purpose of declaring dividends to the shareholders in a particular year. The law also requires that before declaring any dividend, the management shall transfer up to ten per cent of the profits to the reserves. It will thus be clear that the accountability concept of the reserves of a company as belonging to its shareholders has undergone a considerable change. The reserves are now equally viewed as belonging to the company as a juristic entity with a continuity of existence transcending the sole interests of individual shareholders.

Apart from the powers given in the Companies Act to convey approvals and permissions in respect of exercise of corporate powers and utilisation of corporate funds by management, specific duties and responsibilities have been cast on the Central Government and the Company Law Board to ensure that the affairs of companies do not deteriorate seriously and thus cause distress to the members, creditors and employees or create situations detrimental to the public interest. In situations where management is guilty of fraud, misfeasance or misconduct, inspection and investigation can be undertaken not only to punish the guilty but also to see that the companies are compensated for the
damage done to them. By a judicious exercise of these powers, many important undertakings which would otherwise have come to grief have been saved by the Central Government or the Company Law Board. These special powers and functions of a preventive nature covering inspection, investigation, special audit, imposition of restriction on voting rights and appointment of Government directors have been enlarged. It was felt that in order to keep pace with the socio-economic changes the statutory provisions of a preventive nature should be strengthened to subserve public good. The Board has not hesitated to take swift and timely action in appropriate cases.

The doctrine of social responsibility of business has kept pace with the felt need for professionalisation of management. Professionalisation of management aims that a company should be relieved of the stranglehold of dynastic control retained by certain business families for their own benefit. Such dynastic control was evident in the managing agency system which was finally abolished with effect from April 3, 1970. The abolition of the managing agency system implied the need for a substitute form of management which could claim that it possessed the knowledge and expertise for business and industry. As a step towards professionalisation of management, the Department has promoted an institute under the name of Institute of Company Secretaries of India which would provide a pool of expertise on which companies might draw freely with benefit.

The Department of Company Affairs is also vitally concerned with two other institutes, namely, the Institute of Chartered Accountants of India and the Institute of Cost and Works Accountants of India which provide the professional element in the service of companies. Members of these Institutes function not only as financial auditors and cost auditors, but it is also possible for companies to employ members of the Institutes on a whole-time basis at the top executive levels. The provisions for cost audit of certain types of companies whose activities are significant to the national economy were introduced into the Companies Act in 1956 and the scope has been enlarged over the years. Detailed and comprehensive study of the affairs of all kinds of companies is now required of the auditors in accordance with the orders issued under Section 227(4A) of the Companies Act. All these measures are designed in a way to meet the demand for “social audit”, “propriety audit” and “efficiency audit”, which has been very much in the air in recent times.

The work of the Department during the last twenty odd years of its existence has to be seen with reference to the objectives of the law, which, to use the words of Mr. G. D. Deshmukh piloting the Bill in Parliament, are,

“to adjust the structure and methods of corporate form of business management with a view to weave an integrated pattern of relationship as between promoters, investors and the managements so that the following ends may be achieved: —

(1) The efficiency of corporate business may be increased as measured by the accepted standards.

(2) Managerial efficiency may be reconciled with the legitimate rights of investors.

(3) The interests of creditors and other partners in production and distribution may be duly safeguarded, and
The attainment of the ultimate ends of social policy, including labour relations, may be helped and not hindered by the manner in which the corporate form of business organisation works in this country."

To all this a new dimension has been added in later years, namely, the relationship of companies with the consumers of the products and services turned out by them. The solicitude which the law shows for the consumers would be apparent from the provisions relating to cost audit as also the provisions whereby industries that are less capital-intensive but more consumer-oriented are brought within the definition of "public companies". New provisions relating to sole selling agency have also been introduced by the insertion of Section 294AA in the Act in order to safeguard the interests of consumers.

I have stated in this brief introduction how Company Law and the Department of Company Affairs have been on the move continuously over the last two decades or so. It would, however, be naive to expect that legislation will by itself open up a new world for us. Material happiness can only be gained by a determined will on the part of every one to work with a sense of duty and with faith in the higher power that shapes our ends. Social good can result only from a greater degree of awareness on the part of everyone of his social responsibilities in a fast changing world.

K. K. RAY,
Secretary to Govt. of India,
and
Chairman, Company Law Board,
New Delhi.
# TABLE OF CONTENTS

## Chapter I

**DEFINITIONS**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Body Corporate</td>
</tr>
<tr>
<td>2</td>
<td>Establishment under GNGC Act—Position</td>
</tr>
<tr>
<td>3.1</td>
<td>Branch Office</td>
</tr>
<tr>
<td>3.2</td>
<td>Factory, other establishments etc.</td>
</tr>
<tr>
<td>4</td>
<td>Director</td>
</tr>
<tr>
<td>5.1</td>
<td>Manager</td>
</tr>
<tr>
<td>5.2</td>
<td>Factory Manager</td>
</tr>
<tr>
<td>6.1</td>
<td>Managing Director</td>
</tr>
<tr>
<td>6.2</td>
<td>Whole-time Director</td>
</tr>
<tr>
<td>7</td>
<td>Officer</td>
</tr>
<tr>
<td>8</td>
<td>Recognised Stock Exchanges</td>
</tr>
<tr>
<td>9</td>
<td>Meaning of Holding Company</td>
</tr>
<tr>
<td>10</td>
<td>Relative</td>
</tr>
<tr>
<td>11</td>
<td>Jurisdiction of courts</td>
</tr>
</tbody>
</table>

## Chapter II

**COMPANY LAW BOARD**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Delegation of Powers to Company Law Board</td>
</tr>
</tbody>
</table>

## Chapter III

**INCORPORATION OF COMPANIES AND INCIDENTAL MATTERS**

**Prohibited Associations**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>13.1</td>
<td>Prohibition of associations and partnerships exceeding certain number</td>
</tr>
<tr>
<td>13.2</td>
<td>Memorandum of Association</td>
</tr>
<tr>
<td>13.3</td>
<td>Arrangement of object clause</td>
</tr>
<tr>
<td>13.4</td>
<td>Discrimination of objects</td>
</tr>
<tr>
<td>13.5</td>
<td>Allocated to be registered within three months</td>
</tr>
<tr>
<td>13.6</td>
<td>Void orders—Revival of Order</td>
</tr>
<tr>
<td>13.7</td>
<td>Names of Companies—Guiding Instructions</td>
</tr>
<tr>
<td>13.8</td>
<td>Guidelines regarding change of names</td>
</tr>
<tr>
<td>13.9</td>
<td>Availability of the word “Hindustan” and “Corporation”</td>
</tr>
</tbody>
</table>

**Association not for Profit**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>13.10</td>
<td>Association not for profit—Procedure for dealing with application for grant of licence</td>
</tr>
<tr>
<td>13.11</td>
<td>Companies registered in pursuance of licence—exemption</td>
</tr>
<tr>
<td>13.12</td>
<td>Exemption to Sec. 25 Companies—Notifications</td>
</tr>
<tr>
<td>13.13</td>
<td>Clarification regarding election of directors in case of Section 25 companies</td>
</tr>
<tr>
<td>13.14</td>
<td>Form Membership of Sec. 25 Companies</td>
</tr>
</tbody>
</table>

(ix)
**Articles of Association**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Details</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.1</td>
<td>Alteration of Articles of Association</td>
<td>21</td>
</tr>
<tr>
<td>14.2</td>
<td>43A Companies: Application by companies</td>
<td>21</td>
</tr>
<tr>
<td>15</td>
<td>Section 31: Common Seal—Clarification</td>
<td>21</td>
</tr>
<tr>
<td>15.1</td>
<td>Common Seal</td>
<td>21</td>
</tr>
<tr>
<td>16</td>
<td>Membership</td>
<td>21</td>
</tr>
<tr>
<td>16.1</td>
<td>Membership of company—holding of shares by a minor in a company</td>
<td>21</td>
</tr>
<tr>
<td>16.2</td>
<td>Expulsion of member</td>
<td>22</td>
</tr>
<tr>
<td>16.3</td>
<td>Societies Registration Act—Membership</td>
<td>23</td>
</tr>
<tr>
<td>16.4</td>
<td>Societies Registration Act—Whether a person</td>
<td>23</td>
</tr>
<tr>
<td>16.5</td>
<td>Membership of a Company—holding of shares by a minor—whether permissible</td>
<td>23</td>
</tr>
<tr>
<td>16.6</td>
<td>Minor—Membership of Company</td>
<td>23</td>
</tr>
<tr>
<td>16.7</td>
<td>Public Office—shares held</td>
<td>23</td>
</tr>
<tr>
<td>16.8</td>
<td>Collector of District—Member</td>
<td>24</td>
</tr>
<tr>
<td>16.9</td>
<td>Gosaka Charitable Trust</td>
<td>24</td>
</tr>
</tbody>
</table>

**CHAPTER IV**

17. **PRIVATE COMPANIES**

**Demand Public Companies**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Details</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>17.1</td>
<td>Section 43A—effect of an executive’s appointments, remuneration etc.</td>
<td>27</td>
</tr>
<tr>
<td>17.2</td>
<td>Section 43A—formalities to be complied with on conversions</td>
<td>27</td>
</tr>
<tr>
<td>17.3</td>
<td>Section 43A—intimation regarding change in the membership of a shareholding Company</td>
<td>27</td>
</tr>
<tr>
<td>17.4</td>
<td>Section 43A—number of shareholding—counting of</td>
<td>28</td>
</tr>
<tr>
<td>17.5</td>
<td>Section 43A—reconversion into a Private Limited Company—steps for</td>
<td>29</td>
</tr>
<tr>
<td>17.6</td>
<td>Section 43A—application of Section 204(3)</td>
<td>29</td>
</tr>
<tr>
<td>17.7</td>
<td>Section 43A—Requirements for entire shareholding</td>
<td>29</td>
</tr>
<tr>
<td>17.8</td>
<td>Section 43A—effect of Section 49</td>
<td>30</td>
</tr>
<tr>
<td>17.9</td>
<td>Section 43A—managerial remuneration</td>
<td>30</td>
</tr>
<tr>
<td>17.10</td>
<td>Section 43A—classification of sub-section (ii)</td>
<td>30</td>
</tr>
<tr>
<td>17.11</td>
<td>Section 43A—Computation of the percentage of shareholding for the purpose of Section 43A(1)</td>
<td>30</td>
</tr>
<tr>
<td>17.12</td>
<td>Section 43A—clarification addressed to all recognized Chambers of Commerce &amp; Trade Associations</td>
<td>31</td>
</tr>
<tr>
<td>17.13</td>
<td>Same person holding shares—Counting</td>
<td>32</td>
</tr>
<tr>
<td>17.14</td>
<td>Section 43A—approval under section 43A(1) and section 31(1) of the Companies Act—clarification regarding conversion</td>
<td>33</td>
</tr>
<tr>
<td>17.15</td>
<td>Section 43A—intimation given to the Registrar of Companies under Section 43A(2)—whether may be treated as a document</td>
<td>33</td>
</tr>
<tr>
<td>17.16</td>
<td>Section 43A—applicability of Section 43A(1A)</td>
<td>33</td>
</tr>
<tr>
<td>17.17</td>
<td>Section 43A—certain clarifications</td>
<td>34</td>
</tr>
<tr>
<td>17.18</td>
<td>Section 43A—interpretation of the relevant period—Section 43A(1A) and explanation</td>
<td>34</td>
</tr>
<tr>
<td>17.19</td>
<td>Section 43A—clarification of Section 43A(1B)</td>
<td>34</td>
</tr>
<tr>
<td>17.20</td>
<td>Section 43A—applicability of Section to Government Companies</td>
<td>35</td>
</tr>
</tbody>
</table>
## Chapter V
### 18. Prospectus

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.1</td>
<td>Section 56 — advertisement of prospectus</td>
<td>37</td>
</tr>
<tr>
<td>18.2</td>
<td>Newspaper advertisement — Pro forma</td>
<td>38</td>
</tr>
<tr>
<td>18.3</td>
<td>Issue of form of application for shares without enclosing copies of prospectus — contravention of Section 56(3)</td>
<td>39</td>
</tr>
<tr>
<td>18.4</td>
<td>Statement in a circular contrary to the terms of sanction by Controller of Capital Issues</td>
<td>39</td>
</tr>
<tr>
<td>18.5</td>
<td>Pro forma advertisement — Additional Information</td>
<td>39</td>
</tr>
<tr>
<td>18.6</td>
<td>Section 56 — unsound practices disclosed in prospectuses</td>
<td>40</td>
</tr>
<tr>
<td>18.7</td>
<td>Section 56 — shares reserved for subscription on a first allotment basis to be excluded out of the number of shares offered to the public for subscription</td>
<td>41</td>
</tr>
<tr>
<td>18.8</td>
<td>Section 56 — advance approval of the prospectus in draft stage</td>
<td>41</td>
</tr>
<tr>
<td>18.9</td>
<td>Clause 24(1) in part II of Schedule II of Companies Act — interpretation of</td>
<td>41</td>
</tr>
<tr>
<td>18.10</td>
<td>Newspaper advertisement</td>
<td>42</td>
</tr>
<tr>
<td>18.11</td>
<td>Newspaper advertisement — Exaggeration</td>
<td>42</td>
</tr>
<tr>
<td>18.12</td>
<td>Further Issue of shares — necessity to issue prospectus</td>
<td>43</td>
</tr>
<tr>
<td>18.13</td>
<td>Section 61 — prospectus — alterations, deletion or additions made at the instance of the Registrar</td>
<td>43</td>
</tr>
<tr>
<td>18.14</td>
<td>Section 60 — List of discussions and decisions</td>
<td>43</td>
</tr>
<tr>
<td>18.15</td>
<td>New capital issues — supply of copies of prospectus to Reserve Bank of India</td>
<td>44</td>
</tr>
</tbody>
</table>

### Chapter VI
#### 19. Company Deposits

**Section 38A and 38B**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.1</td>
<td>Section 38A — applicability of Section 54A of the Companies Act, 1956 and the Companies (Acceptance of Deposits) Rules, 1975</td>
<td>45</td>
</tr>
<tr>
<td>19.2</td>
<td>Deposits from shareholders and Directors</td>
<td>45</td>
</tr>
<tr>
<td>19.3</td>
<td>Deposits from others</td>
<td>45</td>
</tr>
<tr>
<td>19.4</td>
<td>Section 38A — The Companies (Acceptance of Deposits) Rules, 1975 — clarification — Sub-rule 4 of Rule 4</td>
<td>45</td>
</tr>
<tr>
<td>19.5</td>
<td>The Companies (Acceptance of Deposits) Rules, 1975 — Need for advertisement in case of renewal of existing deposits</td>
<td>46</td>
</tr>
<tr>
<td>19.6</td>
<td>Clarification Reg. Rule 4, sub-rule 4</td>
<td>46</td>
</tr>
<tr>
<td>19.7</td>
<td>Section 38A — The Companies (Acceptance of Deposits) Rules, 1975 — clarification Sub-rule 5 of Rule 4</td>
<td>46</td>
</tr>
<tr>
<td>19.8</td>
<td>Section 38B — clarification</td>
<td>46</td>
</tr>
<tr>
<td>19.9</td>
<td>Clarification of Companies (Acceptance of Deposits) Rules</td>
<td>47</td>
</tr>
</tbody>
</table>

### Chapter VII
#### 20. Allotment of Shares

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.1</td>
<td>Section 69 — Allotment of shares</td>
<td>51</td>
</tr>
<tr>
<td>20.2</td>
<td>Section 70 — share capital — propriety of issue of shares as donation</td>
<td>51</td>
</tr>
<tr>
<td>20.3</td>
<td>Section 70 — minimum/maximum period during which subscription list should be kept open</td>
<td>51</td>
</tr>
<tr>
<td>20.4</td>
<td>Section 75 — extension of time for filing of return of allotment</td>
<td>52</td>
</tr>
<tr>
<td>20.5</td>
<td>Section 73 — dividend — clarification</td>
<td>52</td>
</tr>
<tr>
<td>20.6</td>
<td>Section 75 — clarification regarding extension of time for filing of return of allotment with Registrar under Section 75(3)</td>
<td>53</td>
</tr>
<tr>
<td>20.7</td>
<td>Allotment for cash</td>
<td>53</td>
</tr>
</tbody>
</table>
### Chapter VIII

#### 21. SHARE CAPITAL, SHAREHOLDERS AND TRANSFER OF SHARES

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>21.1</td>
<td>Section 81—further allotment out of unissued capital</td>
<td>55</td>
</tr>
<tr>
<td>21.2</td>
<td>Further issue of shares to members</td>
<td>55</td>
</tr>
<tr>
<td>21.3</td>
<td>Propriety of inclusion of a provision similar to Section 81 in the article of a private company</td>
<td>56</td>
</tr>
<tr>
<td>21.4</td>
<td>Counting of period of one year under Section 81(1)</td>
<td>56</td>
</tr>
<tr>
<td>21.5</td>
<td>Conversion of loan into shares—prospective in effect</td>
<td>56</td>
</tr>
<tr>
<td>21.6</td>
<td>Section 81(4) applies to Private Companies—legal opinion</td>
<td>56</td>
</tr>
</tbody>
</table>

#### 22. KINDS OF CAPITAL

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>22.1</td>
<td>Dividends—clarification with reference to Section 86</td>
<td>57</td>
</tr>
<tr>
<td>22.2</td>
<td>Clarification regarding Section 88 and 89—Query</td>
<td>57</td>
</tr>
<tr>
<td>22.3</td>
<td>Section 94: Power of a Company to alter its share capital</td>
<td>58</td>
</tr>
<tr>
<td>22.4</td>
<td>Section 95—consolidation of share capital</td>
<td>58</td>
</tr>
</tbody>
</table>

#### 23. VARIATION OF RIGHTS

**Shareholders' Rights, variation of—Section 106 vis-à-vis Preference shares—(Regulation of Dividends) Act 1969** | 59 |

#### 24. TRANSFER OF SHARES AND DEBENTURES

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>24.1</td>
<td>Section 107—companies to furnish particulars of deceased persons to the Controller—requirement under Section 94 of the Estate Duty Act</td>
<td>59</td>
</tr>
<tr>
<td>24.2</td>
<td>Section 108—clarification regarding requirement of producing of instrument of transfer</td>
<td>59</td>
</tr>
<tr>
<td>24.3</td>
<td>Section 108—restriction on blank transfer of shares—procedure clarified</td>
<td>60</td>
</tr>
<tr>
<td>24.4</td>
<td>Section 108—clarification regarding fixing a 'record date' without closing register of members</td>
<td>60</td>
</tr>
<tr>
<td>24.5</td>
<td>Section 108—extension of time for registering transfer of shares under sub-section (II) of Section 108</td>
<td>60</td>
</tr>
<tr>
<td>24.6</td>
<td>Share Transfer Form (Form 7B)—endorsement—regarding</td>
<td>61</td>
</tr>
<tr>
<td>24.7</td>
<td>Section 108A—Restriction on Acquisition of shares</td>
<td>61</td>
</tr>
<tr>
<td>24.8</td>
<td>Section 108B—Restrictions on Transfer</td>
<td>62</td>
</tr>
<tr>
<td>24.9</td>
<td>List of prescribed authority—Section 100(1A)</td>
<td>62</td>
</tr>
<tr>
<td>24.10</td>
<td>List of Financial institutions approved under Section 100(1U) Companies Act</td>
<td>63</td>
</tr>
<tr>
<td>24.11</td>
<td>Section 111—refusal to register transfer</td>
<td>64</td>
</tr>
</tbody>
</table>

### Chapter IX

#### 25. CHARGES

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>25.1</td>
<td>Registration of charges</td>
<td>Section 125</td>
</tr>
<tr>
<td>25.2</td>
<td>Section 125—pledge of movable assets</td>
<td>63</td>
</tr>
<tr>
<td>25.3</td>
<td>Section 125 and 135: Filing of Forms—8 and 14</td>
<td>69</td>
</tr>
<tr>
<td>25.4</td>
<td>Section 135—registration of modification of charges</td>
<td>67</td>
</tr>
<tr>
<td>25.5</td>
<td>Section 135—modification of charge—variation in rate of interest arising out of increase in Bank rate</td>
<td>67</td>
</tr>
<tr>
<td>25.6</td>
<td>Filing of Form Nos. 9 and 14 in modification of charges</td>
<td>67</td>
</tr>
<tr>
<td>25.7</td>
<td>Filing of Form Nos. 8 and 14 in respect of modification of charges</td>
<td>68</td>
</tr>
<tr>
<td>25.8</td>
<td>Section 134—Satisfaction of charges—notice to the holder</td>
<td>68</td>
</tr>
<tr>
<td>25.9</td>
<td>Section 144—Rectification of the Register of charges</td>
<td>69</td>
</tr>
<tr>
<td>25.10</td>
<td>Application to the Court for condoning delay</td>
<td>69</td>
</tr>
<tr>
<td>25.11</td>
<td>Section 141—late filing of return</td>
<td>69</td>
</tr>
</tbody>
</table>
CHAPTER X
26. COMPANIES MANAGEMENT AND ADMINISTRATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>146</td>
<td>Location of the registered office</td>
<td>71</td>
</tr>
<tr>
<td>147</td>
<td>Publication of name</td>
<td>71</td>
</tr>
<tr>
<td>147</td>
<td>Publication of company's name in notice</td>
<td>71</td>
</tr>
<tr>
<td>147(2)</td>
<td>Whether state certificate is an official publication within the meaning of subsection (2) (c)</td>
<td>72</td>
</tr>
<tr>
<td>148</td>
<td>Clarification regarding specifying authorized capital on its share certificate</td>
<td>72</td>
</tr>
</tbody>
</table>

**Companies' Seal :**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>147</td>
<td>Company's seal—Section 147—manner in which company’s seal should be kept—clarification</td>
<td>72</td>
</tr>
</tbody>
</table>

**Commencement of Business :**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>149</td>
<td>Compliance of the provisions of Section 149 and Section 169 by public companies registered under part IX of the Act</td>
<td>73</td>
</tr>
<tr>
<td>149</td>
<td>Certificate of commencement of business—applicability to Private companies converted into Public company</td>
<td>73</td>
</tr>
</tbody>
</table>

**Register of Members—Dormant Holders :**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>150</td>
<td>Register of members and debenture-holders—clarification regarding 'occupation' of Joint shareholders</td>
<td>73</td>
</tr>
<tr>
<td>150</td>
<td>Shares held by minors—entry in register of members</td>
<td>73</td>
</tr>
<tr>
<td>153</td>
<td>Admission of Trusts as members</td>
<td>74</td>
</tr>
</tbody>
</table>

**Public Trust :**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>153</td>
<td>Declaration to Public Trustee—Section 153(B) clarification</td>
<td>74</td>
</tr>
<tr>
<td>153</td>
<td>Declaration should be by all the Trustees</td>
<td>74</td>
</tr>
<tr>
<td>153</td>
<td>Whether the declaration should be in respect of preference shares as well</td>
<td>74</td>
</tr>
<tr>
<td>153</td>
<td>Declaration is to shares and debentures held in Trust—clarification of Section 153R</td>
<td>75</td>
</tr>
</tbody>
</table>

**Classe of Register :**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>154</td>
<td>Register of Members—anote Section 154—in the делеет of Transfer Books or share transfer books of a company—need for strict compliance with the provisions of Section 154</td>
<td>75</td>
</tr>
</tbody>
</table>

**Reduction of Register :**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>155</td>
<td>Reduction of Register—Section 155—clarification by Court necessary in cases of wrong allotment</td>
<td>75</td>
</tr>
</tbody>
</table>

**Annual Return :**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>159</td>
<td>Annual Return—Section 159 and 160—purpose of filing Annual Returns</td>
<td>76</td>
</tr>
<tr>
<td>160</td>
<td>Delay in filing the annual return—penalties</td>
<td>76</td>
</tr>
<tr>
<td>160</td>
<td>Certificate regarding annual return</td>
<td>76</td>
</tr>
</tbody>
</table>

**General Meeting :**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>166</td>
<td>Annual general meeting—Section 166—extension of time</td>
<td>77</td>
</tr>
<tr>
<td>166</td>
<td>Section 166—Annual General Meeting</td>
<td>77</td>
</tr>
<tr>
<td>166</td>
<td>Implication of 'time' in subsection (2)</td>
<td>77</td>
</tr>
</tbody>
</table>
### Section 166

#### Shares held in Trust

- **Section 166**: Holding of shares in a company in trust by a Society—applicability of Section 167B
- **Section 167**: Public Trustee cannot give consent under Section 171(2)

### Declaration of Beneficial Interest

- **Section 187C**: Scope of the section and the rules made thereunder
- **Section 187C**: Applicability to Private Trusts
- **Section 187C**: Declaration of Beneficial interest in shares—classification
CHAPTER XI

29. FILING OF RESOLUTIONS MINUTES

Section 192—clarification regarding sub-section (2) .................................................... 91

30. MINUTES

30.1 Minute Book—maintenance—section 193—clarification regarding minutes in loose-leaf form 91

30.2 Section 193—clarification regarding the provisions of Section 193(1B) .................................. 91

30.3 Section 193—keeping of minutes of meetings ............................................................................. 92

30.4 Section 193—writing of minutes within thirty days—clarification ............................................... 92

30.5 Section 193—keeping of minutes .................................................................................................. 92

30.6 Section 193—maintenance of minutes of proceedings of Board of Directors ................................. 93

30.7 Section 196—place of keeping the minute books—Query ............................................................ 93

30.8 Signing of the minutes—section 193 vis-a-vis section 205—clarification ..................................... 93

31. MISLEADING NOMENCLATURE

31.1 Misleading nomenclature—section 187A—managerial personnel of companies—adoption of new nomenclature ...................................... 94

31.2 Sections 187A, 267 and 316(1)—"Employment and "Appointment"—meaning of ......................... 95

CHAPTER XII

32. OVERALL REMUNERATION—COMMISSION ETC.

32.1 Section 198—overall managerial remuneration ................................................................. 97

32.2 Section 198—managerial remuneration—clarification regarding perquisites ............................... 97

33. MANAGING, WHOLETIME DIRECTOR

33.1 Managing Director—wholetime director—section 198: Section 269: "whole-time director" and "Director in whole-time employment"— ................................................................. 98

33.2 Section 198—clarification regarding section 198—Query—Answer ............................................ 99

33.3 Overall Managerial Remuneration—section 190—minimum remuneration—Government's power 99

33.4 Section 198—clarification regarding subsection (4) .............................................................. 99

33.5 Section 198—payment of minimum remuneration in the event of absence or inadequacy of profits 100

33.6 Section 198—criterion for approving proposals involving payment of remuneration in excess of prescribed limits ........................................................................................................ 100

33.7 Section 198—remuneration paid to technical directors or directors designated as technical advisors whether outside the purview of Section 198(1) ........................................... 101

33.8 Section 198—appointment of a company as Secretary to another company—whether circumstances Section 196(1) ....................................................................................................... 101

33.9 Section 199—overall managerial remuneration ........................................................................ 101

33.10 Section 199—increase in the remuneration of directors whether in accordance with the provisions of Section 198 ................................................................. 102

33.11 Section 198—Banking companies to obtain approval of the Central Government when remuneration exceeded the prescribed limits ............................................................ 103

34. COMMISSION CALCULATIONS, REIMBURSEMENT

Calculation of commission—section 199—whether applies to private companies .......................... 103

35. REIMBURSEMENT OF EXPENSES

Reimbursement of expenses—section 201—reimbursement of the expenses to the Managing Directors etc in connection with the criminal cases instituted against them ..................................... 103

2-26 M of 1J CA/NIY76
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>36.1</td>
<td>Managing Agents—Secretaries and Treasurers—restrictions on their appointment—section 294—restrictions on appointment of firm and body corporate in office or place of profits—contravention of Section 231</td>
</tr>
<tr>
<td>36.2</td>
<td>Section 249A—restriction on the appointment of associates of managing agents</td>
</tr>
<tr>
<td>36.3</td>
<td>Section 249A—clarification—regarding</td>
</tr>
</tbody>
</table>

**CHAPTER XIII**

**DIVIDEND, MANNER AND TIME OF PAYMENT**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>37.1</td>
<td>Section 285—Treatment of depreciation</td>
</tr>
<tr>
<td>37.2</td>
<td>Section 285—depreciation in respect of assets used in earning agricultural income</td>
</tr>
<tr>
<td>37.3</td>
<td>Section 285—decleration of dividend on assets out of a past year's profit</td>
</tr>
<tr>
<td>37.4</td>
<td>Section 285—calculation of depreciation</td>
</tr>
<tr>
<td>37.5</td>
<td>Section 285—mode of calculating depreciation</td>
</tr>
<tr>
<td>37.6</td>
<td>Section 285—determination of specified period—Query—Answer</td>
</tr>
</tbody>
</table>

**DEPRECIATION OF ASSETS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>38.1</td>
<td>Section 203—determination of specified period</td>
</tr>
<tr>
<td>38.2</td>
<td>Section 203—determination of specified period</td>
</tr>
<tr>
<td>38.3</td>
<td>Section 203—declaration of dividend without providing for depreciation</td>
</tr>
<tr>
<td>38.4</td>
<td>Section 203—depreciation in respect of assets for which no provision is made in the Income Tax Act</td>
</tr>
<tr>
<td>38.5</td>
<td>Section 205—clarification regarding clause (b) of the first proviso to Section 205(1)</td>
</tr>
<tr>
<td>38.6</td>
<td>Section 205—writing back of the depreciation on the fixed assets provided in excess in previous years</td>
</tr>
<tr>
<td>38.7</td>
<td>Section 205—dividend warrants issued by some companies encashable only at particular branches of the companies barely</td>
</tr>
<tr>
<td>38.8</td>
<td>Section 205—depreciation on straight line method</td>
</tr>
<tr>
<td>38.9</td>
<td>Section 205(2)(b)—clarification regarding computation of depreciation under the straight line method</td>
</tr>
</tbody>
</table>

**TRANSFER TO RESERVE**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>39.1</td>
<td>Transfer to Reserve—the Companies (Transfer of Profits to Reserve) Rules, 1975 and the Companies (Declaration of Dividend out of Reserve) Rules, 1975—clarification</td>
</tr>
<tr>
<td>39.2</td>
<td>The Companies (Transfer of Profits to Reserve) Rules, 1975 and the Companies (Declaration of Dividend out of Reserve) Rules, 1975—clarification</td>
</tr>
<tr>
<td>39.3</td>
<td>Section 205(2A)—transfer to general reserves</td>
</tr>
<tr>
<td>39.4</td>
<td>Transfer of unpaid dividend</td>
</tr>
</tbody>
</table>

**PAYMENT OF DIVIDEND**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>40.1</td>
<td>Payment of Dividend—Section 207—distribution of dividend within 49 days</td>
</tr>
<tr>
<td>40.2</td>
<td>Section 207—clarification regarding special provisions</td>
</tr>
</tbody>
</table>
CHAPTER XIV

41. COMPANIES BOOKS OF ACCOUNT—BALANCE SHEET

41.1 Section 209—Accounts

41.2 Section 209—Submission of summarised returns

41.3 Section 209—Accounts to be kept by a company—filing certificate with the Registrar of Companies

41.4 Section 209—Maintenance of books of account at a place outside the State in which companies are registered

41.5 Section 209—Clarification of Section 208(4A)

42. INSPECTION OF BOOKS

42.1 Inspection of Books of Account—Section 209A—Inspection of book of accounts—instructions

42.2 Section 209A—Inspection of documents relating to appointment of former managing agents

43. ANNUAL ACCOUNTS

43.1 Annual Accounts—Section 210

43.2 Section 210—holding of adjourned annual general meeting

43.3 Section 210—Accounts—clarification

43.4 Section 211—General instructions for the preparation of balance sheet—redeemable preference shares

43.5 Section 211—Display of the corresponding figures for the immediately preceding financial year

43.6 Section 211—Model form of balance sheet other than set out in Schedule VI—Part I to Part III

43.7 Section 211—Company accounts—some important problems

43.8 Section 211—Charging of bonus payable to the profit and loss account

43.9 Section 211 and 220—Balance sheets of companies engaged in the generation and supply of electricity

43.10 Section 211—Clarifications of the form in Schedule VI

43.11 Section 211—Notification amending Schedule VI

44. AUTHENTICATION OF BALANCE SHEET

44.1 Authentication of balance sheet—Section 215

44.2 Section 215—Authentication of the annual accounts by the Secretary of a company

44.3 Do

44.4 Section 213—Authentication of the balance sheet and profit and loss account and signing of the same by the auditors

44.5 Section 213—Authentication of the balance sheet and profit and loss account and signing of the same by the auditors

45. DIRECTORS' REPORT

45.1 Director's Report—Section 217—Board's Report

45.2 Section 217—Whether Managing Director is an employee of the company

45.3 Section 217(2A)—Clarification

45.4 Section 217(2A)—M/s. Vohra Limited—annual accounts—provisions of Section 217(2A)
### 46. FILING OF A BALANCE SHEET

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>46.1</td>
<td>Section 220—Filing of copies of balance sheet etc. with Registrar</td>
<td>133</td>
</tr>
<tr>
<td>46.2</td>
<td>Section 220—filing of the profit and loss account of private limited companies—Section 223(1)</td>
<td>133</td>
</tr>
<tr>
<td>46.3</td>
<td>Section 220—filing of Board's report along with the accounts with the Registrar</td>
<td>131</td>
</tr>
<tr>
<td>46.4</td>
<td>Section 220—accounts may be filed with the Registrar without director's report or notice of the annual general meeting</td>
<td>134</td>
</tr>
<tr>
<td>46.5</td>
<td>Section 220—laying of balance sheet and profit and loss account before the annual general meeting</td>
<td>134</td>
</tr>
</tbody>
</table>

### Chapter XV

#### 47. AUDIT AND AUDITORS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>47.1</td>
<td>Auditors—Section 224—auditor's remuneration</td>
<td>135</td>
</tr>
<tr>
<td>47.2</td>
<td>Section 224—auditors—appointment</td>
<td>135</td>
</tr>
<tr>
<td>47.3</td>
<td>Section 224—tenure of office of the auditors—clarification</td>
<td>133</td>
</tr>
<tr>
<td>47.4</td>
<td>Section 224—auditor—acceptance of appointment</td>
<td>136</td>
</tr>
<tr>
<td>47.5</td>
<td>Section 224—certificate by an auditor under proviso to sub-section (1) and applicability of sub-section (1B) and (1C) of Section 224—clarification</td>
<td>136</td>
</tr>
<tr>
<td>47.6</td>
<td>Section 224—certificate of auditors to be sent to Registrar of Companies under Section 224(1C)</td>
<td>137</td>
</tr>
<tr>
<td>47.7</td>
<td>Section 224—whether the branch audit of the Indian companies and the audit of the Indian Business Accounts of the foreign companies are to be included while calculating the specified number—explanation 1 of sub-section (1C) of Section 224</td>
<td>137</td>
</tr>
<tr>
<td>47.8</td>
<td>Section 224—application to the Central Government under Section 224(3)—payment of fees—clarification</td>
<td>139</td>
</tr>
<tr>
<td>47.9</td>
<td>Section 224—appointment of auditors under Section 224(3)</td>
<td>138</td>
</tr>
<tr>
<td>47.10</td>
<td>Section 224—power of the Central Government to appoint an auditor under Section 224(3)</td>
<td>139</td>
</tr>
<tr>
<td>47.11</td>
<td>Section 224A—clarification of the provisions of Section 224A</td>
<td>139</td>
</tr>
<tr>
<td>47.12</td>
<td>Passing of special resolution—relevant time for holding 25% of the subscribed share capital—Section 224A of the Companies Act, 1956—clarification</td>
<td>139</td>
</tr>
<tr>
<td>47.13</td>
<td>Section 225—appointment of auditor other than a retiring auditor—notice to retiring auditor</td>
<td>140</td>
</tr>
</tbody>
</table>

**Auditor's Qualification:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>47.14</td>
<td>Auditor's qualification—Section 225—qualification and disqualifications of auditors</td>
<td>140</td>
</tr>
<tr>
<td>47.15</td>
<td>Section 225(1)—appointment of auditor</td>
<td>140</td>
</tr>
<tr>
<td>47.16</td>
<td>Section 226—interpretation of clause (1) of sub-section (5)</td>
<td>141</td>
</tr>
<tr>
<td>47.17</td>
<td>Appointment of auditors—Section 225 and 224(2)(c)—clarification of</td>
<td>141</td>
</tr>
</tbody>
</table>

**Internal Auditor:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>47.18</td>
<td>Internal auditor who is also the Statutory auditor</td>
<td>142</td>
</tr>
</tbody>
</table>

**Auditor's Duties:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>47.19</td>
<td>Auditor—duties—Section 227—duties of auditors</td>
<td>142</td>
</tr>
<tr>
<td>47.20</td>
<td>Section 227—audit—authorization under Section 215</td>
<td>142</td>
</tr>
</tbody>
</table>

**Branch Audit:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>47.21</td>
<td>Branch Audit—section 228—audit of branch office accounts</td>
<td>148</td>
</tr>
<tr>
<td>47.22</td>
<td>Section 228—audit of branch office accounts</td>
<td>148</td>
</tr>
<tr>
<td>47.23</td>
<td>Section 228—audit of branch office accounts</td>
<td>148</td>
</tr>
<tr>
<td>47.24</td>
<td>Section 228—audit of branch office in a foreign country</td>
<td>148</td>
</tr>
<tr>
<td>47.25</td>
<td>Section 228—definition of “accounts” used in Section 228(3)(c)</td>
<td>144</td>
</tr>
<tr>
<td>47.26</td>
<td>Section 228—audit of branch accounts—exemption rules</td>
<td>144</td>
</tr>
<tr>
<td>47.27</td>
<td>Section 228—exemption to banking companies from branch audit—clarifications</td>
<td>146</td>
</tr>
</tbody>
</table>
### 48. SPECIAL AUDIT

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>233A</td>
<td>Special Audit—its importance</td>
<td>148</td>
</tr>
<tr>
<td>239A</td>
<td>Section 239A—Special audit</td>
<td>149</td>
</tr>
</tbody>
</table>

### 49. REGISTRAR'S POWERS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>231</td>
<td>Registrar's power to call for information</td>
<td>149</td>
</tr>
<tr>
<td>234</td>
<td>Section 234—completion of documents by annexing additional papers</td>
<td>149</td>
</tr>
<tr>
<td>235</td>
<td>Section 235—clarification regarding power of Registrar to call for information</td>
<td>149</td>
</tr>
</tbody>
</table>

### 50. INVESTIGATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>235, 237 and 247</td>
<td>Investigation—Sections 235, 237 and 247—guidelines for taking action</td>
<td>150</td>
</tr>
</tbody>
</table>

### Chapter XVI

#### 51. DIRECTORS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>254</td>
<td>Directors' composition of Board of Directors—section 254—compliance with section 202(2) subscribers to its memorandum</td>
<td>151</td>
</tr>
<tr>
<td>255</td>
<td>Section 255—dising of changes under Section 303(2)—whether applicable to subscribers to memorandum</td>
<td>152</td>
</tr>
<tr>
<td>256</td>
<td>Section 256—necessary directors—private companies</td>
<td>152</td>
</tr>
<tr>
<td>255</td>
<td>Section 255—clarification regarding retirement of directors</td>
<td>152</td>
</tr>
<tr>
<td>257</td>
<td>Sections 253 to 257—amendment of articles of association of the company in contravention of Sections 255, 306 and 257 of the Companies Act, 1956</td>
<td>152</td>
</tr>
</tbody>
</table>

#### Retirement

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>256</td>
<td>Retirement of directors—Section 256</td>
<td>153</td>
</tr>
<tr>
<td>260</td>
<td>Section 260—retirement of directors—</td>
<td>154</td>
</tr>
<tr>
<td>260</td>
<td>Section 260—retirement of directors—</td>
<td>154</td>
</tr>
</tbody>
</table>

#### Buy-out

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>257</td>
<td>Retirement and rotation—Section 257—candidate for directorship of persons other than retiring directors</td>
<td>155</td>
</tr>
<tr>
<td>258</td>
<td>Section 258—additional directors are not retiring directors</td>
<td>155</td>
</tr>
</tbody>
</table>

#### Increase in Directors

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>259</td>
<td>Increase in number of directors—Section 259—clarification</td>
<td>155</td>
</tr>
<tr>
<td>260</td>
<td>Increase in directors—Section 259—Government's policy</td>
<td>155</td>
</tr>
<tr>
<td>260</td>
<td>Additional directors—Section 260</td>
<td>156</td>
</tr>
<tr>
<td>260</td>
<td>Section 260—clarification of the first provision</td>
<td>156</td>
</tr>
<tr>
<td>260</td>
<td>Section 260—clarification of the first provision</td>
<td>156</td>
</tr>
<tr>
<td>260</td>
<td>Section 260—applicability of the provisions of Section 257 to a director appointed under Section 260</td>
<td>157</td>
</tr>
</tbody>
</table>

#### Casual Vacancy

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>262</td>
<td>Casual vacancy—section 262—clarification</td>
<td>157</td>
</tr>
<tr>
<td>264</td>
<td>Filing of consent—section 264</td>
<td>157</td>
</tr>
<tr>
<td>264</td>
<td>Section 264—clarification</td>
<td>157</td>
</tr>
</tbody>
</table>
Consent of Directors:

51.20 Filing of consent by a proposed nominee director—Section 264(1) ........................................... 158
51.21 Section 264—Filing of consent by directors nominated by Industrial Finance Corporation on the Board of issuing companies—applicability of Section 264(2) ........................................... 158
51.22 Section 264—clarification of Section 264(2) .................................................................................... 159
51.23 Section 264—clarification of subsection (3) .................................................................................... 159

32. MANAGING DIRECTORS

32.1 Managing Director—ir their appointment—approval—Section 268—appointment of non-rotational directors— ........................................... 160
32.2 Section 268—appointment of non-rotational directors by a group— ........................................... 160
32.3 Section 268—Directors—appointment of the Company Law Board under Section 268—interpretation— ........................................... 161
32.4 Section 269—clarification regarding Managing Director and Whole-time director— ........................................... 161
32.5 Section 259—reappointment of managing director— ........................................... 161
32.6 Section 269(2)—reappointment of managing or whole-time director— ........................................... 161
32.7 Section 269—Re-election of a managing director as a director—whether approval is necessary— ........................................... 162
32.8 Section 269—appointment of managing director in cases where he is interested in the sole-selling agency— ........................................... 162
32.9 Section 269—Branch Manager if appointed as a director would be whole-time director— ........................................... 162
32.10 Section 269—appointment of professional persons like chartered Accountants, Solicitors etc. as directors—managing directors of companies— ........................................... 162
32.11 Section 269—Directors—whether a whole-time employee is a whole-time director— ........................................... 163
32.12 Section 269—clarification— ........................................... 163

33. DIRECTOR’S SHARE QUALIFICATION

Section 270—clarification of Section 270— ........................................... 164

34. RESTRICTION ON NUMBER

Restrictions on number of Directors—Section 276—more than 29 companies—choice to be made— ........................................... 164

55. VACATION OF OFFICE

Vacation of office by Directors—Section 285—directors, additional grounds on vacation of office in private companies— ........................................... 165

CHAPTER XVII

36. BOARD OF DIRECTORS—MEETINGS, POWER

Board Meeting:

56.1 Meeting of Board—Section 285—clarification regarding frequency of meetings— ........................................... 167
56.2 Section 285—clarification— ........................................... 167
56.3 Section 285—meetings of the Board—whether a member of a company can obtain a copy or inspect the minutes of meetings— ........................................... 167
56.4 Section 285—Board meetings—clarifications regarding holding of— ........................................... 167
56.5 Section 285—interval between Board Meetings—clarification— ........................................... 167

37. QUORUM FOR MEETING

Quorum for meetings—Section 287—quorum in cases where directors are interested— ........................................... 168

38. ADJOURNMENT OF MEETING

58.1 Adjournment of Meeting—Section 288—clarification on holding of Board meetings— ........................................... 168
58.2 Section 288—holding of original Board meetings on public holidays—clarification— ........................................... 168
### 59. BOARD'S POWERS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>59.1</td>
<td>Board's powers—Section 292—Boards powers to make loans</td>
<td>169</td>
</tr>
<tr>
<td>59.2</td>
<td>Section 293—restrictions on powers of Board</td>
<td>169</td>
</tr>
<tr>
<td>59.3</td>
<td>Section 293—contribution to charity if shares</td>
<td>170</td>
</tr>
<tr>
<td>59.4</td>
<td>Section 293—restrictions on the powers of the Board—creating of mortgages</td>
<td>170</td>
</tr>
<tr>
<td>59.5</td>
<td>Section 294—Board powers of borrowing—clarification of sub-section (1)(a)</td>
<td>170</td>
</tr>
<tr>
<td>59.6</td>
<td>Section 293—Board's power of borrowing</td>
<td>171</td>
</tr>
<tr>
<td>59.7</td>
<td>Section 293—Board's powers of borrowing—clarification of sub-section (1)(d)</td>
<td>172</td>
</tr>
</tbody>
</table>

### Chapter XVIII

#### 60. DONATIONS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>60.1</td>
<td>Section 293A—Donation to political parties</td>
<td>173</td>
</tr>
<tr>
<td>60.2</td>
<td>Section 293A—Expenditure incurred by companies on advertisements in Congress issued by political parties</td>
<td>173</td>
</tr>
<tr>
<td>60.4</td>
<td>Section 293B—Clarification of Section</td>
<td>174</td>
</tr>
<tr>
<td>60.5</td>
<td>Section 293C—Funds approved under Section</td>
<td>174</td>
</tr>
</tbody>
</table>

### Chapter XIX

#### 61. SOLE SELLING AGENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>61.1</td>
<td>Section 294—Appointment of sole selling agents</td>
<td>175</td>
</tr>
<tr>
<td>61.2</td>
<td>Section 294—Applications for approval of the appointment of sole selling agents</td>
<td>175</td>
</tr>
<tr>
<td>61.3</td>
<td>Section 294—Appointment of sole selling agents—some undesirable practices</td>
<td>175</td>
</tr>
<tr>
<td>61.4</td>
<td>Section 294—Appointments of sole selling agents of persons, firms or companies related to or associated with the managing directors</td>
<td>176</td>
</tr>
<tr>
<td>61.5</td>
<td>Section 295—Clarification regarding sub-section (2) of Section 291</td>
<td>176</td>
</tr>
<tr>
<td>61.6</td>
<td>Section 294—Involvement of managerial personnel in the selling agency arrangements</td>
<td>177</td>
</tr>
<tr>
<td>61.7</td>
<td>Section 294AA—Sole-selling agents—approval of Central Government</td>
<td>177</td>
</tr>
<tr>
<td>61.8</td>
<td>Appointment of sole-selling agents—Rules—clarifications</td>
<td>178</td>
</tr>
</tbody>
</table>

### Chapter XX

#### 62. LOANS TO DIRECTORS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>62.1</td>
<td>Section 295—Loans to directors etc.—application for approval</td>
<td>179</td>
</tr>
<tr>
<td>62.2</td>
<td>Section 296—Clarification</td>
<td>180</td>
</tr>
<tr>
<td>62.3</td>
<td>Instructions prohibiting Public limited companies from exposing themselves to the risk of standing surety on behalf of accused persons</td>
<td>180</td>
</tr>
<tr>
<td>62.4</td>
<td>Section 295(1)(a)—Clarification</td>
<td>180</td>
</tr>
</tbody>
</table>

### Chapter XXI

#### 63. INTERESTED DIRECTORS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>63.1</td>
<td>Boards' sanction for certain contracts—Section 297—Implications of proviso to sub-section (1)</td>
<td>183</td>
</tr>
<tr>
<td>63.2</td>
<td>Section 297—Companies (Amendment) Act, 1973—Clarification</td>
<td>183</td>
</tr>
<tr>
<td>63.4</td>
<td>Section 297—Meaning of the words &quot;for cash&quot; in sub-section (2)</td>
<td>184</td>
</tr>
<tr>
<td>63.5</td>
<td>Section 297(1)—Clarification</td>
<td>185</td>
</tr>
<tr>
<td>63.6</td>
<td>Approval under proviso to section 297(1) vis-à-vis section 314(1B)/Section 294AA</td>
<td>185</td>
</tr>
</tbody>
</table>
### PROCEDURE WHERE DIRECTORS ARE INTERESTED

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>64.1</td>
<td>Procedure where directors are interested—Section 299—scope of—</td>
<td>135</td>
</tr>
<tr>
<td>64.2</td>
<td>Section 299—interest of a director—</td>
<td>136</td>
</tr>
<tr>
<td>64.3</td>
<td>Section 299—clarification—</td>
<td>136</td>
</tr>
<tr>
<td>64.4</td>
<td>Section 299—shareholding of directors in other companies</td>
<td>136</td>
</tr>
<tr>
<td>64.5</td>
<td>Section 299/300—holding of directorship in other companies</td>
<td>137</td>
</tr>
<tr>
<td>64.6</td>
<td>Section 299—compliance of sub-sections (1) and (6)</td>
<td>137</td>
</tr>
<tr>
<td>64.7</td>
<td>Section 299—compliance of section (6)</td>
<td>137</td>
</tr>
<tr>
<td>64.8</td>
<td>Section 299/300—nature of interest of directors in other companies</td>
<td>138</td>
</tr>
<tr>
<td>64.9</td>
<td>Section 299/300—quorum at Board meetings—disclosure of interest by directors—</td>
<td>138</td>
</tr>
<tr>
<td>64.10</td>
<td>Section 299—transfer of shares by directors but still not registered—</td>
<td>138</td>
</tr>
<tr>
<td>64.11</td>
<td>Section 299—notice under subsection (7)</td>
<td>139</td>
</tr>
<tr>
<td>64.12</td>
<td>Section 299—whether provisions of section 299 apply to Government directors</td>
<td>139</td>
</tr>
<tr>
<td>64.13</td>
<td>Section 299—disclosure of interest in contracts etc. by directors</td>
<td>139</td>
</tr>
</tbody>
</table>

### VOTING BY INTERESTED DIRECTOR

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>65.1</td>
<td>Voting by interested directors—Section 300—voting on resolutions relating to appointment of relatives of directors as directors at meetings of Board—</td>
<td>190</td>
</tr>
<tr>
<td>65.2</td>
<td>Section 300—appointment on the board of a relative of a director—</td>
<td>190</td>
</tr>
<tr>
<td>65.3</td>
<td>Section 300—quorum of interested directors—</td>
<td>191</td>
</tr>
<tr>
<td>65.4</td>
<td>Section 300—clarification of Section 300(1)—</td>
<td>191</td>
</tr>
<tr>
<td>65.5</td>
<td>Section 301—should the directors' meetings be held only at the registered office—</td>
<td>191</td>
</tr>
<tr>
<td>65.6</td>
<td>Section 301—directors—interest in contracts or arrangements—</td>
<td>191</td>
</tr>
</tbody>
</table>

### RESIGNATION OF DIRECTOR

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>66.1</td>
<td>Resignation of Directors—Section 303—communication of</td>
<td>192</td>
</tr>
<tr>
<td>66.2</td>
<td>Section 303—return filed by two parties—</td>
<td>192</td>
</tr>
<tr>
<td>66.3</td>
<td>Section 303—clarification of subsection (5)</td>
<td>193</td>
</tr>
</tbody>
</table>

### MANAGERIAL REMUNERATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>67.1</td>
<td>Section 309—payment of commission to directors—</td>
<td>195</td>
</tr>
<tr>
<td>67.2</td>
<td>Section 309—payment of travelling allowance to the directors—</td>
<td>195</td>
</tr>
<tr>
<td>67.3</td>
<td>Section 309—payment of remuneration as a percentage of profits on managerial officers—</td>
<td>195</td>
</tr>
<tr>
<td>67.4</td>
<td>Section 309—whether remuneration can be paid in terms of a percentage on profits to those who are neither managing or whole-time directors—</td>
<td>195</td>
</tr>
<tr>
<td>67.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>67.6</td>
<td>Section 309—remuneration for services of professional nature</td>
<td>196</td>
</tr>
<tr>
<td>67.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>67.8</td>
<td>Section 309—payment of guarantee commissions to directors—</td>
<td>196</td>
</tr>
<tr>
<td>67.9</td>
<td>do</td>
<td>197</td>
</tr>
</tbody>
</table>
### 68. INCREASE IN REMUNERATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>310</td>
<td>Increase in remuneration</td>
<td>202</td>
</tr>
<tr>
<td>311</td>
<td>Certain payments in respect of directors and managers not allowed under the Act</td>
<td>202</td>
</tr>
<tr>
<td>310</td>
<td>Increase in remuneration</td>
<td>202</td>
</tr>
<tr>
<td>310</td>
<td>Dedication and managerial remuneration</td>
<td>203</td>
</tr>
<tr>
<td>310</td>
<td>Sanction of D.A. or fixed rate</td>
<td>203</td>
</tr>
<tr>
<td>310</td>
<td>Increase in remuneration of foreign technical doing managerial whole-time directors</td>
<td>203</td>
</tr>
<tr>
<td>310</td>
<td>Payment of remuneration to directors without Government approval</td>
<td>204</td>
</tr>
</tbody>
</table>

### 69. DIRECTOR—ALTERNATE HOLDING OFFICE OF PROFIT

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>313</td>
<td>Alternate director</td>
<td>235</td>
</tr>
</tbody>
</table>

### 70. OFFICE OF PROFIT

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>314</td>
<td>Director—holding of office of profit</td>
<td>205</td>
</tr>
<tr>
<td>314</td>
<td>Directors holding an office of profit, or purchase of securities by a director or his relative, associate etc. to or from a company in which he is director—applicability of Section 314</td>
<td>205</td>
</tr>
<tr>
<td>314</td>
<td>Appointment of persons, firms or body corporate related to, associated with, director or sole-trading agent</td>
<td>206</td>
</tr>
<tr>
<td>314</td>
<td>Clarification</td>
<td>207</td>
</tr>
<tr>
<td>314</td>
<td>Clarification</td>
<td>207</td>
</tr>
<tr>
<td>314</td>
<td>Holding of office of or place of profit by directors or by their relatives—question whether an unanimous resolution can be passed</td>
<td>208</td>
</tr>
<tr>
<td>314</td>
<td>Appointment of whole-time director does not attract sub-section (1)</td>
<td>208</td>
</tr>
<tr>
<td>314</td>
<td>Clarification</td>
<td>209</td>
</tr>
<tr>
<td>314</td>
<td>Clarification regarding sub-section (1(B)</td>
<td>208</td>
</tr>
<tr>
<td>314</td>
<td>Clarification regarding</td>
<td>211</td>
</tr>
<tr>
<td>314</td>
<td>Clarification regarding</td>
<td>211</td>
</tr>
<tr>
<td>314</td>
<td>Remuneration paid to managing director/whole-time director etc.</td>
<td>211</td>
</tr>
</tbody>
</table>

### Professional Service

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>314</td>
<td>Services of professional nature</td>
<td>212</td>
</tr>
<tr>
<td>314</td>
<td>Appointment of Partnership Firm—Technical Adviser</td>
<td>213</td>
</tr>
<tr>
<td>314</td>
<td>Appointment of relatives of director as statutory auditors</td>
<td>214</td>
</tr>
</tbody>
</table>

### 71. MANAGING DIRECTORS, RESTRICTION

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>316</td>
<td>Restrictions on appointment of managing directors—section 316—clarification</td>
<td>215</td>
</tr>
</tbody>
</table>

---

3–26 M of L & G/49/1976
### Chapter XXIV

#### NET PROFITS—COMPUTATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>349.1</td>
<td>Determination of net profits</td>
<td>217</td>
</tr>
<tr>
<td>349.2</td>
<td>Computation of net profits for a financial year partly before and partly after 20th December, 1960</td>
<td>217</td>
</tr>
<tr>
<td>349.3</td>
<td>Managerial remuneration—mode of calculation in respect of officers or employees of a company</td>
<td>217</td>
</tr>
<tr>
<td>349.4</td>
<td>Computation of managing director's remuneration without taking into account the unabsorbed depreciation of the previous year</td>
<td>217</td>
</tr>
<tr>
<td>349.5</td>
<td>Computation of net profits—deduction of super profits tax</td>
<td>218</td>
</tr>
<tr>
<td>349.6</td>
<td>Notification under section 349(4)(d)—treatment of surtax</td>
<td>219</td>
</tr>
<tr>
<td>349.7</td>
<td>Clarifications regarding treatment of surtax—section 349(4)(d)</td>
<td>219</td>
</tr>
<tr>
<td>349.8</td>
<td>Wealth tax not an item of deductible expenditure</td>
<td>220</td>
</tr>
<tr>
<td>349.9</td>
<td>Section 349(3)(3)—net profits question whether political contributions constitute &quot;outgoing&quot;</td>
<td>222</td>
</tr>
<tr>
<td>349.10</td>
<td>Clarifications regarding corporate income</td>
<td>222</td>
</tr>
<tr>
<td>349.11</td>
<td>Calculation of depreciation</td>
<td>222</td>
</tr>
<tr>
<td>349.12</td>
<td>Calculation of depreciation</td>
<td>222</td>
</tr>
<tr>
<td>349.13</td>
<td>Note on the provisions of Sections 205 and 330</td>
<td>223</td>
</tr>
<tr>
<td>349.14</td>
<td>Sections 349, 205—clarification regarding memorandum</td>
<td>225</td>
</tr>
<tr>
<td>349.15</td>
<td>Section 350—clarifications regarding explanatory notes</td>
<td>230</td>
</tr>
</tbody>
</table>

#### Chapter XXV

#### INTERCORPORATE LOANS AND INVESTMENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>370.1</td>
<td>Guiding principles for considering applications under Section 370 and 372</td>
<td>233</td>
</tr>
<tr>
<td>370.2</td>
<td>Section 370—inter-company loans or guarantees—Government approval necessary after 1-4-1967</td>
<td>234</td>
</tr>
<tr>
<td>370.3</td>
<td>Section 370—applicability of the provisions of Sections 370 and 285—clarifications</td>
<td>234</td>
</tr>
<tr>
<td>370.4</td>
<td>Section 370—the Section applies in respect of a guarantee given by a company in respect of a loan given by a bank to an individual</td>
<td>235</td>
</tr>
<tr>
<td>370.5</td>
<td>Section 370—valuation under section 370—Instructions</td>
<td>235</td>
</tr>
<tr>
<td>370.6</td>
<td>Section 370—loans by subsidiaries to the holding companies</td>
<td>236</td>
</tr>
<tr>
<td>370.7</td>
<td>Section 370—applicability of the provisions of Sections 370 and 285—clarifications</td>
<td>236</td>
</tr>
<tr>
<td>370.8</td>
<td>Application of Section 370(1) (iii) to Government companies</td>
<td>237</td>
</tr>
<tr>
<td>370.9</td>
<td>Controversy of Section 370 of the Companies Act, 1956</td>
<td>237</td>
</tr>
<tr>
<td>370.10</td>
<td>Section 370—loans given by exempted companies when can be taken into account for the purpose of ceiling</td>
<td>237</td>
</tr>
</tbody>
</table>

**Loans:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>372.1</td>
<td>Display of investments as Stock-in-trade in accounts</td>
<td>238</td>
</tr>
<tr>
<td>372.2</td>
<td>Investments made prior to the amendment of Section</td>
<td>238</td>
</tr>
<tr>
<td>372.3</td>
<td>Guiding principles for considering applications thereunder</td>
<td>238</td>
</tr>
<tr>
<td>372.4</td>
<td>Inter-corporate investments by a share-trading company</td>
<td>241</td>
</tr>
<tr>
<td>372.5</td>
<td>Calculation for the purpose of ceiling limits of permissible investment</td>
<td>242</td>
</tr>
<tr>
<td>372.6</td>
<td>Applicability</td>
<td>242</td>
</tr>
<tr>
<td>372.7</td>
<td>Investments by a holding company in its subsidiary company</td>
<td>242</td>
</tr>
<tr>
<td>372.8</td>
<td>Clarifications</td>
<td>242</td>
</tr>
</tbody>
</table>

**Investments:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>372.9</td>
<td>Inter-corporate investments—relaxation of statutory limits in case involving foreign collaboration</td>
<td>245</td>
</tr>
</tbody>
</table>
73.20 Section 372—some instances of inter-corporate investments
73.21 Section 372—investments in excess of statutory limits—effect
73.22 Section 372—‘Investment company’—clarification regarding definition
73.23 Section 372—inter-company investments (Section 370)
73.24 Section 372—inter-company investment—purchase of units of the Unit Trust of India
73.25 Section 372—approval should be prior approval
73.26 Section 372—inter-company investments beyond statutory limits made without prior approval
73.27 Section 372—clarification—whether investments mentioned in sub-section (1)(b) have to be considered for computing the ceilings
73.28 Section 372—applicability of the provisions of section 372(4)
73.29 Section 372—acquisition of shares by virtue of schemes of reconstruction and amalgamation no need of approval
73.31 Section 372—inter-corporate investments—consideration for grant of approval

74. QUALIFIED SECRETARIES

74.1 Section 383A—certain companies to have secretaries
74.2 Section 383A—clarification

CHAPTER XXVI

75. AMALGAMATION OF COMPANIES

75.1 Section 396—amalgamation of companies—the transferees and the transferor companies should move the High Court for direction
75.2 Section 396—amalgamation of companies under Section 391/394—expedite disposal of cases
75.3 Section 394A—delegation of powers to the Regional Directors, Company Law Board
75.4 Amalgamation of companies under section 391/394 of the Companies Act, 1956—compliance of the provisions of the provision to Section 394(1)
75.5 Suggestion for amendment of Section 394 of the Companies Act, 1956

CHAPTER XXVII

76. CENTRAL GOVERNMENT’S POWER TO PREVENT OPPRESSION

76.1 Section 400—notice to Government in respect of applications under Sections 397 and 398
76.2 Appointment of Government Directors—Section 408—Government policy in respect of application made under Section 408
76.3 Section 408—Government policy in respect of application under Section 408
76.4 Power of Government to prevent change in the Board of Directors—Section 409—Government’s policy
76.5 do do

CHAPTER XXVIII

77. SECURITY DEPOSIT AND PROVIDENT FUND

77.1 Section 417—investment of employee’s securities in National Defence Certificates—clarification
77.2 Section 418—device for bypassing regulations for investment of provident fund money
77.3 Section 419—employees’ provident fund contributions—clarification
77.4 Section 418—employees’ provident fund money—clarification
CHAPTER XXIX

78. WINDING UP OF COMPANIES

Petition for Winding-up:
78.1 Sections 433 and 439—winding up petition— 265
78.2 Section 441—commencement of winding up— 266
78.3 Section 444—order of winding up—notice of— 268
78.4 Section 445—copy of winding up order to be filed with Registrar— 268
78.5 Section 531—payment of fee under Section 441(2) read with rule 281 of the Companies (Court) Rules, 1959— 269
78.6 Section 534—supply of certified copies of statement of affairs and other documents— 269
78.7 Section 481—497—Registrar of Companies entries to be made on dissolution of companies— 269

Voluntary winding-up:
78.8 Section 498—declaration of solvency— 269
78.9 do 269
78.10 do 269
78.11 Section 499—appointment of firm of Chartered Accountants as liquidator in winding up— 269
78.12 Section 500—501—notice of appointment of liquidator— 269

Liquidator’s Account:
78.13 Fees on application to the Central Government under section 106(1)(c) and Section 551—Companies (Fees on application) Rules, 1963— 269
78.14 Scrutiny of accounts under Section 497,503 of the Companies Act, 1956— 269
78.15 Problems and difficulties arising out of administration of Section 497,503 of the Companies Act, 1956—instructions— 269
78.16 Proposals for returning to the provisions of Section 440 instead of Section 535 companies in voluntary liquidation— 269

Unclaimed Dividend:
78.17 Section 555—dividends—declaration of tax at source—deduction from unpaid dividends and undistributed assets paid into the company's liquidation account—instructions— 270
78.18 Section 555—departmental instructions as regards applications to Central Government—under subsection (7)(b) of Section 555— 270
78.19 Section 551—information as to pending liquidation—delaying filing of statements by liquidators— 270
78.20 Section 359—delayed filing of statements by liquidators pursuant to Section 551— 270
78.21 do 270
78.22 Section 555—payments from company's liquidation account—Payment from— 271
78.23 Section 555—defect committed by a liquidator under section 555— 271
78.24 Section 555—payment of dividend—return of share capital to portion, demanufactured but not encashed within the period prescribed under section 556—procedure to be followed— 271
78.25 Deposit of funds available with Official Liquidators— 271

79. DEFUNCT COMPANIES
79.1 Section 560—policy followed with regard to winding out defunct companies— 276
79.2 do 276

CHAPTER XXX

80. FOREIGN COMPANIES
80.1 Section 397—Foreign company— 277
80.2 Section 395—Foreign companies—returns to be filed— 277
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>61.1</td>
<td>Central Government's general policy as to foreign companies</td>
<td>277</td>
</tr>
<tr>
<td>61.2</td>
<td>applications under Section 394</td>
<td>280</td>
</tr>
<tr>
<td>61.3</td>
<td>accounts of foreign companies</td>
<td>281</td>
</tr>
<tr>
<td>61.4</td>
<td>accounts of foreign companies</td>
<td>281</td>
</tr>
<tr>
<td>61.5</td>
<td>accounts of foreign companies—failure to file</td>
<td>281</td>
</tr>
<tr>
<td>62.1</td>
<td>foreign companies—filing and registration fees</td>
<td>281</td>
</tr>
<tr>
<td>62.2</td>
<td>filing and registration fees payable by foreign companies</td>
<td>281</td>
</tr>
<tr>
<td>62.3</td>
<td>foreign companies—registration of charges</td>
<td>281</td>
</tr>
<tr>
<td>62.4</td>
<td>Section 397 and Section 600—registration of charges</td>
<td>282</td>
</tr>
<tr>
<td>63.1</td>
<td>documents kept by Registrar—copies of correspondence—whether can be given</td>
<td>283</td>
</tr>
<tr>
<td>63.2</td>
<td>documents kept by Registrar</td>
<td>284</td>
</tr>
<tr>
<td>63.3</td>
<td>documents kept by Registrar—need not produce the original in Court</td>
<td>284</td>
</tr>
<tr>
<td>63.4</td>
<td>Photostat copies of documents—suggestion for adoption</td>
<td>284</td>
</tr>
<tr>
<td>64.1</td>
<td>re-numbering document after making necessary correction without charging fees</td>
<td>284</td>
</tr>
<tr>
<td>64.2</td>
<td>payment of fees by cheques and bank drafts</td>
<td>285</td>
</tr>
<tr>
<td>64.3</td>
<td>late filing—payment of additional fees</td>
<td>285</td>
</tr>
<tr>
<td>64.4</td>
<td>fees for registration of an association not for profit</td>
<td>286</td>
</tr>
<tr>
<td>64.5</td>
<td>increase in fees—notifications Nos. G.S.R. 598 [E], GSR 200 [E] and GSR 201[E] published in the Gazette of India Extraordinary dated 21st April, 1972</td>
<td>286</td>
</tr>
<tr>
<td>65.1</td>
<td>FILING RETURNS—ENFORCEMENT</td>
<td>286</td>
</tr>
<tr>
<td>65.2</td>
<td>enforcement of company's duty to file returns, etc.</td>
<td>286</td>
</tr>
<tr>
<td>66.1</td>
<td>Government companies</td>
<td>290</td>
</tr>
<tr>
<td>66.2</td>
<td>Government companies—appointment of first auditor or auditors</td>
<td>290</td>
</tr>
<tr>
<td>66.3</td>
<td>Government companies—appointment of auditor</td>
<td>290</td>
</tr>
<tr>
<td>66.4</td>
<td>Government companies—power to conduct cost audit</td>
<td>290</td>
</tr>
<tr>
<td>66.5</td>
<td>clarification regarding corporations controlled by Central/State Governments</td>
<td>290</td>
</tr>
<tr>
<td>66.6</td>
<td>clarification regarding corporation controlled by Central/State Government's</td>
<td>290</td>
</tr>
<tr>
<td>67.1</td>
<td>MODIFICATION OF THE ACT</td>
<td>291</td>
</tr>
</tbody>
</table>

**Government Companies:**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>67.1</td>
<td>Notification to Govt. Companies</td>
<td>293</td>
</tr>
</tbody>
</table>
## 81. MODIFICATION

### 89. MODIFICATION UNION TERRITORIES

<table>
<thead>
<tr>
<th>Section 620A</th>
<th>Notification</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>69.1</td>
<td>Notification under Section 620E — extent of application of provisions to Union territories of Goa, Daman and Diu</td>
<td>299</td>
</tr>
<tr>
<td>69.2</td>
<td>Notification</td>
<td>301</td>
</tr>
</tbody>
</table>

### 89. MODIFICATION JAMMU AND KASHMIR

<table>
<thead>
<tr>
<th>Section 620C</th>
<th>Notification</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>70.1</td>
<td>Notification</td>
<td>301</td>
</tr>
</tbody>
</table>

## 81. MODIFICATION

### 90. LEGAL PROCEEDINGS — APPLICATION FOR RELIEF

<table>
<thead>
<tr>
<th>Section 633</th>
<th>Application to Court for grant of relief offered by Registrar</th>
<th>Page</th>
</tr>
</thead>
</table>

### 92. DELEGATION OF POWERS

<table>
<thead>
<tr>
<th>Section 627</th>
<th>Delegation of powers and functions of the Central Government to the Regional Director of the Company Law Board</th>
<th>Page</th>
</tr>
</thead>
</table>

### 93. FEES ON APPLICATION

| Section 637A | Fees on application rules, 1966 — amendment thereof — effective from 1-5-1972 | Page |

### 94. FEE CHARGE OF ACCOUNT HEAD

| Section 637A | Rationalisation of accounting classification of Government transactions — change in the receipt head allotted to the Department of Company Law Administration | Page |

### 95. LIQUIDATION UNDER 1913 ACT

<table>
<thead>
<tr>
<th>Section 647</th>
<th>Pending proceedings for winding up</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>95.2</td>
<td>Payment of filing fees by Liquidators and Receivers in respect of various statements returns etc. filed with the Registrar of Companies under Schedule X of the Companies Act, 1956</td>
<td>312</td>
</tr>
</tbody>
</table>

### 96. SCHEDULES

<table>
<thead>
<tr>
<th>Schedule VI</th>
<th>Balance sheet and the Profit and Loss account according to the requirements of</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>96.1</td>
<td>Schedule VI to the Companies Act, 1956 — authentication of Schedules</td>
<td>312</td>
</tr>
</tbody>
</table>

### 97. OFFICIAL GAZETTE

<table>
<thead>
<tr>
<th>Official Gazette</th>
<th>Page</th>
</tr>
</thead>
</table>

### 98. MISCELLANEOUS

<table>
<thead>
<tr>
<th>Section 633</th>
<th>Application to Court for grant of relief offered by Registrar</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>98.1</td>
<td>Enquiries made by shareholders regarding accounts</td>
<td>313</td>
</tr>
<tr>
<td>98.2</td>
<td>Promotion expenses — ceiling in respect of promotional expenses</td>
<td>313</td>
</tr>
</tbody>
</table>

### 99. SHARE CERTIFICATES

<table>
<thead>
<tr>
<th>Miscellaneous shares — share certificates — clarification regarding signature by means of machine thereon</th>
<th>Page</th>
</tr>
</thead>
</table>

### 100. DEFECTIVE DOCUMENTS

<table>
<thead>
<tr>
<th>Filing of defective documents — courts open to Registrar</th>
<th>Page</th>
</tr>
</thead>
</table>

### INDEX

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
</table>
CHAPTER I

DEFINITIONS

1. Section 2(7): Definition of body corporate

The question whether a society registered under the Societies Registration Act, 1860, should be considered a 'body corporate' within the meaning of section 2(7) of the Companies Act has been carefully examined further in consultation with the Ministry of Law as well as in the light of recent judgement of the Supreme Court in the Board of Trustees v. State of Delhi, 1962 A.I.R. SC 558. It has been decided that such a society should not be deemed to be a 'body corporate' within the meaning of the aforesaid provisions of the Companies Act, although such a society can be treated as a 'person' having separate legal entity apart from the members constituting it and thereby capable of becoming a member of a company under section 41(2) of the Companies Act. The view expressed in para 1 of the Department's letter No. 8/27/56-PR, dated the 30th November, 1957 to Register of Companies, New Delhi, copy endorsed to all other field officers, may accordingly be deemed to have been modified to the extent stated above.

Consistent with the revised interpretation of the expression 'body corporate' as stated above, the said expression occurring in various provisions of the Companies Act, viz, sections 431, 298, 303, 372, etc., should be so interpreted as to exclude a society registered under the Societies Registration Act from the scope of the expression 'body corporate'.

(Circular letter No. 6/49/2(7)/93-PR dated 24th November, 1962.)

2. Section 2(7). Notification under section 2(7)(c).

In pursuance of sub-clause (c) of clause (7) of section 2 of the Companies Act, 1956 (1 of 1956) the Central Government hereby specifies, for the purposes of the said sub-clause, the Oil and Natural Gas Commission, a body corporate, established under section 3 of the Oil and Natural Gas Commission Act, 1959 (43 of 1956).

(Notification No. G. S. R. 1883, dated 20th December, 1956.)

3. Section 2(9): Definition of branch office

3.1 If an establishment is not the branch office of a company, it will form part of the head office and will be dealt with as such for audit and other purposes.

Int. Cir. No. 3 'No. 8/16(1)/61-PR dated 9th May, 1961.

Query

3.2 Under the amended section any establishment carrying on the same or substantially the same activity as the head office, and any establishment engaged in any production, processing or manufacture will be treated as a branch office. There is practical difficulty in applying the provision to civil engineers and contractors who may be said to be engaged in some productive work in their various workspots. The workspots are not permanent establishments but remain only until the work is completed. No doubt provisions exist in section 8 enabling the Government to declare any establishment not a branch office. It is necessary that establishments of a civil engineer or contractor in a workspot should be declared by order under section 8 as not constituting
branch offices for all purposes of the Act. Strictly speaking, there is no provision authorising any company to apply for an exemption under section 2(9) and it is therefore, very necessary that the Central Government should examine the appropriate cases and declare that the workplaces should not be treated as branch offices.

**Answer**

If the establishment is not a branch office of the company, it will form part of the Head office and will be dealt with as such for audit and other purposes.

(See Illustration 2 of letter No. 4/75/1(3) of the Central Government dated 9th May, 1961.)

4. **Section 2(13): Definition of Director**

The word 'director' has been defined in section 2(13) of the Companies Act, 1956 to include any person occupying the position of a Director by whatever name called. The scheme of the Companies Act, 1956 shows that the ultimate control and management of the affairs of company vests in the Board of Directors. Under the Iron and Steel (Taking over of the Management) Act, 1972 however, the management of the affairs of Indian Iron and Steel Company Limited does not vest in the Board of Management, but vests in the Central Government; and the Board of Management carries on the general supervision, direction and management of the affairs and business of the undertaking of the company only on behalf of the Central Government as agent thereof. Further, the Board of Management is entitled to exercise even in relation to the undertaking of Indian Iron and Steel Company Limited, all the powers of the Board of Directors of a company subject to the direction, control and supervision of the Central Government. In the premises, it follows that no member of the Board of Management occupies the position of a director.

(See F. No. 409/75-CL II dt 23rd November 1975.)

5. **Section 2(24): Definition of Manager**

5.1 A person who is a manager within the meaning of section 2(24) and also a director of the company, would be a managing director and would be subject to all restrictions applicable to a Managing director under the Act. In this connection, 'Manager' means an individual who has the management of the whole or substantially the whole of the affairs of a company and a Director of a company may also be its manager. On the other hand, a 'managing director' means a director who is entrusted with substantial powers of management of the whole or substantially the whole of the affairs of the company.

(See F. No. 8/16/1(3) of the Central Government)

5.2 Factory managers whether comes within the meaning of Section 2(24). Factory managers in charge of production not concerned with the buying of raw materials or the selling of finished products and not having control over the company's finances, would not be 'managers' within section 2(24).

(Extract from the minutes of the meeting of Bombay Chamber of Commerce & Industry's Company Law Sub-Committee with Secretary, Department of Company Law Administration, held on 26-4-1966.)

6. **Section 2(26): Definition of Managing Director**

6.1 Section 2(26) defines 'Managing director' as a director who is entrusted with substantial powers of management which term refers to the nature of the powers and not the quantum thereof. Section 2(24) of the Act on the other hand has defined the word 'manager' as an individual who has the management of the whole or substantially the whole of the affairs of a company. Thus the managing director of a company may
be entrusted with substantial power of management but not necessarily of the whole or substantially the whole of the affairs of a company. A company may, therefore, have more than one managing director.

6.2 Whether a director is to be regarded as a whole-time director or as a managing director of the company would depend on the nature and extent of the duties entrusted to him and that the designation under which the appointment is made would not make any difference in this regard. Thus, if a director is entrusted with managerial functions, he would be in the position of a Managing Director notwithstanding the fact that he may be designated as a technical adviser or as a technical director of the company.

7. Section 2(30): Definition of Officer

Whether or not a person would come within the scope of term 'Officer' as contemplated in section 2(30) of the Companies Act, 1956 would depend on the facts and circumstances of each particular case and the relevant provisions of the Companies Act. Thus, in respect of discharge of any particular duty imposed by the Act any person occupies a position of responsibility in a company, he will be deemed to be an "Officer" in relation to that duty and answerable as such. In this connection, attention is also invited to the definition of Officer who is in default in section 2(31) read with section 5 of the Companies Act, 1956.

8. Section 2(39): Recognised Stock Exchanges

1. The Bombay Stock Exchange,
   Apollo Street,
   Fort, Bombay-400001.
2. The Calcutta Stock Exchange Association Ltd.,
   7, Jatana Range,
   Calcutta.
3. The Madras Stock Exchange Ltd.,
   16/17, Second Line Beach,
   Stock Exchange Building,
   P.B. No. 769,
   Madras-600001.
4. The Stock Exchange,
   Merck House,
   Aluva,
5. The Delhi Stock Exchange Association Ltd.
   3/4/6 R And All Road,
   New Delhi-110001.
6. Madras Peninsular Stock Exchange,
   61, Bara Bazar,
   Tangra.
7. Bangalore Stock Exchange Ltd.,
   Indian Bank Building (Third Floor),
   Kempegowda Road,
   Bangalore-560009.
8. The Hyderabad Stock Exchange Ltd.,
   Bank Street,
   Hyderabad (A.P.).
9. London Stock Exchange,
   *Not for the purposes of Sections 168 (1-A) (b) (1) and (1B) (9) Co. Act.

9. Section 4(1)(b): Meaning of holding company

If a part of the share capital of a company is fully paid and part partly paid, how should the "half in nominal value of equity capital" mentioned in the section be reckoned?

4. 26 M of Ij & Ca/ND/75
The "nominal value of equity capital" is a fixed figure at any point of time and readily ascertainable. It is unrelated to the amount paid up on the equity shares. The words "nominal share capital" in Schedule X of the Act indicate the "authorised capital". The words "nominal value of equity capital" in section 4 may be interpreted to mean the face value of the equity capital which has been subscribed.

(T. No. 2(25/61-P.R.)

10. Section 6: Meaning of relative

Query

Section 6 has now been amended. According to this section, the term "relative" includes members of a Hindu undivided family. Does the family refer to the coparcenary alone or the entire undivided family?

Answer

A Hindu undivided family includes and is not confined to coparcenary.

(T. No. 8/16/1/51-P.R.)

11. Section 10: Jurisdiction of Courts

In exercise of the powers conferred by subsection (2) of section 10 of the Companies Act, 1956 (1 of 1956), and in supersession of all the notifications issued by the Provincial/State Governments under the proviso to subsection (1) of section 8 of the Indian Companies Act, 1913 (7 of 1913) the Central Government hereby empowers all the District Courts in the Union of India except the District Courts in the State of Jammu and Kashmir, to exercise the jurisdiction conferred upon the Court by the sections hereinafter specified of the said Companies Act, 1956, subject to the condition that, in the case of the District Courts in the State of Orissa and in the Union Territory of Himachal Pradesh, such jurisdiction shall be exercisable subject to the orders of the High Court or, as the case may be, the Judicial Commissioner’s Court, namely:

1. Section 113 — Limitation of time for issue of certificates.
   (2) Section 118 — Right to obtain copies of and inspect trust deed.
   (3) Section 141 — Rectification by Court of Register of Charges.
   (4) Section 144 — Right to inspect copies of instruments creating charges and Company’s register of charges.
   (5) Section 193 — Place of keeping, and inspection of, registers and returns.
   (6) Section 196 — Inspection of minute books of general meetings.
   (7) Section 219 — Right of member to copies of balance sheet and auditor’s report.
   (8) Section 234 — Power of Registrar to call for information or explanation.
   (9) Section 240 — Production of documents and evidence.
   (10) Section 304 — Inspection of the register of directors.
   (11) Section 307 — Register of directors’ shareholdings etc.
   (12) Section 307 — Register of [..............] directors’ shareholdings etc.
   (13) Section 307 — Enforcement of duty of Company to make returns, etc. to Registrar.

2. This notification shall not affect any proceeding under the Indian Companies Act, 1913 (7 of 1913), or under the Companies Act, 1956 (1 of 1956), which on the date of this notification, is pending before any District Court.

(Notification No. GSR. 653 dated 29th May, 1959 as amended by GSR. No. 1926 dated 18th October, 1966).

Since transferred to the Company Law Board by the Companies (Amendment) Act, 1974.

CHAPTER II

12. BOARD OF COMPANY LAW ADMINISTRATION

Section 16E: Delegation of Powers to Company Law Board

In exercise of the powers conferred by clause (a) of sub-section (1) of Section 627, read with sub-section (1) of Section 10E of the Companies Act, 1956 (1 of 1956), and in supersession of the notification of the Government of India in the (Department of Company Affairs No. G.S.R. 686, dated the 4th May, 1971), the Central Government hereby delegates to the Company Law Board the powers and functions of the Central Government under the said Act other than those under the following provisions of the said Act, namely:

1. Sub-section (1) of Section 1
2. Sub-section (2A) of Section 10E
3. Sub-sections (1), (5) and (6) of Section 21
4. Sub-section (4) of Section 108
5. Section 279
6. Section 280
7. Section 280-A
8. Section 280-B
9. Section 280-C
10. Sub-section (1), (3) and (5) of Section 280-E
11. Section 310
12. Section 310-A
13. Section 310-B
14. Sub-section (4) of Section 310-A
15. Section 370
16. Section 372
17. Sub-section (2) of Section 325

(Notification No. G.S.R. 443(E) dated October 10, 1972.)
CHAPTER III

13. INCORPORATION OF COMPANIES AND INCIDENTAL MATTERS

Prohibited Associations

Section 11: Prohibition of associations and Partnerships exceeding certain number

13.1 Both male and female adult members have to be taken into account in computing the number specified in sub-sections (1) and (2) for the purpose of sub-section (3) of section 11 of the Companies Act.

(Memorandum of Association)

Section 12: Memorandum of Association

13.2 It has been brought to the notice of the Company Law Board that some Registrars of Companies have been insisting that the Memorandum of Association of a company and any amendment thereto should be signed by the subscribers themselves and not through their constituted attorneys and that this is causing some practical difficulties, especially where some of the subscribers to the memorandum are foreign parties who may be collaborating with Indian promoters. The matter has been carefully examined by the Company Law Board and it has been decided that when it is not possible for a company, it may be signed on its behalf by an agent if the latter is authorised by a power of attorney to do so. The same course may also be followed in respect of any amendment to the memorandum or articles which it may be found necessary to make as a result of any suggestions in this behalf made by the Registrar concerned after the scrutiny of the memorandum and articles presented to him for registration.

In this connection, attention is also invited to the last sentence of para 2 of the former Department of Company Law Administration's circular letter No. 8/15/8 dated the 1st September, 1958 wherein it was stated that "An agent may sign the memorandum on behalf of a subscriber if he is authorised by a power of attorney to do so".

A suggestion has been made to the Company Law Board that it would be helpful to promoters if the Registrar could scrutinise and approve the draft Memorandum and Articles of a proposed company before they are presented to him for registration. Though it may not be possible for Registrars to accept a definite commitment in this regard, the Board is of the view that the Registrars should to the extent possible offer their help and advice to those who may approach them in drawing up the Memorandum and Articles. This would be specially desirable in cases where promoters have no prior experience of company promotion. All Registrars are advised to take necessary action accordingly.

Section 13: Arrangement of objects clause

13.3 The Department of Company Affairs is of the view that having regard to the provisions of sub-section (1)(d) of section 13 of the Companies Act, the objects clause of the Memorandum of Association of a company should be split up as follows:

(a) Main objects to be pursued on its incorporation;
(b) Objects incidental or ancillary to the attainment of the objects specified in (a) above; and
(c) Other objects not indicated in (a) and (b) above.
Such an arrangement, it is felt, would be in line with section 13(1)(d) of the Companies Act and at the same time make clear that clause (d)(i) of the said sub-section included (i) objects other than main objects and also (ii) objects incidental or ancillary thereto.

[Company News & Notes dated 1-1-66.]

Diversifications

Section 17(4): Diversification of objects

13.4 It is often seen that companies having inadequate resources propose to take up objects which may be entirely new, having regard to the existing objects. There have been cases in which companies having very unsatisfactory financial condition have attempted to insert entirely new objects in the Memorandum on the plea that they expected to do very well if they could take up the newly proposed business. It has been decided that all such cases of undesirable diversification of activities should be opposed at the Court(1). Whether a proposal for diversification is undesirable or not is to be decided on due consideration of the facts of the particular case and having regard to the policy of the Government on the subject. Government do not favour existing companies taking up new lines of activity which are not reasonably connected with the activities in which they are already engaged.

The reasons for this policy are as follows:

(1) The need to broaden base investment in industries instead of giving the existing shareholders a preferential right to increase their investment in the existing companies;

(2) through the spreading of investment in the manner indicated above, to prevent rise in the shares of existing well-established concerns;

(3) to encourage the growth of managerial talent by enlarging the field for the exercise of top managerial powers;

(4) to enable the shareholders to obtain information about the performance of an undertaking readily from the accounts which are statutorily required to be submitted to the shareholders; and

(5) to enable the State to ascertain the relative efficiency of investment and management in different lines of activity more readily through a scrutiny of the financial accounts which may not be readily available for the constituent units if they are grouped into one company.

In no case, alteration in the objects clause should be opposed where the industrial licence has been given to the company enabling it to branch off into other activities.

(2) A reference is invited to subsection (4) of section 17 of the new Companies Act which enjoins the Court(2), to which a petition has been made by a company for confirmation of an alteration in its memorandum of association, to give the Registrar a reasonable opportunity to appear before the Court(3) and state his objections and suggestions with respect to the confirmation. This provision is new and was inserted in the Act because it was considered necessary that the Registrar should have the right to appear before the Court(4) in case he desires to point out any irregularity in the proposed alteration. The Government of India are, however, anxious that this right is judiciously exercised by the Registrars so as not to create an impression in the mind of the public that the new provision is being made use of to harass or unnecessarily interfere in the management of companies. This should be borne in mind whenever any occasion arises for having recourse to the provisions referred to above. In all cases of doubt, Registrars are advised to consult their Regional Director in the matter before exercising the right conferred on them by the said sub-section.

(Circular letter No. F. 2/7)-PR/56 dt. 29-3-1956.)

1. New Company Law Board.
Registrations of Alterations

Section 18: Alterations to be registered within three months

13.5 This Department is of the view that the main spirit behind Section 18(3) of the Companies Act, 1956 in regard to the filing of the Court's order conferring the transfer of the company's Registered Office from one State to another State with the Registrar of Companies of each State is that the Registrar of Companies from whose State the Registered Office is transferred should keep the Court order duly registered in his office as an evidence to such shifting and should transfer all records of the company to the Registrar of Companies to whose State the Registered Office has been so shifted. The other Registrar of Companies will register the other copy of the Court order and keep that order with the records transferred to him by his counterpart.

(Circular No. 2(75) F. No. 26/1/75 CL III.)

Section 19: Void Order—Revival of order

13.6 Cases have come to the notice of Government where, even when the companies failed to apply to the Court within a period of three months for extension of time to file the order or within a further period of one month for revival of the order, Courts have passed orders granting applicant companies extension of time to file copies of the orders with the Registrars. Such orders of extension are not in conformity with the law and whenever the Registrars get an opportunity they should bring the above position of law to the notice of the Court.

(Circular No. 20(26).CL-IV.61 dated 31st July, 1961.)

Note:—Changes introduced by the Companies (Amendment) Act, 1973—

References to the Court under relevant provisions of Sections 17, 18 and 10 should be read as reference to the Company Law Board.

Names of Companies

Section 20: Names of Companies

13.7 Section 20 of the Act provides that a company shall not be registered by a name which, in the opinion of the Central Government, is undesirable. A name is considered undesirable and a company is not allowed to be registered with such a name—

(a) If the name is identical with, or too nearly resembles, the name by which a company is already registered. Names under which well known firms and other bodies are doing business are also considered undesirable for a new company.

(b) If the proposed name is identical with, or too nearly resembles, a name of a company in liquidation.

(c) If the proposed name differs from the name of an existing company merely in the addition or subtraction of words like New, Modern, Nav etc., or the name of a place.

(d) If the proposed name closely resembles the popular or abbreviated descriptions or nick names of important companies.

(e) If it attracts the provisions of the Emblem and Names (Prevention of Improper Uses) Act, 1950.

(f) If it connotes Government's participation or patronage unless circumstances justify it.
4. If it implies association in connection with, or patronage of, a national hero or any person held in high esteem.

5. If it includes the word 'cooperative'.

6. If it includes the word like 'Bank', 'Banking', 'Insurance', 'Investment' and 'Trust' unless the circumstances of a particular case justify the inclusion of such a word.

7. If it includes a proper name which is not a name or surname of a director.

8. If it includes a name of a registered trade-mark unless the consent of the owner of the trade mark has been produced by the promoters.

9. If it is intended or likely to produce a misleading impression regarding the scope of its activities which would be beyond the resources at its disposal.

10. If the name suggests a business which is not undertaken by the company.

11. If the proposed name is the exact Hindi translation of the name of an existing company in English, especially an existing company with a reputation.

(Circular Letter No. 10(3) 88/90, dated 1st April, 1960.)

Further Guidelines

These are some guiding instructions, duly consolidated in this Department, for deciding cases of making new names available for registration under the Companies Act. An illustrative list of names considered to be undesirable within the meaning of section 20 of the Companies Act, has also given for guidance. In this connection it may further be added that the various criteria set out in these instructions are not exhaustive but only illustrative of what is considered as undesirable names under section 20 and by the very nature of the subject all possible cases could not be covered and some of them will have to be decided on merits.

These instructions are for information and guidance so that the promoters of new ventures may not apply for availability of names which may be considered as undesirable. It may be suggested to them that it would be in their interest to suggest three to five names, quite distinct from each other for consideration to avoid possibilities of any delay in case the first name is not made available.

A name which falls within the categories mentioned below will not generally be made available:

1. If it is not in consonance with the principal objects of the company as set out in its Memorandum of Association.

2. If it includes any word or words which are offensive to any section of the people.

3. If the proposed name is the exact Hindi translation of the name of an existing company in English especially an existing company with a reputation.

4. If the proposed name has a close phonetic resemblance to the name of a company in existence, for example, J.K. Industries Ltd., and Jay Kay Industries Ltd.
5. If the name is only a general one, like Cotton Textiles Mills Ltd., or Silk Manufacturing Ltd.

6. If it includes the word 'Co-operative', 'Sabakari' or the equivalent of word 'Co-operative' in the regional languages of the country.

7. If it attracts the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time to time, i.e., use of improper names, prohibited under this Act.

8. If it denotes Government participation or patronage unless circumstances justify it, e.g., a name may be deemed undesirable in certain context if it includes any of the words such as National, Union, Central, Federal Republic, President, Rashtrapati, Small Scale Industries, Cottage Industries, etc.

9. If a proposed name implies association or connection with or patronage of a national hero or any person held in high esteem or important persons who are occupying important positions in Government so long as they continue to hold such positions.

10. If it resembles closely the popular or abbreviated descriptions of important companies like TISCO (Tata Iron & Steel Company Ltd.), HMT (Hindustan Machine Tools), ICI (Imperial Chemical Industries, TINMACO (Textile Machinery Corporation), WIMCO (Western India Match Company), etc. In some cases, the first word or the first few words may be the key words and care should be taken that they are not exploited. Such words should not be allowed even though they have not been registered as trade marks.

11. If it is different from the name/names of the existing company/companies only to the extent of having the name of a place within brackets before the word limited, for example, Indian Press (Delhi) Limited should not be allowed in view of the existence of the company named Indian Press Limited.

12. If it includes the name of a registered trade mark unless the consent of the owner of the trade mark has been produced by the promoters.

13. If a name is identical with or too nearly resembles, the name by which a company in existence has been previously registered. However, if a proposed company is to be under the same management or in the same group and likes to have a closely resembling name to existing companies under the same management or group with a view to have advantage of the goodwill attached to the management or group name such a name may be allowed.

Even in the case of unregistered companies or firms which have built up a reputation over a considerable period, the principle (that if a name is identical with or too closely resembles the name by which a company has been previously registered and is in existence, it should not be allowed) should be observed as far as practicable. In view of the difficulty in checking up whether a proposed name is identical with or too nearly resembling the name of an unregistered company or a firm of repute it should at least be ensured that a proposed name is not allowed if it is identical with or too nearly resembles the name of a firm within the knowledge of the Registrar. The case of foreign companies of repute should also be similarly treated even if there are not branches of such companies in India.
A few illustrations of closely resembling names are given below for guidance. The names as proposed in col. 1 should not (normally) be made available in view of the companies in existence as shown in col. 2.

<table>
<thead>
<tr>
<th>Proposed Name</th>
<th>Existing Company with too nearly resembling names</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Hindustan Motors &amp; General Finance Co.</td>
<td>Hindustan Motor Ltd.</td>
</tr>
<tr>
<td>3. Trade Corporation of India Ltd.</td>
<td>State Trading Corporation of India Ltd.</td>
</tr>
<tr>
<td>4. Visakaram Engineering Works Private Ltd.</td>
<td>Visakaram Engineers (India) Private Ltd.</td>
</tr>
<tr>
<td>5. General Industrial Finance &amp; Trading Co. Ltd.</td>
<td>General Financial &amp; Trading Corporation</td>
</tr>
<tr>
<td>6. India Land &amp; Finance Ltd.</td>
<td>Northern India Land &amp; Finance Ltd.</td>
</tr>
<tr>
<td>8. Hindustan Chemicals &amp; Fertilizers Ltd.</td>
<td>Hindustan Fertilisers Ltd.</td>
</tr>
</tbody>
</table>

14. If it is identical with or too nearly resembles the name of a company in liquidation, since the name of a company in liquidation is borne on the register till it is finally dissolved. A name which is identical with or too closely resembles the name of a company dissolved as a result of liquidation proceedings should also not be allowed for a period of two years from the date of the dissolution since the dissolution of the company could be declared void within the period aforesaid by an order of the court under section 560 of the Act.

Further, as a company which is dissolved in pursuance of action under section 560 of the Act can be revived by an order of the court before the expiry of 90 years from the publication in the Official Gazette of the company being so struck off, it is considered desirable to stop or conditionally allow the registration of a proposed name which is identical with or too nearly resembling the name of such dissolved company for a period indicated below. Since the period of 90 years as prescribed under the law is considered an unduly long period, the registration of a proposed name which is identical with or too nearly resembles the name of a company dissolved in pursuance of section 560 should not be allowed for a period of first five years only. During the next five years such a proposed name may be allowed subject to the condition that in the event of the dissolved company being restored to life by an order of the court the new company would have to change its name. After a lapse of ten years, names identical with or too nearly resembling those of the dissolved companies may be allowed without any such condition.

15. If it is different from the name of an existing company merely by the addition of words like 'New', 'Modern', 'New', etc. Names such as New Bata Shoe Company, Nav Bharat Electronic etc. should not be allowed. Different combination of the same words also requires careful consideration. If there is a company in existence by the name of "Builders and Contractors Ltd.", the name "Contractors and Builders Ltd." should not ordinarily be allowed.

16. If it includes words like 'Bank', 'Banking', 'Investment', 'Insurance', and 'Trust'. These words may, however, be allowed in cases where the circumstances justify it. In cases of Banking Companies, the Reserve Bank of India should be consulted and its advice should be taken before a name is allowed for registration. The purpose of such consultation is to prevent small banking companies from misleading the general public by adopting the names of some well-established and leading banks functioning elsewhere than in India.
17. If it includes proper name which is not a name or surname of a director such names should not be allowed except for valid reasons. For example, for sentimental reasons, sometimes the names of relatives, such as, wife, son and daughter of the director may have to be allowed provided one other word suggested makes the name quite distinguishable.

18. If it is intended or likely to produce a misleading impression regarding the scope or scale of its activities which would be beyond the resources at its disposal. For example names like Water Development Corporation of India Private Ltd., Telefilm of India Private Ltd., All India Sales Organisation Ltd., Intercontinental Import and Export Company Ltd., etc., should not be allowed, when the authorized capital is to be only a few lakhs, and the area of operation limited to a State. Words like 'International', 'Hindustan', 'India', 'Bharat', 'Continental', 'Asian', may be allowed only if the scope and scale of business of the proposed company justify the use of such words. However, the words 'Jai Hind', 'Jai Bharat', 'Nov Bharat', 'New India', etc., included in the proposed name need not stand the same test as 'Hindustan', 'India', etc., (as, they do not give the same sense). Similarly, the words, 'Bharat', 'India', etc., if stated in the brackets, before the word limited or private limited need not stand the same test as the words India, etc., put at the beginning of the name. Also, the word 'India' or 'Bharat' in brackets before the word limited or private limited does not necessarily mean that the company is an Indian Branch of some foreign company, such as Marico Ltd. (India) Private Ltd.

19. If the proposed name includes the word 'State' along with the name of the State such as Kerala State Company Ltd., it should not be allowed as it would give an impression of the Kerala State Government participating in the state capital of the proposed company. However, if the name of a State only is included without the addition of the word 'State' in the proposed name then it may be allowed as it is not likely to give the impression that the company has the State Government interest in it.

20. If the proposed name includes the word 'Corporation', unless the company could be regarded as a big-sized company. However, the word 'Corporation' and 'Company' may be regarded as closely resembling for purposes of allowing a new name. If for example a company by the name of Rajasthan Finance Corporation already exists, Rajasthan Finance Company should be regarded as undesirable within the meaning of section 20 of the Act.

21. If the proposed name includes words like 'French', 'British', 'German', etc., unless the promoters satisfy that there is some form of collaboration and connection with the foreigners of that particular company or the name of which is incorporated in the name. Thus the name 'German Tool Manufacturing Company Ltd.' should not be allowed unless the company has some connection with Germany.

22. Even where except for the first word all the other words of the proposed name are similar to those of an existing company, the first word should be considered to be sufficient to distinguish if from the name of the existing company. For example, "Oriental.........................Ltd.".

(Circular No. 10/19-OPS/61 dated 5th May, 1962.)

Section 21: Guidelines regarding change of names

13.8 Section 21 of the Companies Act lays down that a company may, by special resolution and with the approval of the Central Government signified in writing, change its name. A reference is also invited to this Department letter No. 8/21/56 PR, dated
the 6th February, 1957, informing that for any change of name of a company involving the deletion or addition, as the case may be, of the word 'Private' as a result of its conversion from a private limited company into a public limited company or vice versa, the approval of the Central Government should be obtained under section 21. As it has been observed that applications under this section received in the Department do not always contain full particulars necessary to enable Government to take decision without further reference to the parties concerned, the nature of the information/documents required to be furnished by the applicants is indicated in the succeeding paragraphs for the information and guidance of all concerned.

In considering an application for change of name not resulting from conversion, the Central Government generally examines it from the following angles:

(i) Whether the reasons adduced by the company for the change of name are sufficient.

(ii) Whether the proposed name is in consonance with the principal objects of the company as set out in its memorandum of association and with the business actually carried on by it, where such consideration is relevant; and

(iii) Whether the proposed name is not undesirable.

As regards (i) and (ii), the question is decided on the merits of each case. As regards (iii), the proposal is considered in the light of the principles set out in Annexure 'A' to this letter. These principles are however, not exhaustive but only illustrative, their main object being to ensure that a company does not adopt a name likely to mislead the public, that the proposed name is distinctive and is consistent with the resources and objects of the company. The companies will therefore be well advised to consult the Registrar of Companies concerned in the first instance with a view to ascertaining whether the name proposed to be adopted by them would be available for registration. While making such consultation they should furnish the particulars specified in Annexure 'B' to this letter in duplicate.

In the case of a Banking company, if it desires to change its name as a result of its decision to give up the business of Banking, it is required first to alter its memorandum of association so as to exclude the business of banking as defined in section 8(1)(b) of the Banking Companies Act, 1949 and apply to the Central Government under section 21 of the Companies Act only after effecting the said alteration in accordance with the requirements of law. In such cases, the applicant company should also attach a copy of a certificate from the Reserve Bank of India that the Bank has no objection to the proposed change. All applications for change of name, not resulting from conversion, should be made after passing the necessary special resolution and accompanied by the following particulars:

(a) Detailed reason for the change of name;

(b) An up-to-date copy of the memorandum and Articles of association;

(c) A copy each of the balance-sheet and profit and loss account for the last two financial years;

(d) A certified copy of the communication received from the Registrar in token of his having recorded the special resolution in terms of section 192 of the Act; and

(e) Where the change is as a result of alterations in the objects of the company as set out in its memorandum of association, whether or not a certified copy
of the Court's order under section 17 has been filed with the Registrar and the requisite certificate of registration obtained from him under section 18 of the Act.

As regards the change of name due to conversion, it has been decided that in future the company concerned should furnish all the particulars set forth in Annexure 'C' to this letter. It is also required to pass a separate special resolution in terms of section 21 of the Act.

ANNEXURE A

A name which falls within the categories mentioned below will not generally be allowed:

(i) If it is identical with, or too nearly resembles, the name of an existing company or an unregistered company or a firm which might have built up a reputation over a considerable period;

(ii) If it attracts the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950;

(iii) If it connotes Government's participation or patronage, unless circumstances justify it, e.g., a name may be deemed undesirable in certain context if it includes any of the words such as 'National', 'Union', 'Central', 'Federal', 'Republic', 'President', 'Rashtrapat', 'Small-scale Industries' and 'Cottage Industries';

(iv) If it implies association or connection with or patronage of a national hero or any person held in high esteem;

(v) The name must not include the word 'Cooperative';

(vi) Words like 'Bank', 'Banking', 'Insurance', 'Investment' and 'Trust', will be allowed to be used in a name only where the circumstances justify it;

(vii) A proper name which is not a name or surname of a director may not be allowed except for valid reasons; and

(viii) If it includes a name of a registered trade mark, the consent of the owner of the trade mark should be produced by the promoters.

ANNEXURE B

Particulars to be furnished to the Registrar of Companies for ascertaining availability of proposed name.

(1) Name and full address of the persons who apply for availability of names in blue letters . . .

(2) Proposed name of the company (State whether Public or Private) . . . . . . . .

(3) In case the proposed name mentioned in item (2) is not available, give 2 or 3 names to be considered in the order of preference . . . . . . . .

(4) Primary objects of the proposed company . . . . . . . .

(5) Names and addresses of the prospective directors or promoters etc.

(6) Nature of activity of the proposed Co. and whether it will be registered in this State or elsewhere . . . . . . . .
ANNEXURE C

Particulars to be furnished while applying for change of name consequent on conversion from a public company into a private company or vice versa.

(6) The reasons in sufficient details for the decision to convert the company into a private/public limited company.

(7) The number of members on the register and the shareholdings of each as on the date of passing the special resolution relating to the conversion, and whether all the members were present in the meeting and voted in favour of the said resolution. If any, the names of the members who were present personally or by proxy and who:

(a) voted in favour of the resolution.

(b) voted against the resolution with the grounds of their objection; and

(c) expressed no opinion.

(8) Whether any of the members not present at the meeting had communicated any objections to the passing of the resolution and, if so, the nature of such objections.

(9) The present capital structure of the company.

(10) An extract copy of the memorandum and articles of association of the company and a copy of the proceedings of the meeting in which the special resolution was passed.

(11) Whether any special resolution changing the name of the company in terms of section 21 of the Act has been passed and, if so, a copy of such special resolution to be furnished.

(12) In case of conversion from public to private, a copy of the prospectus or a statement in lieu of prospectus has been filed with the Registrar of Companies as required by section 44 of the Companies Act and the consent where necessary of the Controller of Capital Issues obtained.

(13) Whether the conversion of the company attracts the provisions of section 314(1)(a) of the Companies Act, 1956

(14) The number of members on its register as on date of application.

[Circular No. 28(64) CLT/IV/57 dated 30th July, 1957.]
Availability of the word “Hindustan” and “Corporation” —

13.9. I am directed to say that it has been observed that some of the Registrars of Companies are having an impression that while allotting names to the new Companies, the word “Hindustan” should be kept reserved only for public sector Companies viz., Government Companies and that it should not be allowed to be used by private Sector Companies. This question has been examined and it has been decided that the word “Hindustan” may be allowed to private sector companies provided the scope and scale of business of the proposed company justify the use of such a word. While disposing of applications in this regard, the guidelines already issued and their applicability or otherwise in all aspects to the facts of the cases may be examined in the light of the clarification now given on the subject.

As regards the word “Corporation” a question has recently been raised as to what should be the criteria for regarding a company as a “big size” company to enable the Registrar to allow the word “Corporation” in the name of a company other than a Government Company which is proposed to be registered. This has been examined in the light of the guiding instructions No. 26 already issued under this Department’s Circular letter No. 10(1)/RS/55 dated the 27th November, 1965 and it is of the view that for the purpose of treating a company as a big sized company or not at the time of incorporation, its authorised capital will have to be taken into consideration. As no specific limit of capital has been indicated in the aforesaid guiding instructions for a big sized company to be incorporated, it is considered necessary to clarify the position in this regard. It may, therefore, be noted that a company which is proposed to be registered with an authorised capital of Rs. 5 crores or above may be regarded as a big sized company and the Registrar may allow the use of the word “Corporation” in deserving cases while approving the names of such companies. However, for preparing the broad sheets on big sized Companies those companies whose paid up capital is Rs. 50 lakhs or more (and not the authorised capital) are to be regarded as big sized companies according to the existing practice which should be continued.

(No. 27/97-CL III Circular No. 16/71)

Association not for profit

Section 23: Procedure for dealing with application for grant of licence under the provisions of section 25

13.10 With a view to facilitate quicker disposal of applications received from or on behalf of proposed companies for the grant of licence under section 23 of the Companies Act, the following procedure will be followed in processing the aforesaid applications:

(i) The applications be made to the Central Government as hitherto.

(ii) Notices pursuant to regulation 11 of the Companies Regulations, 1956 shall be published within one week before or after the submission of the application in one or more local newspapers. The regulation has been amended suitably for this purpose.

(iii) Applications will, hereafter, be accompanied by drafts of the memorandum and articles of association of the proposed company after scrutiny by an advocate of the Supreme Court or of a High Court, an attorney or pleader entitled to appear before a High Court or a chartered accountant practising in India, along with a declaration from such advocate, attorney, pleader or chartered accountant to the effect that he has scrutinised the application and the accompanying documents and that he is satisfied that they have been drawn up in conformity with the Act. Regulation 4 and 8 have been amended accordingly.
(v) Immediately on receipt of a copy of the application under regulation 10, the Registrar concerned will get the draft memorandum and articles of association and other papers thoroughly scrutinised in his office with a view to ensuring that the various provisions in these documents conform to the relevant provisions of the Act. The Registrar will then list out the modifications considered necessary in the draft memorandum and articles of association and forward the same to the Department within 15 days of the receipt of the copy of the application. If the Registrar considers the matter to be important enough, his comments would be sent to the Department through the Regional Director who would transmit the comments of the Registrar within 10 days of their receipt by him to this Department along with his own comments.

(vi) A fuller identity of the promoters and the proposed members of the Board of directors would be available in the applications themselves. Sub-clause (ii) of regulations 4 and 8, have been amended accordingly. The Registrar will also have some personal knowledge of the promoters and the proposed members of the Board and it should not be difficult for him to advise the Department whether or not the proposed company should be granted a licence. Only in doubtful cases, he would send his opinion through the Regional Director. The Registrar shall also indicate in his report whether there are in existence other companies with similar objects in or near the place where the registered office is proposed to be situated and whether the new proposed company is really necessary.

(vi) The existing procedure of referring is a matter of routine all applications to the State Government for their opinion has been discontinued. The Registrar would, if he thinks such a consultation is necessary, ask for the views of the District Magistrate concerned within whose jurisdiction the registered office of the proposed company is proposed to be located. In such cases, the Registrar would send to the Department a copy of the District Magistrate’s letter in reply to him. It is hoped that the Registrar will be able to get a reply direct from the District Magistrate in most of the cases. In cases, however, where more important considerations are involved, the Department will make a reference to the State Government concerned but it is expected that such cases will be very few and will largely be restricted to companies with the object of promoting religion or social service of a particular community or a group. Immediately on receipt of an application, the Department will get the draft memorandum and articles and other papers generally scrutinised. On receipt of the report of the Registrar and/or the Regional Director, the applicants will be asked to modify the drafts in the light of the scrutiny made by the Registrar and the Departmental Officers. The Department will also consult the Ministries of the Central Government concerned and also determine the objections, if any, received from the public to a licence being given to the applicants.

(vii) Having received the views of the Registrar, Regional Directors, the State Government and Ministries of the Central Government, where necessary and also the objections from the public, if any, the Department will take a decision whether or not the licence, applied for, should be granted.

2. If the procedure outlined above is followed diligently, it is hoped that all formalities would be completed within a period of eight weeks from the receipt of the applications and it should be possible for the Department to issue the licence applied for within a period of 10 to 12 weeks of the receipt of their applications.

(Circular issued by the Department of Company Law, Administration, Company News and Notes, dated 1-3-1963.)

Note.—The power of the Central Govt. has been delegated to the Regional Directors.
Companies registered in pursuance of licences—Exceptions from compliance of some provisions of the Companies Act

15.11 It has been decided by the Central Government to allow the following exceptions from the compliance of the requirements of some sections of the Act to companies registered in pursuance of licences under section 23 of the Act, or parallel provisions of the earlier Acts:

(a) An ex-director of such a company when elected again as its director may be exempted from complying with the requirements of section 261 of the Act. The consent in writing submitted by him in connection with his election as director of the company for the first time may be deemed to be continuing in force if the director so confirms by a letter to the Registrar and this would meet requirements of section 261 in such cases; and

(b) A copy of all resolutions passed under section 281* in any one general meeting of such a company should be treated as a single document and filed accordingly.

The Central Government has also consented to grant exemption in terms of provisions in sub-clause (d) of clause 6 of section 25 of the Companies Act the companies may be advised accordingly in suitable cases.

(Note.—Section 131 Co. Act omitted by Act 31 of 1961.)

Exemption from certain provisions of the Companies Act for non-profit making associations (Section 25 companies)

15.12 (i) Notification.—In exercise of the powers conferred by sub-section (6) of section 25 of the Companies Act, 1956 (1 of 1956), the Central Government hereby directs that a body to which a licence is granted under section 25 as aforesaid shall be exempt from the provisions of the said Act specified in column 1 of the Table below to the extent specified in the corresponding entries in column 2 of the said Table.

<table>
<thead>
<tr>
<th>Provisions of Act</th>
<th>Extent of Exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 147</td>
<td>The whole</td>
</tr>
<tr>
<td>Section 160(1) (m)</td>
<td>The whole</td>
</tr>
<tr>
<td>Section 161(2)</td>
<td>The whole; provided that the time, date and place of each annual general meeting are decided upon beforehand by the Board of Directors having regard to the directions, if any, given in this regard by the company in general meeting.</td>
</tr>
<tr>
<td>Section 171(1)</td>
<td>A general meeting may be called by giving a notice in writing of not less than 14 days.</td>
</tr>
<tr>
<td>Section 260(4A)</td>
<td>Books of accounts relating to a period of not less than four years immediately preceding the current year shall be preserved.</td>
</tr>
<tr>
<td>Section 257</td>
<td>Shall not apply to companies whose articles provide for election of directors by ballot.</td>
</tr>
<tr>
<td>Section 264(1)</td>
<td>The whole</td>
</tr>
<tr>
<td>*Section 282</td>
<td>The whole</td>
</tr>
<tr>
<td>*Section 286</td>
<td>The whole</td>
</tr>
<tr>
<td>Section 288</td>
<td>Shall apply only to the extent that the Board of Directors' Executive Committee or Governing Committee of such companies shall hold at least one meeting within every six calendar months.</td>
</tr>
</tbody>
</table>

*Communication dated 9th April 1959 addressed by the Regional Director, Northern Region, Xamnagar.)
### TABLE (cont.)

<table>
<thead>
<tr>
<th>Provisions of Act</th>
<th>Extent of Exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 297</td>
<td>Shall apply only to the extent that the provisions for the Board meeting shall be either eight members or 1/10th of its total strength, whichever is less provided, the quorum shall be more than two members in any case, 3rd of section 297 apply.</td>
</tr>
<tr>
<td>Section 299</td>
<td>Shall apply only in cases in which subsection (2) of section 297 apply.</td>
</tr>
<tr>
<td>Section 301</td>
<td>A person shall be disqualified only in cases in which subsection (1) &amp; (3) of section 297 apply.</td>
</tr>
<tr>
<td>Section 303(2)</td>
<td>The whole</td>
</tr>
</tbody>
</table>

*Ordained by Act 31 of 1956.*

(ii) Notification—In exercise of the powers conferred by subsection (6) of section 25 of the Companies Act, 1956 (1 of 1956), read with the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No. G.S.R. 178 dated the 1st February, 1961, the Company Law Board hereby directs that a body to which a licence is granted under section 25 of said Act shall be exempt from the provisions of the said Act specified in column 1 of the Table below in the extent specified in the corresponding entries in column 2 of the said Table.

#### TABLE

<table>
<thead>
<tr>
<th>Provisions of Act</th>
<th>Extent of Exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 195</td>
<td>Minutes may be recorded within 30 days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.</td>
</tr>
<tr>
<td>Section 219</td>
<td>The whole</td>
</tr>
<tr>
<td>Section 298</td>
<td>Matters referred to in clauses (a), (d) and (e) of subsection (4) may be decided by the Board by circulation instead of a meeting.</td>
</tr>
</tbody>
</table>

*Notification No. S.O. 2762, dated January 5, 1964.*

(iii) Notification—In exercise of the powers conferred by subsection (8) of section 25 of the Companies Act, 1956 (1 of 1956), read with the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No. G.S.R. 178 dated the 1st February, 1961, the Company Law Board hereby directs that a body to which a licence is granted under section 25 of the said Act, shall be exempt from the provisions of section 219 of the said Act to the extent that the documents mentioned in subsection (l) of the said section 219 may be sent not less than fourteen days before the date of the general meeting.


**Clarification regarding election of directors in case of section 25 Companies.**

**Query**

13. Section 25 Companies make provisions in their articles of association that the companies in their membership will not be entitled to vote in the election of directors (committee members) unless they have paid their subscription for the relevant year. The member companies are entitled to nominate their representatives for election to the Committee. In case, one of the nominees happen to be nominated by a member
company, which has not paid the subscription for the relevant year, the point for
clarification is whether such nomination and his subsequent election as Committee
member will be invalid under the law. The Articles of Association of the company
concerned do not so that disqualify a person being nominated for election by a member
company which has not paid subscription.

Answer

There can be no objection to the nomination and election of a person nominated
by a member company which has not paid the subscription for the relevant year.
(Circular No. 23/20-Gr. IV, dated 7th May, 1984.)

13.11 A firm, not being a person cannot be registered as a member of a company
except where the company is licensed under section 25 of the Companies Act, 1956.
Companies which have firms registered as shareholders should be advised to take steps
to rectify the position within a specified time. In case the irregularity persists, despite
a warning, necessary action can be taken under section 130(2) of the Companies Act,
1956.
(Circular No. 1/72 dated 8-3-72.)

II. Articles of Association

Section 31: Alteration of Articles of Association

11.1 A company can never replace its articles; it is only the regulations contained
therein which may be changed. Accordingly the concerned company can adopt an
entirely new set of regulations in place of those now contained in its existing articles
by passing a special resolution to that effect in accordance with the provisions of section 31
of the Companies Act, 1956. The new set of regulations proposed to be adopted should
form a part of the special resolution and the explanatory statement to be annexed to
the notice of the general meeting under section 178(2) of the Act should set out all
material facts concerning the proposed alteration in the existing articles.
(Letter No. 329/91/33-PR dated 23-10-1962.)

11.2 Clause 5 of the Companies (Amendment) Bill, 1972 seeks to amend section 13A
of the Companies Act, 1956, with a view to enlarging the scope of the section. In view
of this application under the proviso to sub-section (i) of section 31 of the Act for
conversion of a public company into a private company should be critically examined and
conversion allowed only if the applicant company is closely held one having no public
interest involved in it.
(Circular No. 33/72 dated 3-10-1972.)

15. Common seal: Clarification of section 31 read with sections 50 and 147

The relevant provisions of the Act clearly show that a company registered under
the Act should have only one common seal for use within India.
(Letter No. 6/12355-63-PR dated 25th January, 1968 to Shri Bipin Chaudhuri, Bombay.)

16. Membership of Company

Section 41: Holding of shares by a minor in a company

16.1 This Department has been advised that the Judicial Committee of the Privy
Council in the leading case Mohori Bibi v. Jharamadas Ghosh [1963] 30 Cal. 539 held
that in India a contract by a minor is ab initio void. Apart from the subscribers to the
memorandum of association of a company a person can become a member of that company only when he agrees in writing to be a member and when, pursuant to such agreement the name of the person is entered in the register of members. Since a minor cannot enter into a contract or agreement except through a guardian, and since in view of section 153, no notice can be taken of the fact that the guardian holds a share in trust for a minor, it follows that his name cannot be entered in the register of members and therefore, he cannot become a member of a company. A subscriber to the memorandum of association of a company also enters into an implied agreement to become a member of the company by acceptance of the number of shares of the company written against his name. Since a minor cannot enter into contract, it follows that he cannot subscribe his name to the memorandum of association of a company. There is, however, no objection in law to the guardian of a minor entering into a contract on behalf of a minor or a minor entering into a contract by or through his guardian. In such an event, however, owing to the operation of section 153 of the Companies Act, the name of the minor cannot be entered in the register of members along with that of his guardian nor can the name of the guardian be entered in the register of members in a manner which will show that the person concerned (the guardian) is holding the shares in question on behalf of another person viz., the minor. In view of the fiduciary relationship between the guardian and the minor as laid down in the Guardians and Wards Act, a guardian is responsible for his acts and dealings to the minor in respect of the 'ward' property. There is a distinction between an agreement for sale and the sale itself. Whereas, due to the provisions of section 10 of the Indian Contracts Act a minor is not competent to enter into any contract for the purchase of shares, there is no bar to a minor purchasing fully paid-up shares since in the event of such purchase there will be no covenant subsequent on the part of the minor. In view of the legal position explained above, the Government feels it desirable that in the case of shares owned by a minor the name of the guardian and not of the minor is shown in the register of members.

(Circular No. 312(43); GL-111/63, dated 30th September, 1963.)

Expulsion of Member

16.2 A case has come to the notice of the Central Government where a public limited company amended its Articles of Association by including a clause by a special resolution passed at the Extraordinary General Meeting of the company empowering the Board of Directors of the company to expel a member in a case where the Board is prima facie of the view that activities or conduct of the member is detrimental to the interests of the company or that by reason of his continuance as a member, it would be prejudicial to the future of the company. The question whether such an amendment of the Articles of Association of a company is valid has been under consideration of the Department. After considering the scheme of the Companies Act, the Department is of the view that amendment of Articles of Association of a company providing for expulsion of a member by the management is opposed to the fundamental principles of the companies' jurisprudence and is ultra vires of the company. Such a provision is repugnant to the various provisions in the Companies Act pertaining to the rights of a member in a public limited company and cuts across the scheme of the Act as it has the effect of rendering nugatory the very powers of the Central Government under section 111 of the Companies Act, 1956 and the powers of the courts under Sections 107 and 393 of the Act and is, therefore, void by the operation of the provisions of Section 9 of the Act. The Articles of Association is a contract between the company and its members setting out the rights of members inter se under the contract and expulsion of a member is not only a violation of this contract but it is also opposed to the principles of natural justice. Moreover, under Section 29 of the Indian Contracts Act, any agreement which is contrary to any law or opposed to public policy would be deemed to be unlawful and void. The Supreme Court in the case of M/s. Bajaj Auto Ltd. (Company cases
(1971) 1 has laid down the law as to the conditions on the basis of which directors could refuse a person to be admitted as a member of the company. The principles laid down by the Supreme Court in this case, even though pertinent to the refusal of a company to the admission of a person as a member of the company, are applicable even with greater force to a case of expulsion of an existing member. As under Article 141 of the Constitution the law declared by the Supreme Court is binding on all courts within the territory of India, any provision pertaining to the expulsion of member by the management of a company which is against the law as laid down by the Supreme Court will be illegal and ultra vires. In the light of the aforesaid position, the Companies Act, 1956, has laid down that such a society can be treated as a 'person' having separate legal entity apart from the members constituting it and thereby capable of becoming a member of a company under section 41(2) of the Companies Act, 1956.

(Circular No. 42/73 dated 1st November, 1975.)

16.3 A society registered under the Societies Registration Act, 1860 should not be deemed to be a 'body corporate' within the meaning of the aforesaid provisions of the Companies Act, although such a society can be treated as a 'person' having separate legal entity apart from the members constituting it and thereby capable of becoming a member of a company under section 41(2) of the Companies Act, 1956. (Refer to Section 2(7).)

(Circular letter dated 24th Nov., 1962.)

16.4 In 1957, the Department of Company Affairs was advised that the shares in a company, being the property of a charitable trust, can be held in the names of the trustees 'simply' without describing them as trustees and that if the trustees constitute a society registered under the Societies Registration Act, 1860, the shares can be held in the name of such a society. (vide, U.O. No. 2103/57-Adv(F) dated 27-5-1957). This view was reiterated in the subsequent opinion bearing U.O. No. 21767/62-Adv.(F) dated the 16th July, 1962, wherein it was pointed out that though a society registered under the Societies Registration Act, 1860 is not a body corporate, it is a "person" capable of being a member of company under section 41(2) of the Companies Act, 1956. Such a society is also a 'person' as contemplated by section 153B.

(Extracts from File No. 1(43)-PR/62.)

Membership of a Company—Holding of shares by a minor in a Joint Stock Company—Whether permissible

16.5 In a reference from the Federation of Indian Chambers of Commerce & Industry, New Delhi, the question relating to the holding of shares in a company by a minor was examined in the Department and it has been decided that whereas due to the provisions of section 10 of the Indian Contract Act a minor is not competent to enter into any contract for the purchase of shares, there is no bar to a minor purchasing fully paid-up shares, provided the name of the guardian and not that of the minor is entered in the register of members.

(Circular No. 8/18(11)/63-PR, dated 2-11-1963 to all Regional Directors and Registrars of Companies.)

Membership of a company—Whether a minor can be a member

16.6 Registrars should not raise any objection to the allotment or registration of transfer/transmission of shares to a minor and the entry of the name of a minor in the register of members or in the return of allotment or in any other return.

(Letter No. 8/18(11)/63-PR, dated 31-3-1964.)

16.7 There is no provision in the Companies Act, 1956 that the shares in a company may be held in the name of a public officer. Section 11(2) provides how a
"person" (other than a subscriber of the memorandum) becomes a member. The Collector of Central Excise or the Secretary, to the Government of India, as such, is not a legal entity. Shares cannot, therefore, be held in the name of such office. Similar observations apply to the holder of any other public office which is not a corporation sole constituted by statute (e.g., the Administrator General constituted a corporation sole by the Administrators General Act, 1963). Hence, shares in a company cannot be registered in the name of a public office which is not a corporation sole as understood in law.

16.8 The question raised is whether the Collector of a District is entitled to hold shares of a Company incorporated under the Companies Act. A 'member' has been defined in section 41 of the Companies Act. According to that section, the subscribers to the Memorandum of Association of a company and other persons who agree in writing to become a member shall be deemed to be members of the Company. The answer to the question raised will, therefore, depend on whether the Collector of a District is "a person" within the meaning of the Companies Act. The term "person" has been held to include among others a "corporation sole". The Collector of a District can only be entitled to be a share holder as a corporation sole in case it is held that his office constitutes a corporation sole. A corporation sole is a corporation constituted in a single person who in the right of some office or function has corporate status. The object of a corporation sole is to make it possible to distinguish the holder of an office or function in his official and in his private capacity. By this fiction of law, it is possible to attach rights and duties to the holder, for the time being, of the office or functions to convey real or personal property to him in his official capacity, and to sue him and for him to bring an action in his official name and style. In short, a corporation sole has the same characteristics of perpetual succession and separation of rights and duties of the corporate body from those of the corporator as all corporations possess.

Illustrations of corporation sole in existence in the modern law are the sovereign, an archbishop, a minister or officer of the Crown who is given the status usually by statutes (see Palmer's Company Law 21st Edition).

The Collector of a District is a civil servant of the Union State. Under article 289 of the Constitution of India, all contracts are required to be in the name of the President or the Governor as the case may be and under article 300 all suits by or against the Union State Governments are required to be filed in the name of the President or the Governor as the case may be. A Collector has no power under the Constitution either to enter into contracts or to sue or to be sued in his capacity as a collector. Therefore, the Collector cannot be said to be a Corporation sole.

In the circumstances, he is not competent to hold shares in a limited company incorporated under the Companies Act at the Collector.

Extracted from File No. 2651 (67)/1968

16.9 Goenka Charitable Trust, although the name indicates so, is not a Trust created under the Indian Trust Act, 1882. It is a Society registered under the Societies Registration Act, 1860 and as such the provisions of the Societies Registration Act shall apply. Under section 5 of the said Act, moveable and immovable properties of a Society so registered, if not vested in Trustees, shall be deemed to be vested for the time being in the governing body of such Society. Under the rules and regulations of the Goenka Charities Trust, the management of the Society is vested in a Board of Trustees. The Board of Trustees, therefore, is the governing body of the Society for the purposes of
section 5 of the said Act irrespective of whether the trust properties have been transferred to the Trustees as required by section 6 of the Indian Trust Act. The shares should therefore be held in the name of the Trustees.

Section 108 of the Indian Companies Act, 1956 inter alia requires that a company shall not register transfer of shares unless a proper instrument of transfer duly stamped and executed by and on behalf of the transferor and transferee has been delivered to the company. As the section under which the application has been made requires that the transfer should be on a proper instrument duly stamped and executed, the Company Law Board is competent to advise the applicant that the share should be held in the name of the Trustees and not the Trust and that the application should be amended accordingly.

(Ex.tracts from File No. 32/10946-C.L-V.)
CHAPTER IV
17. PRIVATE COMPANIES

17.1 Where private companies convert into public companies, or come to be deemed to be public companies, and have pre-existing managing directors whose remuneration is in accord with sections 309 and 198, as amended, no permission of the Central Government would be necessary for the continuance of the existing appointment. But sections 268, and 317 will become applicable as from the date of conversion or change of character and Central Government's approval will be necessary for any amendment in the terms of appointment or at the time of re-appointment under section 269(2), as it will also be necessary for purposes of payment of minimum remuneration under section 198(4).

Section 43A: Formalities to be complied with on deemed conversion

Query

17.2 There are no procedural details given in the new section 43A which made private companies/public companies in certain cases. Is it sufficient that the Registrar is intimated? What are the other formalities to be complied with?

Answer

When a private company becomes a public company due to the provisions of section 43A(1), then by virtue of section 43A(2) the said company is required to—

(i) file a declaration with the Registrar;

(ii) change its name;

(iii) bring its articles in consonance with the requirements applicable to a public company; and

(iv) take such other steps as would be necessary in regard to the number of its directors, members, etc.

Section 43A: Intimation regarding change in the membership of a shareholding company

Query

17.3 Section 43A(7) requires every shareholding company to intimate the change in the number of its individual shareholders or any body corporate. It invariably happens that some shareholders are only nominees for some real holder. Hence if a change in the number of shareholders of body corporate alone is intimated it will not enable a private company to strictly comply with the provisions of section 43A. Under such circumstances, is it the duty of the private company to call for additional particulars from the shareholding company?

7-28 M of IJ & CA/N/D/76
Answer

Section 173 of the Companies Act prohibits every company from entering on its register of members, notice of any trust express, implied or constructive. A private company need not, therefore call for any additional particulars from its shareholding company regarding the actual owner of its shares.

Section 43A: Number of shareholders—Counting of Query

17.4 (a) If the same person holds shares in the shareholding of private company as well as in the private company which is liable to be deemed to be a public company, will he be counted as two for the purpose of computing the crucial figure of 50?

(b) Under the section a private company having only two members, one of whom is a body corporate can become a public company. Are all the obligations of a public company cast on such a private company during its altered status?

Answer

(a) According to the terms of the section, he will be counted as two.

(b) A company which has become a public company by operation of law should comply with the various requirements of the statute except where relaxation is permitted.

Section 43A: Reconversion into a public Limited company—Steps for Query

17.5 In cases where a private company has become a public company under this section it may like to remain or reconvert itself into a private company. What necessary steps it should take so that it may not be put to needless inconveniences?

Answer

For reconversion of a Section 43A public company into a private company, the normal procedure for reconversion under section 21, 31 etc. will have to be followed and Government’s approval will have to be taken.

Section 43A: Application of Section 204(3) to deemed Public Limited Companies

17.6 The question is whether section 204(3) will apply to a private company on becoming a public company under section 43A from the date it became public company or from 28.12.60? This question will also arise in connection with a private company that becomes a public company in the ordinary course by conversion.

It seems that the contract for appointment entered into, before the company became a public company under section 43A, will not be terminated immediately after it had become a public company under section 43A.

17.7 Where a small percentage (say less than one) of the shares is held by individuals and the rest by the parent company outside India, section 43A would operate to make
the Indian private company a public company. Actually, the section will operate except where the entire share capital is beneficially owned by the corporate body although one share may be held in the name of an individual as the nominee of the body corporate, or if the articles of the Indian private company prescribe a share qualification for the appointment as director, the individual owns shares not exceeding that share qualification. The question of the percentage of shares held by individuals in India is immaterial.

A private company, which becomes a public company by operation of law by virtue of section 43A, is required to comply with all the requirements of the Companies Act, 1956, which a public company is required to comply with, except where relaxation is permitted by law, and for this purpose, it should reorganise its membership so as to comply with the provisions applicable to public companies.

If, in any case, all the directors of a private company which becomes a public company by virtue of operation of section 43A, become interested directors making it impossible for them to transact business, the remedy would be to increase the strength of the Board by appointing disinterested directors or co-opting or appointing additional disinterested directors, if so authorised by the articles. If this is found impracticable, it would be necessary to place the proposed contract before the general meeting for approval.

Section 43A: Effects of section 49 on deemed public companies

17.8 A question was raised as to whether, in view of the fact that section 49 of the Act did not apply to a foreign company, it was open to such a company holding the entire paid-up share capital of an Indian private company, to hold these shares through nominee shareholders to the extent the company wished without thereby disturbing the private character of the Indian private company. Since, in view of the fact a private company must have at least two members under the Act, it would, in effect, not be possible for the entire share capital of a private company to be held only by one company, the view has been taken that section 43A should be read with section 49 of the Act which allows nominees of a shareholding companies to hold the minimum number of qualification shares for the purpose of being appointed as directors or to hold shares solely for the purpose of complying with the requirement as to the minimum membership of two.

Section 49 of the Act not being applicable to foreign companies, they are not entitled even to the concession envisaged in that section. It has, however, been decided administratively that equal treatment should be given to foreign companies and they should have the benefit of section 49 of the Act.

Section 43A: Managerial Remuneration in deemed public companies

17.9 The general policy to be followed in regard to section 43A companies will be governed by the following considerations:

(i) Section 43A companies should be treated at par with other public companies so far as managerial remuneration was concerned and except in the case of such companies which were primarily managing agency companies, no special treatment would be justified.

(ii) In the case of such companies, where the existing remuneration itself could be considered reasonable having regard to the criteria adopted for fixation
of remuneration of managerial personnel of public companies generally, such remuneration should be protected in full by issuing suitable orders under sections 198(4) and 309(3).

(iii) In cases where the existing remuneration consists of both salary and commission element and where the total remuneration exceeds 11 per cent. of the current net profits of the company but the remuneration itself is not unduly high, the full amount of the salary and perquisites should be protected but the commission element should be protected (by being converted into salary) only to such extent that the total remuneration should not exceed 25 per cent. of the average net profits of the company for the last three years.

(iv) In regard to cases where the remuneration is disproportionately high, no protection should be given to the commission element, if any but the monthly salary payable in terms of existing contracts may be protected for a period not exceeding two or three years or for the remainder of the term of office, whichever is less. In such cases, it should be made clear to the company that Government would not be able to exercise its special powers to protect the salary for a longer period and that the company should reorganise their business and managerial set up so that the managerial remuneration should not exceed the ceilings prescribed under the Act.

[S. No. 1(120) CL 161]

Section 43A: Clarification of subsection (6)

17.10 The question arose now, in view of the fact that a private company must have at least two members, subsection (6) of section 43A could contemplate that the entire share capital of a private company may be held by a foreign body corporate.

It was decided that from the administrative point of view, section 43A should be read with subsections (2) and (3) of section 49 and shareholdings by nominees referred to in the latter section should be disregarded, provided the shareholdings of nominee directors do not exceed the qualification shares, if any, prescribed by the articles and (in cases to which section 49(3) applies) there is not more than one nominee and his holding does not exceed one share.

[S. No. 3(161) M-PR]

Section 43A: Computation of the percentage of shareholding for the purpose of Section 43A(3)

Query

17.11 According to section 43A, where not less than 25% of the paid-up share capital of a private company is held by one or more body corporate, the private company shall be deemed to be a public company subject to the other provisions of the section. The second proviso to clause (b) of subsection (1) of the said section provides that in computing the said 25% share holding, account is not to be taken of any share in the private company held by a banking company if, inter alia, such share is held by the banking company either as a trustee of a trust or in its own name on behalf of a trustee of that trust. The Registrar of Companies should construe this proviso in such a manner that in computing the required percentage of share holding for the purpose of section 43A the shares held by a banking company on behalf of a trustee of a trust should not be taken into account even if there is no written trust deed in respect of such holdings.
Answer

The Department's view is that it is not possible to accede to the request mentioned above as the Registrar must have evidence to satisfy himself that the banking company is a trustee or that it is holding the shares on behalf of a person in his capacity as a trustee and that the share forms subject matter of the trust.

Section 45A: Clarification regarding provisions of section 45-A—addressed to all recognised Chambers of Commerce and Trade Associations

17.12 (i) By virtue of the new section 45A, a number of private companies became public companies with effect from the 28th March, 1961. A company which was a private company before the enactment of section 45A will, however, continue to remain so, if it fulfils immediately before the 28th March, 1961 either of the conditions laid down under subsection (6) thereof.

(ii) All the provisions of the Act which are applicable to a public company will, after the 28th March, 1961, generally apply to a company which has become a public company by virtue of section 45A. However, the provisions of section 12(1) and 29 of the Act which require a public company to have at least seven members will not apply to a section 45A company. The articles of association of such company may continue to contain a provision similar to that in section 3(1)(iii) which is applicable to private companies. Section 41 also is not applicable to a private company, when it becomes a public company by virtue of section 45A and consequently such a company will not be required to file with the Registrar a statement in lieu of prospectus under section 41(1)(b) of the Act. When it intends to raise subscriptions from the public, the company must comply with the requirements of section 70.

(iii) The provisions of sections 198, 209, 309, 310, 311, 387 and 388 etc. which govern inter alia appointment and re-appointment and the payment of remuneration to managing and whole-time directors or managers apply to section 45A Companies. The provisions of section 260(1) of the Act will, however, apply to a person holding the office of managing or whole-time director or manager of such a company for a period of not exceeding five years from the 28th March, 1961 provided he was holding the office immediately before it became a public company, but the restrictions contained in sections 198, 209, 310, 311 etc., would automatically be applicable to such companies from the date they became public companies. Some companies are under the impression that the amended provisions contained in sections 198 and 309 would not apply in cases where the terms of appointment were settled or approved before the Amendment Act was passed. This is not correct. It further appears that on the basis of the provisions contained in subsection (9) of section 309 of the Act, some companies have taken the view that these sections are applicable to them only from the next financial year. Apparently, the words 'this Act' occurring in the subsection have been taken to refer to the Companies (Amendment) Act, 1960 which came into force on the 28th December, 1960. This is not correct and it is pointed out for the information of all concerned that section 309 with all its existing sub-sections has been in force since the 1st April, 1956, when the Companies Act was promulgated. The Companies (Amendment) Act 1960 has, brought about certain changes in the existing subsections. The words 'this Act' occurring in subsection (6) of section 309, therefore, refer to the Companies Act which came into force on the 1st April, 1956, and not to the Companies (Amendment) Act, 1960. The provisions of section 309 and 198 of the Act would therefore be applicable to public companies of the type referred to above with effect from the 28th March, 1961.
provisions of the Act relating to payment of remuneration to managerial personnel did not apply to private companies. The remuneration had, in most cases, been fixed by the companies without reference to the modes of payment authorised under the Act or the ceilings prescribed thereunder. It would, therefore, be necessary for many of these companies to change the mode of payment of managerial remuneration and also seek the Central Government's approval, wherever necessary under section 309, 310, and 198 of the Act as the case may be. Some companies have already sought the Central Government's approval in this behalf. Other companies which for some reason or other have not sought Government's approval so far should do so immediately in their own interest as otherwise they will be violating the law with its attendant consequences.

(iv) For the purposes of calculating the total number of shareholders in terms of section 43A(6)(b)(ii), common shareholders of the private company and of the shareholding company should be counted separately.

(v) The word 'held' used in subsection (1) and elsewhere in section 43A does not mean "beneficially held" since companies are not permitted under section 133 of the Act to recognise trust or nominee holdings. Nominee holdings however are permissible to the extent they are provided for in subsections (2) and (3) of section 49 and companies which seek exemption from the provisions of section 43A under subsection (b)(ii) thereof would not be entitled to such exemption unless holdings by nominees of the parent company are restricted to what is permitted under section 49(2) and 49(3). For this limited purpose, the Department has construed the word 'company' appearing in these two subsections to include a 'Body Corporate'.

(vi) In respect of the various representations made to the Central Government to the effect that a large number of private companies which had technically become public companies on 28.3.61 under the provisions of section 43A(1) could not, for one reason or the other, reorganise their shareholdings before 28.3.1961 so as to enable them to continue as private companies, Government has taken an administrative decision that no proceedings would be launched against such of those companies as were able to reorganise their shareholdings before 31.12.61 at the latest. All those companies which were able to avail of this administrative concession would be deemed to have continued as private companies and no insistence will be placed on them by the Department to comply with the requirements of subsection (2) and (4) of section 43A. Where, however, for its own protection any such company applies for the approval of Central Government under section 43A(4), it should first fulfil the obligations imposed on it under section 43A(2) and then only seek Central Government's approval under section (4).

(vii) Companies which have failed to reorganise their shareholdings by 31.12.1961 would be deemed to have become and continued as public limited companies on and from 28.3.1961 and would become liable to penal proceedings as prescribed in law for failure to comply with the provisions of subsection (2) of section 43A as well as other provisions of the Act applicable to public limited companies.

(Enclose to Circular Letter No. 48/50-CL IV/61, dated 12th February, 1962)

17.13 This Department does not see any reason to modify the views expressed in para 5 of this Department's Circular letter No. 48/50-CL IV/61, dated 12th February, 1962 (given above). There is nothing in the section to support the view that where the same individuals hold shares in the private company in question and/or in all or some of the several shareholding Company, they (the individuals) should not be regarded as separate and distinct members for computing the total number for the purpose of section 43A(6)(b) of the Act. Though such individual may be common members of more
than one shareholding company and/or the private company under consideration, they
retain their distinct and separate capacity as members of each such company with dis-
~tinct rights as such.

(Circular letter No. 48/32-CII. IV/c/2, dated 16th November, 1962.)

Section 45A: Approval under Section 43A(4) and Section 31(1) of the Companies Act—
Clarification regarding conversion of a public company under Section 43A(1) into
a private company

17.14 In terms of provisions in Section 43A(1) of the Companies Act, 1956 (herein-
after referred to as the Act) a private company which becomes a public company by virtue
of provisions in Section 43A(1) shall continue to be a public company until it has with
the approval of the Central Government and in accordance with the provisions of the
Act again become a private company.

Question has been raised whether in the case of a company which having become
a public company by virtue of the provisions of Section 43A(1) of the Act approaches
the Company Law Board for obtaining approval under Section 43A(4) for a reversion
to the status of a private company, two applications to the Central Government—one
under Section 43A(4) and the other under Section 31(1) of the Act, with two separate
application fees are required under the aforesaid provisions of the Companies Act or a
single application fee is sufficient for the purpose.

The issue has been examined by the Company Law Board in consultation with
the Ministry of Law and the Board has been advised that any company which becomes
a public company by virtue of the provisions of Section 43A(1) of the Act can convert
itself into a private company after obtaining the approval of the Central Government
under Section 43A(4) of the Act. Once the Central Government has granted its approval
to convert a public company into a private one under Section 43A(4) of the Act there
is nothing left for further approval under Section 31(1) of the Act. Therefore in such
cases an application by the company under Section 43A(4) is only required and the
question of two applications accompanied by two application fees does not arise. Be-
fore making the said application the company should amend its Articles of Association,
if necessary, so as to incorporate the requirements of Section 31A(iii) of the Act. This
amendment will be necessary in those cases of companies which during their existence
as a public company under Section 43A(1) chose to get those clauses of the Articles of
Association deleted, which had conformed to the requirements of Section 31A(iii) of
the Act, instead of retaining them under the proviso to Section 43A(1). As for the obliga-
tion of companies in such cases to reinstate the said clauses in the Articles of Association
in order that they might be regarded as private companies after their application under
Section 43A(4) of the Act is allowed, the said obligation may be fulfilled with the passing
of a special resolution in pursuance of Section 31 of the Companies Act, but no approval
of the Central Government is required in that regard, because the special resolution
would precede and be a step-in-aid of the application under Section 43A(4) of the Act.
This means that the requirement of Central Government's approval under the proviso
to Section 31 of the Act is solely applicable to the category of public companies which
by the terms of their incorporation or by direct conversion (i.e. without intervention of
Section 43A) from private to public have assumed the status of public companies and
which seek to attain or recover the status of private companies.

(Circular No. 13/72 dt. 19-3-1972.)

Section 45A: Intimation given to the Registrar of Companies under section 43A(2)—
whether may be treated as a document on which filing fee is to be levied

17.15 It has come to the notice of this Department that some of the Registrars
of Companies charge fees for recording the information referred to above while others do

not charge any such fees. This Department has examined this point in consultation with the Ministry of Law and Justice and holds that the provisions contained in clause 6 of Schedule X of the Companies Act, 1956 apply to the making of an alteration in the Memorandum of Association under sub-section (2) of Section 43A which has to be done when the Registrar is informed by a Private company that it has become a public company under sub-section (1) of the said section. Clause 6 of the Schedule X speaks of making a record of any fact and therefore making alteration by means of a formal writing in the Memorandum of Association registered with the Registrar showing that the private company has become a public company would be within the ambit of the said clause.

Appropriate fees are therefore to be paid by companies on the information furnished to the Registrar of Companies under sub-section (2) of section 43A of the Companies Act, 1956.

(Circular No. 20/72 dt. 24.10.72.)

Section 43A: Applicability of section 43A(14)

17.10 The turnover criterion brought in section 43A by the recent amendment for converting a private company into a public company contemplates an average over a period of three consecutive financial years. There is nothing in this context to suggest that the turnover as reflected in the accounts of the company as audited by an auditor appointed in terms of the requirement of the Companies Act or laid before an annual general meeting should only be taken into account. The definition of financial year in section 2(17) of the Act is applicable only if there is nothing repugnant to it as may be gathered from the context of the section where that expression occurs. Since the purpose of section 43A is to introduce a friction whereby a private company becomes a public company, it has to be interpreted in a manner which will serve the concept of the public interest underlying it to the fullest extent possible. To that concept, the holding of the annual general meeting or the circumstances whether accounts are audited or not is not germane stricto sensu. What is germane is the availability of the accounts to the Board of directors whereby they may determine for themselves whether they satisfy the turnover criterion or not. Given the accounts of the three financial years in the sense of the three accounting years of the company, a company would attract the provisions of section 43A.

(Letter No. 22/17/73-C1. III dt. 3-9-75.)

Section 48A: Certain clarifications regarding section 48A

Queries

17.17 (i) (a) Consequent upon becoming a deemed public limited company under the amended Section 48A will it be necessary for the company to get an approval from the Central Government for the continuation of the appointment of its Managing Director, whole-time Directors already in position, or on the analogy of the provisions contained in sub-section (2) of Section 269 applicable to an “existing company”, the present tenure of the continuing directors may remain undisurbed and the approval of the Central Government will be necessary for any new appointment or reappointment only on expiry of the existing tenure of the continuing directors.

(b) What will be the position if the orders appointing them only say that their appointment is until further orders and no fixed tenure is indicated there against. In such a case, would it be correct to assume that in terms of Section 317 they can continue for a period of five years from the date of company becoming a deemed public company?

(c) Have the companies, having losses or inadequate profits, on becoming deemed public limited under section 48A to apply for approval for minimum remuneration to
be paid to their Managing/Whole-time Directors. If so, what is the time limit within which such applications should be submitted by such companies after their coming within the purview of Section 43A of the Act.

(ii) What would be the position of loans and advances already given in excess of the limits laid down in Section 370(1) of the Companies Act, 1956 in case of companies on becoming deemed public limited companies under Section 43A of this Act. Would it be correct to assume that the past loans and advances would not be affected though for future loans and advances they will have to seek necessary approval from the Central Government apart from complying with other formalities as laid down.

Answers

(1) The existing appointment of Managing Director or the whole-time Director would not require the approval of the Central Government now, but it will be necessary at the time of the next appointment. In case the existing appointment is for an indefinite period, i.e. until further orders, then, unless the appointment is terminated earlier, the period of appointment will be taken as five years from the date of the company becoming a public company.

(2) In the event of inadequacy of profit, the company can pay the minimum remuneration after obtaining the approval of the Central Government under Section 198(3) of the Act and the application for the purpose has to be made within a reasonable time from the date of the company becoming a public company.

(3) On the principle underlying the provisions of Section 370(2) of the Act, the company will have to recover the loans taken or withdraw the guarantee within a period of six months from the date of becoming a public company.

Section 43A—Interpretation of the relevant period—Section 43A(1A) and Explanation to Section 43A

17.18 Several queries have been received relating to the interpretation of and the date of the applicability of the provision of Section 43A(1A) to the Private companies with reference to the explanation given at the end of the said Section. The matter has been examined in consultation with the Department of Legal Affairs and it has been decided that the cases of the companies becoming public company by virtue of sub-section (1A) of Section 43A of the Act would fall under one of the three clauses as enumerated under Explanation to the said Section 43A, as follows:

(i) Companies having the average annual turnover of Rs. 1 crore and above during the relevant period consisting of three consecutive financial years and whose 3rd financial year does not end prior to 31-10-1974 i.e. where the 3rd financial year of the relevant period ended on 31-10-1974 or on any date thereafter but not after 31-1-1975 will be converted under sub-clause (i) of clause (a) of the Explanation to Section 43A of the Act and these companies shall become public companies on and from the expiry of a period of three months from the last date of the 3rd Financial year of the relevant period.

(ii) Companies, whose first or the second financial year, as the case may be, of the relevant period having an average annual turnover over of Rs. 1 crore or above does not end prior to 31-10-1974 i.e. where either the first financial year or the second financial year of the relevant period is current on 1-2-1975, will fall under sub-clause (ii) of clause (a) of the Explanation to Section 43A and shall become public companies by virtue of the provisions of sub-section (1A) of Section 43A of the Act on and from the expiry of a period of three months from the last date of the third financial year of the relevant period.

8—26 M of I J & CAND/56
(iii) Companies whose relevant period of three consecutive financial years having an average annual turnover of not less than Rs. 1 crore falls immediately after 1-2-1975 i.e., the third financial year of the relevant period ends after 1-2-1975, will fall under sub-clause (iii) of clause (a) of the Explanation to Section 43A of the Act and shall become public companies by virtue of Section 43(1A) on and from the expiry of a period of 3 months from the last date of the third financial year of the relevant period.  

(Circular No.16/75 dated 24-6-1975)

Section 43A—Clarification of Section 43A (1B)

17.19 The provisions of section 43A (1A) and (1B) are mandatory and the private company shall become a public company according to the said provisions and the company should comply with the provisions of subsection (2) of section 43A of the Act within the stipulated period of 3 months. On the private company’s disposing of the shares of the public company so as to reduce the percentage of its hold less than 25% of the paid up share capital of the public company or its average annual turnover falling below rupees one crore, the company can convert itself into a private company by complying with the provisions of Section 43A(4) of the Companies Act, 1956.  

(Letter No.32/21/75-CL.III dt. 20-10-75)

Section 43A—Applicability of section 43A to Government Companies

17.20 Several Government Companies which were private companies until 1st February, 1975 have already become Public companies by virtue of the turnover criterion brought in by new sub-section (1A) of section 43A of the Companies Act, 1956. Representations have been received from some of the Government Companies etc. for exempting Government Companies incorporated as Private Limited Companies from the operation of sub-section (1A) of Section 43A under section 620 so that they can preserve the status quo ante of a Government private company as on 1st February, 1975. While there is no bar to exempting Government Companies from the operation of sub-section (1A) of section 43A, there is no scope for exempting Government Companies which have become Public Companies by the operation of section 43A, with retrospective effect, so as to enable them to be reconverted into private company status. Hence, even if a notification under section 620 is issued granting such an exemption the same would not be available to all existing Government private companies, but may be available only to those companies which may become public companies by the turnover criteria adopted under section (1A) of section 43A in future or Government companies that may be incorporated as private in future.

2. The Department of Company Affairs have already notified exemptions in favour of Government companies generally, from the operation of some of the important sections and intend to give exemption from other important sections after complying with the provisions of sub-section (2) of Section 620 of the Companies Act, 1956. These exemptions relate to inter-corporate investments, inter-corporate loans, contracts in which directors are interested, and investments, managerial appointments and remuneration and other provisions viz., section 187(3), 198, 259, 268, 269, 297, 309, 310, 511, 570, 572, 387 and 388 of the Companies Act, 1956. The question of granting exemption to the Government companies from the provisions of section 255, 256, 257 and 258 is also under active consideration of the Department. Hence, it should not be so very important now whether a Government company becomes a public company or continues to remain a private company under section 43A in so far as the day-to-day operations are concerned.  

(Circular letter No. 3675 dated 2-12-75)
CHAPTER V

18. PROSPECTUS

Section 56: Advertisement of Prospectus

18.1 Section 56 of the Companies Act provides that every prospectus issued shall state the matters and the report set out and specified respectively in Part I and Part II of Schedule II to the Act, read with Part III of the Schedule. Section 65 of the Act further provides that where any prospectus is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum of association or the signatures thereto or the number of shares subscribed for by the signatories. Many companies offering shares or debentures to the public have been publishing in newspapers and other publications announcements of the issue of capital to the public. Such an announcement usually contains extracts from the prospectus as filed with the Registrar of Companies and is qualified with a note at the head of the announcement in bold characters, such as: (i) “This is only an announcement and not a prospectus”; or (ii) “This is only an announcement for information and not a prospectus and applications are invited on the prospectus copies whereof are available from the Company’s Registered Office or Underwriters, Managing Brokers or Bankers mentioned hereunder”; or (iii) “This is only an announcement regarding the issue of prospectus—it is not a prospectus”; or (iv) “Announcement not being a prospectus or an invitation to the public to subscribe”, etc. The advertisement of the nature referred to above amount in effect, to publication of prospectus in an abridged form and such practice may be said to offend the provisions of section 56 of the Act, with the consequent liability to penalties under the law and the individual civil liability of the directors and others. The prevalent practice is also fraught with danger to the investing public, because it would be possible for an unscrupulous management to omit certain material particulars from the prospectus, as published in newspapers, for the reason that such particulars may have the effect of dissuading prospective investors from subscribing for the new issue.

This Department has had the matter under consideration for some time past and has come to the conclusion that it would not be in conformity with the law or in the larger interests of the investing public if the practice of publishing abridged prospectuses were allowed to continue. In this connection, it has been suggested by certain responsible quarters that the Central Government should prescribe a suitable form in which company promoters and managers may make announcement of their intention to issue a prospectus. In support of this suggestion, it has been pointed out that in the United Kingdom and the United States of America only a bare announcement of the proposal of a company to issue its prospectus is published in newspapers, and prospective investors are expected to contact the brokers or bankers named in the announcement for copies of the prospectus and other relevant particulars of the issue.

The main reasons for not publishing the prospectus in full in newspapers are purported to be the high cost of advertising space the incidence of which in the case of a small issue would be very heavy, and the shortage of space in newspapers. Having carefully considered all the aspects of the question, this Department has come to the conclusion that the best solution would be to follow the practice obtaining in the United States of America and the United Kingdom alluded to in the preceding paragraph. Accordingly, a preference for making an announcement of the issue of a prospectus, as in the copy attached, has been drafted by this Department for adoption.
by those company promoters and managers who may not consider it possible to publish the full prospectus in newspapers and other publications ** ** where an announcement is to be made in the prospectus, as proposed, it will be essential to make such an announcement sufficiently in advance of the date on which the list will be opened for public subscription so as to allow sufficient time for the prospective investors to get copies of the prospectus and any other particulars relevant to the issue.

(Extract from Circular No. 5136 CL IV/62 dated 6th February 1962.)

182. Attention is invited to this Department’s circular letter of even number dated the 8th February, 1962 [Extracts given above] on the above subject. The matter has been reconsidered by Government in detail in the light of the suggestions made by the Chambers and Stock Exchanges in reply to this Department’s circular under reference. It would appear that some of these bodies have not fully appreciated the object underlying the proposal of this Department to evolve a suitable form of announcement in newspapers and other publications regarding the proposed issue of capital by a company. The object was three-fold: (i) to induce the prospective investors to obtain copies of the prospectus relating to a particular issue and study the same before deciding to invest, (ii) to prevent the unwary among them from mistaking the press announcement which might contain most of the material generally found in a prospectus but might omit to give some vital information which a prospectus is obliged to supply, and (iii) to ensure that in making announcements in the press regarding the issue of prospectuses, company managers and promoters did not offend section 56 and any other applicable provisions of the Companies Act. As this Department has been advised that the announcement of the issue of capital being published by companies at present—containing as they do copious extracts from the relevant prospectuses filed with the Registrar of Companies—are not in conformity with law, it is regretted it is not possible to agree to the suggestions of some Chambers that further information should be disclosed than that contemplated in the prospectus circulated earlier.

On a careful reconsideration of this question the Central Government are of the view that the balance of advantage would lie in disclosing only such essential information in the announcement as would arouse the interest of a prospective investor and induce him to ask for the full prospectus. With this end in view the Government have devised a revised prospectus as in the Annexe to this letter, and they would advise company managers and promoters to make all future announcement regarding issues of capital in that form. In this connection I am to point out that the adoption of the enclosed prospectus is not obligatory but if any company chooses to make the announcement in the press in any other form, it would do so at its own risk. If such an announcement, offends in any way the provisions of section 56 of the Act, the directors and other persons concerned would render themselves liable to the penalties under the law and also the payment of compensation to every person who subscribes for any shares or debentures of the company on the faith of the announcement.

ANNEXURE

Amendment regarding the proposed issue of capital

1. Name of the company and the address of the Registered office

2. Existing and proposed activities

3. Location of the Industry

4. Board of Directors

5. Managing Director/Manager
<table>
<thead>
<tr>
<th>9.</th>
<th>Authorised capital:</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.</td>
<td>Subscribed capital:</td>
</tr>
<tr>
<td>11.</td>
<td>Proposed issue to the public (whether at par, discount or premium):</td>
</tr>
<tr>
<td>12.</td>
<td>Dates of the opening and closing of the subscription list:</td>
</tr>
</tbody>
</table>

- Application forms along with copies of the prospectus can be had from the registered office of the company or from the Underwriters/Brokers whose names and addresses are given below:

  **Underwriters:**
  **Brokers:**

---

**Issue of form of application for shares without enclosing copies of prospectus—Contravention of Section 56(3).**

18.3 Instances have come to Government's notice where members of Recognised Stock Exchanges, while issuing circular letters to their clients in respect of new issues, have forwarded forms of application without enclosing therewith copies of prospectus as required under section 56(3). The requirements of section 56(3) are mandatory and any contravention of the provisions contained therein is punishable with fine which may extend to five thousand rupees. Government have very carefully considered the matter in all its aspects and are of the firm opinion that no laxity in strict compliance of the legal provisions should be permitted. With a view to avoiding prosecutions for such illegal practices being launched against the member-brokers of the Exchanges, the desirability of strictly adhering to the mandatory provisions of law as well as of conforming to the rules, bye-laws and regulations of the Exchange should be impressed upon them.

(Circular Letter No. 5/13/GL-VI/62, dated 21st May, 1962.)

**Statements in a circular contrary to the terms of sanction by Controller of Capital Issues.**

18.4 Recently it came to the notice of the Government that a firm of stockbrokers who were acting as underwriters to the issue of capital by a company had issued an undated and unsigned circular which contained statements which materially differed and were contrary to the terms under which the issue was sanctioned by the Controller of Capital Issues. This action on the part of the firm was also within the mischief of the penal provisions of the Companies Act, 1956 relating to the offer and sale of shares.

Government desires to observe that the stockbrokers with their specialised knowledge of company matters are expected to maintain a strict code of conduct. In the above case, it was not considered necessary to pursue the matter further but it is hoped that in future Stock Exchangers will be more alert and take firm action should such instances recur.

(Circular No. F.2/1570/64-dated 22nd September, 1964.)

18.5 Attention is invited to the erstwhile Department of Company Law Administration's Circular No. 5/3/GL-VI/62, dated 21st May, 1962, forwarding a performa in which announcement regarding the proposed issue of capital was to be made in the press. It has been suggested to this Department that the companies wishing to make a public issue of shares may be permitted to include in the eight-point performa of announcement the terms of payment as they are vital aspect concerning a public issue of shares. After a careful consideration of the suggestion made by the aforesaid organisations, the
Central Government feels that there is no bar to the term of payment being included in the announcement made in the press provided it does not offend the provisions of section 56.

(Circular No. 5(3) — CL-V/65, dated 21st March, 1966.)

Section 56: Unsound practices disclosed in prospectuses

18.6 The examination of the prospectuses published by limited companies disclosed the following unhealthy practices which are not keeping with the spirit and objects underlying the provisions of the Companies Act.

(i) It was noticed in a prospectus issued by a company that shares, which were reserved for subscription on the ‘firm allotment’ basis were included in the number of shares offered to the public for subscription. This was considered to be a misrepresentation of the proposed transaction to mislead the intending investors. Subsequently the company concerned filed a revised prospectus showing the correct number of shares actually offered to the public.

(ii) In a Statement in lieu of prospectus filed by a company, an amount of Rs. 2,25,000 was shown as due to be reimbursed to the promoter/director on account of preliminary expenses incurred by him. A complaint was received at that time, alleging that the said promoter/director had misused the company’s funds in lieu of his claim.

On an enquiry by the Registrar of Companies, it was found that the actual amount of expenditure claimed to have been incurred by the promoter/director was Rs. 1,81,000 only, apparently the claim had been reduced by the promoter/director. A further scrutiny showed that only a sum of Rs. 91,907 out of this authenticated claim was supported by vouchers. This led to the appointment of a Committee of the Board of Directors of the company which reduced the claim to Rs. 1,50,000 and the Controller of Capital Issues also directed that the amount to be reimbursed shall be limited to Rs. 1,50,000.

(iii) A company, in its press announcement regarding the issue of its capital, stated that the shares comprised in the issue would be entitled to such dividend as might be declared in respect of the year ending the 30th June, 1961, but such dividend would be payable on the amount paid up on the shares allotted for the period between the actual date of payment of allotment money or the call money on the said shares and the 30th June, 1961. In fact the company did not allot any of the new shares till the 1st July, 1961, thereby preventing the new shareholders from paying any allotment or call money before the 30th June, 1961. No dividend was, therefore, payable on the new shares for the year ended the 30th June, 1961, and the promise held out in the prospectus remained unredeemed. The explanation of the company for the delay in allotting the new shares was called for. It stated that it had received a very large number of applications, almost twice the number of shares offered for public subscription and so there was considerable delay in the allotment of shares. It was considered that the company ought not to have held out a promise which it could have foreseen that it was not likely to be able to honour.

(iv) During the scrutiny of the prospectus issued by a company, it was observed that the preliminary expenses (excluding brokerage and underwriting commission to the extent of Rs. 25,000) were estimated at Rs. 1,35,000 in respect of a total estimated project cost of Rs. 40 lakhs. As the estimate of the preliminary expenses was on the high side, the company was asked to furnish the break-up of this figure. From the company's reply, it was seen that a sum of Rs. 1,35,000 under the head 'Preliminary expenses' included an amount of Rs. 70,591 which was stated to have been spent by the
company on travelling and other so-called preliminary investigation expenses. A further scrutiny showed that the bulk of the expenditure, included in this figure of Rs. 76,561, represented travelling expenses incurred in India and abroad by the managing director of the promoter company. This was on the face of it an attempt to remunerate the promoters in the guise of reimbursement of promotional expenses.

(Extract from the Sixth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended 31st March, 1962)

Section 58: Shares reserved for subscription or firm allotment basis to be excluded in arriving at the number of shares offered to the public for subscription

18.7 In a recent prospectus, it was observed that shares which were reserved for subscription on “firm allotment” basis were included in the number of shares offered to the public for subscription stated in the prospectus. Such a presentation would almost invariably be confusing to the intending investors and might well be, in certain circumstances, deemed to be misleading. Subsequently, a revised prospectus was filed by the company concerned showing the correct number of shares actually offered to the public. However, such remedial action might not be entirely satisfactory particularly when newspaper announcements had been made and prospectus issued to the public on the erroneous basis mentioned earlier. Furthermore, the expense involved in making further newspaper announcements and reprinting and issue of the amended prospectuses to all persons to whom the earlier prospectus was issued, might result in increased expenditure in raising capital, which do not appear to be desirable.

Companies who are likely to make public issue of share capital in the future or are engaged in or associated with such matters should ensure that shares reserved for subscription on “firm allotment” basis are excluded in arriving at the number of shares offered to the public for subscription to be mentioned in the prospectus.

(Circular No. 5150/8440, dated 3rd May, 1962)

Section 60: Advance approval of the prospectus in draft stage before it is actually delivered to the Registrar for registration

18.8 It has been suggested by a Chamber of Commerce that it would be desirable to adopt some system of advance approval of the prospectus in the draft stage i.e. before it is actually delivered to the Registrar for registration. In this connection attention of all the Registrars is invited to the decision taken at the Fifth Conference of Regional Directors and Registrars of Companies held in September, 1961, vide the penultimate paragraph of the decision on item No. 9 in the Agenda for the Conference. It is presumed, that the informal arrangement contemplated herein for scrutiny of the draft prospectuses by the Registrars has been given effect to in all the offices. If, however, this has not been done in any office, the Registrar concerned is advised to give effect to the arrangement without further delay.

(Circular No. 128/HCC/54, dated 27th July, 1961)

Clause 24(1) in Part II of Schedule II to Companies Act, 1956—Interpretation of

18.9 Clause 24(1) in Part II of Schedule II to Companies Act, 1956 was amended on 3rd January, 1968, whereby the Companies are required to furnish in the prospectus the accounts upto a date not earlier than six months from the date of issue of the prospectus. The said amendment was made with a view to giving the prospective subscribers the latest financial position of the company and the gap of six months was kept having regard to practical considerations in the matter of preparation of such accounts.
A doubt has been raised whether the period of 'five years' mentioned in the last para of the said clause 24(1), refers to the period of 'five financial years immediately preceding the issue of the prospectus' earlier indicated in para (b) of the said clause or to a simple period of five years ending on a date three months before issue of the prospectus. In case the period of 'five years' refers to the 'five financial year', the companies will be required to furnish details of accounts upto a period not earlier than six months from the date of issue of the prospectus only when their financial year has already been completed on a date three months before the issue of the prospectus but no accounts for the year have been made till the date of issue of the prospectus.

On the other hand, if the period of five years refers to a simple period of five years ending on a date three months before the date of issue of the prospectus every company which issues a prospectus will be required to furnish accounts upto a date not earlier than six months from the date of issue of the prospectus.

The matter has been examined carefully in consultation with the Ministry of Law and it has been decided that the period of 'five years' mentioned in last para of clause 24(1) did refer to a simple period of five years ending on a date three months before the date of issue of prospectus and hence every company will have to furnish in the prospectus accounts upto a date not earlier than six months from the date of issue of the prospectus, irrespective of the fact whether or not the financial year of the company closes on a date three months before the issue of prospectus.

(Letter No.572/CL-V/68 dated 11th Nov., 1968)

Newspaper Advertisement

18.10 It has been brought to the notice of Government that in advertisements issued on behalf of companies, either directly or through issue houses or managers to the issue, very often exaggerated claims regarding dividend prospect, capital appreciation etc. are made. Similar claims are also, at times, made by company managements at the time of press conferences held prior to the dates of entry into the capital market on the basis of which newspapers present bright pictures of the projects, which are quite often unjustified and misleading.

Companies may, therefore, be advised not to publish either themselves or through their issue houses etc. any material relating to the issue between the date of announcement and the date of closing the subscription list. Similarly, the company managements may be advised to restrain themselves from depicting, at the time of their press conferences, too rosy pictures about the prospects of the companies, unsupported by facts or objective estimates.

(G.letter No.27/71/CL-V/68)

18.11 There has recently been a growing tendency on the part of a number of companies entering the capital market to issue either directly or through the issue houses or managers to the issue, announcements in newspapers in support of their public issue, over and above the advertisements made in pursuance of Section 60 of the Companies Act, 1956. For the guidance of the companies, the erstwhile Department of Company Law Administration, Government of India had, vide its letter No. 5/13/CL-V/62 dated the 21st May, 1962 addressed to all Chambers of Commerce and Stock Exchanges (Copy enclosed), advised company managements and promoters to adopt a particular form for the purpose of these announcements. While these announcements
are generally in conformity with the form suggested by the said Department of Company Law Administration. It has been noticed that in the advertisements issued on behalf of these companies, very often exaggerated claims regarding dividend prospects, capital appreciation, etc., are made. Similar claims are also at times made by company managers at the time of press conferences held prior to the date of entry into the capital market on the basis of which newspapers are made to present misleadingly bright picture of the project. It has also been noticed that companies entering the capital market issue advertisements saying that the public issue of the company has been oversubscribed, but the subscription list is kept open till a particular date with a view to complying with the listing requirements of recognised Stock Exchanges or to meet the demands of up-country clients. The reference to oversubscription is at times dubious as bogus applications are submitted by interested parties. It need hardly be emphasised that such exaggerations and distortions which have the effect of inducing the public to subscribe to the shares of these companies leave them often with a feeling of legitimate frustration when they are proved to be wrong.

The question of preventing these malpractices with a view to safeguarding the interests of the general investing public has been engaging the attention of the Government for quite some time. After taking into account all relevant factors, including the need of granting necessary facility of publicity to companies seeking to raise capital from the public, the Government is of the considered opinion that these companies should not be permitted to publish either themselves or through their issue houses, managers to the issue underwriters or official brokers to the issue, or any one else connected with the issue, any material relating to the issue between the date of announcement and the closing date of the subscription list except an advertisement that the subscription list has been closed. Similarly, the company managers should be restrained from depicting at the time of their press conferences too rosy a picture about the prospects of the company unsupported by facts or objective estimates. Towards this end, the Stock Exchanges may suitably advise the companies approaching them for an allotment of shares.

(Letter No. 1/ST/74 dt. 3.4.74 issued by Deptt. of Economic Affairs.)

18.12 In view of section 56(3)(a) of the Companies Act, 1956 the issue of further shares by a company to its members with the right to renounce them in favour of third parties does not require the issue or registration of a prospectus.

(Circular Letter No. B/31/56-PR, dated 4th November, 1957.)

Section 60: Prospectus—Alterations, deletions or additions made therein at the instance of the Registrar of Companies when filing

18.13 The existing practice as regards filing of prospectus is that the company files the prospectus for registration and simultaneously proceeds to make the announcement in the press and circulate the copies of prospectus. Many a time, it so happens that prospectus delivered for registration is not in conformity with the Law or does not furnish adequate information and, as such, on being called upon to make such corrections, additions, etc., necessary corrections, alterations are made. It is, however, observed that such alterations, deletions or additions are not incorporated in the copies of prospectus which have actually been circulated and published in papers. Thus, it is apparent that the copies of prospectus issued or circulated are not the exact copies of prospectuses registered with the Registrar.

(5th Conference of Regional Directors and Register of Companies.)

Section 60: Gist of discussion and decision

18.14 The question of rectification of the defects in the prospectuses delivered to the Registrars under section 60 was considered at length. The Registrars pointed...
out that though the Companies concerned made good the deficiencies in the prospectuses filed with them, there was no means of ensuring that the said deficiencies were also made good in the copies of the prospectuses as circulated among the public. The main point at issue was whether in such cases, the company concerned should be forced, on threat of prosecution, to publish in the newspapers any or all the alterations pointed out by the Registrar so that the public would get a full picture. As, however, the complete prospectus was not, in most cases, published in newspapers and the Press announcements usually contain only certain important excerpts from the prospectus, Secretary stated that no useful purpose would be served by insisting on the publication in the press of all the alterations made at the instance of the Registrar. Where however, the announcement in the press contained any statement which was patently false, the Registrar should, as soon as it was detected by him before registering the prospectus ask the company, on threat of prosecution, to publish immediately in the newspapers a suitable corrigendum to the earlier announcement. But, where the Registrar on a scrutiny of the prospectus, had reason to believe that there was deliberate suppression of facts, or that patently false, deceptive or misleading statements were included in the prospectus as circulated to the public, he should not hesitate to launch proceedings against the person concerned under section 68 of the Act.

The general view of the Conference was that the best remedy would be to impose a statutory obligation on every company to deliver the prospectus to the Registrar well in advance of its publication and to ensure that no prospectus would be issued to the public except in the form in which it was registered by the Registrar. Till such time as section 60 of the Act was amended in this regard, it was decided that each Registrar should persuade company promoters and managements under his jurisdiction to furnish to him for scrutiny a copy of the draft prospectus proposed to be published, at least a month before the date fixed for its publication, so that any alterations necessary to bring it in full conformity with the provisions of the Act could be pointed out by the Registrar and effected by the company before the final prospectus was delivered to the Registrar in terms of section 60. All the Registrars were advised to issue a suitable Press Note bringing the informal arrangement for scrutiny of the draft prospectus by the Registrars to the notice of all concerned.

The Registrars were also enjoined to exercise greater vigilance in granting certificates for commencement of business after filing Statement in lieu of prospectus and in appropriate cases, to ascertain the full implications of such requests.

(3rd Conference of Regional Directors and Registrars of Companies.)

New Capital Issues—Supply of copies of Prospectus issued by companies to Reserve Bank of India

18.15 I am directed to say that the Reserve Bank of India conducts regularly periodical survey of public response to capital issues. The material for these companies when entering the capital market for new issues and also from the circulars issued by the companies to the shareholders while making right issues. However, in some cases, copies of prospectuses or of the circular letters are not furnished. I am, therefore, to request that companies filing copies of prospectus with you may be advised to furnish a copy of the prospectus or of circular for right issue, as the case may be, to the Director, Division of Monetary Economics, Economic Department, Reserve Bank of India, P.B. No. 1035. Bombay-1.

(Circular No. 17/75 dated the 31st July 1975 on File No. 58/75-01, VI)
CHAPTER VI

19. COMPANY DEPOSITS

Section 58A & 58B

Section 58A: Applicability of section 58A Companies Act, 1956, and the Companies (Acceptance of Deposits) Rules, 1975

19.1 Secured loans

(a) If secured loans are taken from banks or other financial institutions referred to in sub-clauses (ii) and (iii) of Clause (b) of Rule 2 of the Companies (Acceptance of Deposits) Rules, 1975, they would not be regarded as ‘Deposits’ within the meaning of the said rules.

(b) On the other hand if the whole or part of the secured loans have been taken from other sources on the security of the assets of the company, they would be regarded as ‘Deposits’ except that loans which do not exceed 25% of the market value of the assets which constitute security for the loan would not be taken into account for the purpose of the limits mentioned in rule 3. In this connection, attention is invited to explanation 1 below the said rule 3.

(c) Any loans which are not covered under (a) and (b) above would be ‘Deposits’ and will be taken into account for the purposes of the limits laid down in rule 3.

Deposits from shareholders and Directors

19.2 The deposits from shareholders and others laid down in rule 3(2)(b), together with the short term deposits provided in rule 3(1), should not exceed 15% of the paid up capital and free reserves of the company.

Deposits from others

19.3 These deposits would be governed by section 58A(3)(a) and Section 58A(3)(c) of the Companies Act, 1956. According to these provisions, if the deposits have been accepted in accordance with the provisions of the Non-Banking Companies (Reserve Bank) Directions, 1966, as amended from time to time, then they are to be repaid in accordance with the terms on which they were accepted. On the other hand if these deposits had been accepted in contravention of the said directions, then they were required to be repaid by 1st April, 1973.

Section 58A: The Companies (Acceptance of Deposits) Rules, 1975—Clarification in respect of sub-rule 4 of Rule 4

19.4 Under sub-rule 4 of Rule 4 of the Companies (Acceptance of Deposits) Rules, 1975, it has been stipulated that no advertisement shall be issued by or on behalf of a company unless, on or before the date of its issue, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director. It may be noted that it would be treated as sufficient compliance with the aforesaid provisions of the Companies (Acceptance of Deposits) Rules, 1975, if the advertisement is signed by every director or by his agent authorised in writing.

(Circular No. 36/75 dt. 22.9.75.)
Section 58A: The Companies (Acceptance of Deposits) Rules, 1975—Need for advertisement in case of renewal of existing deposits

19.5 I am directed to invite your attention to Rule 4 of the Companies (Acceptance of Deposits) Rules, 1975 which requires every company intending to invite or allowing or causing any other person to invite deposits to issue an advertisement for the purpose. A question has been raised as to whether an intimation to a depositor on the eve of maturity of his deposit indicating the date of maturity coupled with a statement that the depositor may renew his deposit if deemed necessary would amount to an invitation, and hence call for issue of an advertisement. This Department has considered the matter and is of the view that such an intimation would amount to an invitation, and hence the company should comply with the requirements of subrule (1) of Rule 4 of the said Rules. In short, there must be a valid advertisement in force which would permit such an intimation.

(Circular No. 5 of 1976 dated the 10th March, 1976 on File No. 4/2/76-CL.XIV)

Section 58A: The Companies (Acceptance of Deposits) Rules, 1975—Clarification in respect of sub-rule 4 of Rule 4

19.6 Under sub-rule (4) of Rule 4 of the Companies (Acceptance of Deposits) Rules, 1975, it has been stipulated that no advertisement shall be issued by or on behalf of a company unless, on or before the date of its issue, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director. It would be treated as sufficient compliance with the aforesaid provisions of the Companies (Acceptance of Deposits) Rules, 1975, if the advertisement is signed by every director or by his agent authorised in writing.

(Circular No. 23/75 dated the 25th September, 1975 on File No. 4117/75-CL.XIV)

Section 58A: The Companies (Acceptance of Deposits) Rules, 1975—Clarification in respect of sub-rule 5 of Rule 4

19.7 Sub-rule (5) of Rule 4 of the Companies (Acceptance of Deposits) Rules, 1975, stipulates that every change in the particulars contained in the advertisement of which a copy has been filed with the Registrar in accordance with the provisions of sub-rule (4) shall also be notified to the Registrar within thirty days from the day on which such change occurs. A question has arisen whether any hiring fee should be charged from the companies for notifying the changes in the particulars contained in the advertisement. It has been decided that while in view of the provision contained in Section 58B of the Act payment of fee should be insisted upon in respect of an advertisement which is required to be filed under sub-rule (4) of rule 4, no fee will be required to be paid when changes are notified under sub-rule (5) of rule 4.

(Circular No. 26/75 dt. 18.10.75)

Section 58B: Clarifications regarding the scope of Section 58B of the Companies Act. 1956

Section 58B of the Act runs as follows—

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

19.8 The advertisement referred to in the above section is the one required to be issued by Companies for inviting or accepting deposits. Such an advertisement is covered under the definition of "prospectus" laid down in Section 2(36) of the Act, as amended recently. Accordingly, an advertisement for inviting or accepting deposits is
a prospectus and ordinarily all the provisions of the Act relating to prospectus automatically become applicable in relation to such an advertisement. However, the words "so far as may be" appearing in Section 588 of the Act are significant in this context. Having regard to these words, the Central Government is of the opinion that whatever in respect of certain matters relating to advertisement specific provision has been made in Section 58A or in the Companies (Acceptance of Deposits) Rules, 1975, the corresponding provisions in the Act relating to prospectus would not apply to the advertisement. To illustrate, according to Section 58(1) of the Act, every prospectus is required to contain information on the matters specified in Schedule 11. This requirement will not apply to an advertisement for deposits because Rule 4 of the Companies (Acceptance of Deposits) Rules, 1975 prescribes the form in which such an advertisement is required to be issued. The other provisions governing the prospectus, including those relating to civil and criminal liabilities for misstatements (Sections 62 and 63); penalty for fraudulently inducing persons to make deposits with any company (Section 68) etc., will mutatis mutandis apply to the advertisement for deposits.

(Circular No. 275 dt. 7-6-75)

19.9 Clarification under Companies (Acceptance of Deposit) Rules 1975

Period of validity of advertisement

Suggestion

1. Although the figure of profit would be known earlier than the date of the annual general meeting dividend would be declared only at the annual general meeting. Since dividend declared have also to be stated in the advertisement, and the text of the advertisement approved by the Board of Directors and signed by all of them and filed with the Registrar, it would require sometime after the annual general meeting.

2. While the Department's action in extending the period of validity of advertisement up to the date of annual general meeting is greatly appreciated, it is submitted that the period of validity should be extended by at least 15 days after the annual general meeting to provide enough time to companies to fulfill the formalities. Acceptance and renewal of deposits is a continuous process and any gap therein would cause loss of interest to the intending depositors.

Secretary Shri Ray's reply

It would be acceptable to the Department if the companies mentioned that the dividend has not been declared for the immediate preceding year and indicate the dividend proposed to be declared.

Particulars to be given in the advertisement

Suggestion

It is not clear as to whether an application for acceptance or renewal of deposit under Rule 5(2) would be necessary in the case of companies which accept uninvited deposits. An amendment to Clause (i) of Rule 4(2) as under would make the provision more explicit:

Clause 5: Profits of the company before and after making provision for tax for the latest three financial years for which the accounts have been audited and adopted in the annual general meeting.
Secretary Shri Ray's reply

This should not present any problem as all the particulars which are given in the advertisement have also to be given in the application form. Both the advertisement and the application form are complimentary and are intended to safeguard the interest of the depositories. It is a provision under the law and the Department could not do much except to interpret it as liberally as possible.

In response to the suggestion that when all the particulars are available in the application why to impose additional burden of advertisement on companies, the Dept.'s view was that public advertisement and application were both essential.

Signatures to the advertisement

Suggestion

Compliance with the requirement that all directors or their authorised agents should sign the advertisement may be practically difficult as some directors might be residing abroad or out of India on tour. Further, refusal by a single director to sign the advertisement or appoint an agent could hold up the company from issuing advertisement or appoint the agent. The principle of authentication of balance sheet laid down u/s 215 could be made applicable to advertisement or it should be sufficient if a majority of directors sign the advertisement.

Secretary Shri Ray's reply

The Department has allowed an authorised agent to sign the advertisement on behalf of a director. Alternate director could also sign on behalf of a director when the director is not present in the country. The suggestion that signatures of two directors should be treated as sufficient is being examined by the Department and may be, the Department after examination might allow if the advertisement is signed by a majority of directors.

Repayment of deposits before expiry of six months

Suggestion

Rule 8 which was amended by the Companies (Acceptance of Deposit) Amendment Rules 1975 has completely omitted the provision regarding repayment of deposits before six months on a lower rate of interest. It is possible that it might be interpreted that repayment is not permitted before expiry of six months. Sub-rule 2 of the Rule should therefore be reinstated as the amendment to Rule 8 appears to be relating to the earlier Rule 8(1).

Also where companies accepting deposits are not able to refund the same on maturity due to financial difficulty and the amount is refunded within a period less than six months from the due date, only normal rate of interest from the date of maturity till the date on which actual refund is made should be payable to the depositories.

Secretary Shri Ray's reply

The intention is to club short term loans with short term requirements and they are allowed upto 10% under the Rules. So far as the deposits of six months and above are concerned, they come under different category of ceilings. No specific purpose would therefore be served in reinstating sub-rule 2 of Rule 8. The Reserve Bank of India was also consulted before the amendment was issued and it did not encourage any deposit for less than six months as it did not want non-banking companies to operate
current accounts. In regard to difficulty apprehended in cases where deposits have been accepted for a period of one or two years and subsequently due to some exigency the depositor wants his money back, there may be only very few cases and such exceptional circumstances should not be brought into the Rules.

Security margin for exclusion of loans secured by charge: Inconsistency with RBI directives

Suggestion

Under the new rules, loans secured by a charge are excluded from the definition of deposits, provided the security margin is 75%. Under the RBI directions, however, loans secured by creation of a mortgage or pledge of assets of the company were excluded, provided the security margin was 25%. There seems to be some mistake at the time of framing the rules. This may be rectified.

Secretary Shri Ray's reply

The Department had consultations with RBI and even interministerial consultations on this. It was decided that so far as this kind of loan was concerned the margin should be kept at 75%.

Declaration by Director or Secretary

Suggestion

The provision regarding filing of return with the Registrar of Companies after the close of the financial year should be applicable only to companies which accepted or renewed deposits. In the case of other companies only a declaration by a Director or Secretary or other officer of the company that the company had not accepted or renewed any deposit during the previous financial year nor is intended to do so in future should be sufficient. Deposits should also be distinguished from private loans or other temporary borrowings.

Secretary Shri Ray's reply

In case where the companies have discontinued accepting deposits or do not intend to go in for more deposits there might be instances where the deposit might be in excess of the ceiling, which the Department should know, as it has to be correlated with the finances of the company, the paid up capital with regard to which percentages are worked out.

Changes in particulars in the advertisement

Suggestion

There might be cases where there is no material change e.g. in the figures of profit or dividend, but only in the directors. In such cases filing this information would not serve any purpose.

Shri Ray's reply

The whole question is under review and the Department is trying to take an overall view in this matter.

(Reply by Secretary Shri Ray at meeting of Punjab, Haryana, Delhi Chamber of commerce and Industry.)
CHAPTER VII

20. ALLOTMENT OF SHARES

20.1 Section 69 of the Companies Act provides inter alia that no allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount has been subscribed. Clause 5 of Schedule II to the said Act indicates how the minimum amount should be computed having regard to the immediate requirements of the company, i.e. for purchase of property, preliminary expenses, working capital etc.

A company issued two prospectuses one in 1962 and the other one in 1963. In the prospectus issued in 1963, it was indicated that the minimum subscription on which the directors were to allot the shares was fixed at Rs. 14,51,500. Although the minimum amount indicated in the second prospectus was not subscribed, the company allotted shares worth Rs. 91,000. The company has taken the plea that although a minimum amount was specified in second prospectus, it was not strictly necessary for the company to postpone the allotment of shares on account of poor response, because under subsection (7) of section 69 it is not strictly necessary to do so. The views expressed by the company are similar to those expressed in Palmer's Company Law Twentieth Edition, Page 185.

It was held that as shares had been allotted at first after the issue of the first prospectus in 1962 in compliance with the provisions of Section 69, those requirements do not have to be complied again at the 2nd allotment after the issue of the 2nd Prospectus in 1963.

(Extracts from File No. 5(15)/CL/66)

Section 70: Share Capital: Propriety of issue of shares as donation

20.2 A company limited by shares has no power to issue shares as fully paid up as a gift or bonus to the shareholders although a contract to do so has been made bona fide and registered under the Companies Act, 1956; if there is no payment in money's worth for the shares the allotment would be ultra vires. Consequently, the allotment of shares as fully paid up to a charitable trust by way of donation is not valid in law.

(Letter No. N90(17)/65-CL-V dated 6th August, 1965 to Regional Director, Bombay)

Section 70: Minimum/Maximum period during which subscription list in respect of an issue of capital to public should be kept open

20.3 In the Department of Economic Affairs letter No. F. 1(1)/SE/73 dated the 24th August, 1973, it was inter alia, clarified that the companies which are granted underwriting assistance to all India Financial institutions would be required to keep the subscription list of an issue of capital to public, open for not less than three working days as laid down in the Securities Contracts (Regulation) Rules, 1957 and that in case the issue was not fully subscribed during the said minimum period the list would be kept open till the issue was fully subscribed provided that the subscription list would in no case be kept for a total period exceeding 10 working days from the date of opening of the subscription list.

The question has been under consideration of Government for some time past as to the maximum period up to which the subscription list should be kept open in respect
of public issues made by companies which are not underwritten by any of the all-India
financial institutions and whether the subscription list could be allowed to remain open
for an indefinite period. It has been observed that in the absence of any such maxi-
mum time limit the public money is unduly locked up and the allotment of shares is
delayed. It has, accordingly, been decided that the Stock Exchanges should make it
incumbent on the companies making public issues, intended for enlistment on them,
to keep the subscription list open for a period not exceeding twenty-one days from the
date of opening of the subscription list in cases where the public issues are not under-
written by public financial institutions.

(Dept. of Economic Affairs Letter No.F.2/SE/74 dated the 4th October, 1975.)

Section 75: Extension of time for filing of returns of allotment

20.4 The Government of India are advised that under subsection (6) of section
75 of the Companies Act, 1956, it would be competent for a Registrar to grant an ex-
tension of time for filing of a return of allotment irrespective of whether an application
for such extensions is submitted to him before or after the expiry of the period of one
month prescribed by sub-section (1) of the section.

It is however added for the information of the field Officers that provision of
subsection (3) are exactly the same as those of subsection (2A) of section 104 of the
Indian Companies Act, 1913, which was inserted by section 2 of the Act No. XXVI of
1941 and the power was originally conferred on the Registrar for a more limited pur-
pose namely delays in transit. Normally the period of one month prescribed by section
75 of the new Act should be ample for companies to file their returns of allotment and
there should not be frequent occasions for the Registrar to exercise this power. It is
appreciated, however, that, owing to ignorance of the procedure to be followed, some
companies may find it difficult on the first occasion for filing such return of allotment
after the commencement of the new Act to submit it within the period of one month.
There would be no objection to the Registrar exercising his power under section 75(3)
on such occasions, provided he is fully satisfied that there are valid reasons for granting
the extension applied for. He may, on such occasions, entertain applications for ex-
tension submitted either before or after the expiry of the prescribed period of one
month. On subsequent occasions, ignorance of procedure cannot be a valid reason for
applying for extension of time. It would then be for the Registrar not only to satisfy
himself that very strong reasons exist for the grant of an extension of time but also
to insist that applications for extension is submitted to him before the expiry of the
prescribed period of one month. Where, in such cases the application for extension of
time is not submitted within the period of one month the Registrar may obtain the
advice of the Regional Director before deciding the matter.

(Letter No.A/75/56-PR dated 18.3.57.)

Section 75: Dividend—Clarification of

20.3 The holders of coupons for fractional shares cannot be said to be allouee
of any shares by the strength of holding those coupons till they actually receive commu-
nication of the allotment of any share from the company in their favour in exchange of
the said coupons. Any dividend declared in the meantime in respect of the “capital”
represented by the coupons should not be treated as dividend declared in favour of any
particular holder of a share as such, but as dividend allotted to a holder for whomsoever
may acquire full shares in exchange of the coupons.

(F.No.5/31 (75)/03-PR, dated 27th March, 1969.)
Section 75: Clarification regarding extension of time for filing of a return of allotment with Registrar under section 75(3):

29.6 The Department's view is that the Registrar of Companies should grant extension of time under sub-section (3) of section 75 only when the application for extension of time is made within one month [now thirty days] from the date of allotment of the shares in question.

Where the Registrar has not extended the time for filing under sub-section (3) of section 75 and a return of allotment is filed with him after the expiry of the one month [now thirty days] period specified in sub-section (1), he should take the document on record on payment of the additional fee, if any, imposed under section 611(2) without prejudice to any other liability of the company and its officers in default for such delay.

(Clarification issued by the Department of Company Law Administration, Company News & Notes, dated 16th July 1989)

Allotment for cash

29.7 As the provisions of the said section 75 stands at present, this Department is advised* that if consideration for allotment of shares is actual cash, then only the allotment would be for cash. "Cash" is actual money or instruments e.g. cheques which are generally used and accepted as money. If consideration for allotment is not flow of cash but some other mode of payment e.g. cancellation of a genuine debt or outstanding bills, for goods sold and delivered, marketable securities, time deposits in banks, then allotment cannot be treated as for cash.

*Advice reproduced below.

The question to be decided is whether the conversion of bonus into Share capital constitutes an allotment of shares for consideration other than cash.

As put in Buckley on the Companies Act, 16th Edn. P.127: "A good payment in cash was made—
If there being due and presently payable in respect of property sold to the company a sum of cash, such sum.
Or any portion of it, was set off against some presently payable in the shares,

or if, the Company being indebted in cash to a third party, payment was made by creating a shareholder with cash, or if the company having been free entered into arrangement with a shareholder, under which cash becomes payable to his creditor, the amount to the shareholder upon his shares, notwithstanding that the company was shortly afterwards wound up.

And by a credit to make payment might be made upon shares in accordance with cash.

In Palmer's Company Law 21st Edn at p. 200 it is stated as follows:

"Where a company desires to deduct from a debt presently due, that debt may be used as consideration against an allotment of shares to the creditor, and such arrangement is proof of payment for the shares (the allotment being treated as for cash), but if shares are allowed to a creditor by way of accord and satisfaction, the allotment is not for cash and a contract to be filed under section 52(2)".

In the note at pages 6-7 reference has been made to Spurgo's case (1872) 8 Ca. App. 497. That case has been cited in the aforesaid passage in Buckley on the Companies Act. The said case and the other case cited by the learned author are decisions on the wording of section 52 of the English Act.

Section 52 of our Companies Act, 1956, corresponds to section 52 of the English Act.

With effect from 15th October, 1985 the following proviso has been added to section 75(1) of our Act.

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

As such previous English decisions on the point are not helpful. We have to construe section 75(1) (a) of our Companies Act on its own wording and not on the wording of the English Act.
In the new proviso added to section 75(1) (a) of our Act we have made it clear that allotment for cash, means “cash actually been received in respect of such allotment”. The words “cash”, “actually received” can only mean that cash must actually received i.e. there must be flow of cash in consideration of the allotment. If consideration for such allotment is cash, but actual cash, then only according to true interpretation of the words used in the proviso the allotment would be for cash. “Cash” is actual money or instruments e.g. cheques which are generally used and accepted as money. Its characteristic feature is that it is immediately available for disbursement. If it cannot be so made available, it cannot be treated as cash. Thus marketable securities, time deposits in banks may be readily realizable but are not cash and are not in ordinary business transactions considered as cash as those are not readily available for use.

If consideration for allotment is not, flow of cash but some other mode of payment e.g. cancellation of a genuine, due or outstanding bill for goods sold and delivered that cannot be treated as payment in “Cash”.

In a case when loan was received by a company with the specific object of converting it into shares at a subsequent date and the company had actually received cash, a view was taken that as the intention of the party was to treat the money given as a loan at the outset, satisfaction of that loan in lieu of allotment of shares cannot be treated as “cash” for the reasons stated above.

(Extracts from FIs No. 34-16987 AIR dated 27-6-1999)
CHAPTER VIII

21. SHARE CAPITAL, SHARE HOLDERS AND TRANSFER OF SHARES

Section 81: Further allotment out of unsubscribed portion of capital

21.1 Any allotment of unsubscribed portion of issued shares as and where applications are received will not amount to an increase in the subscribed capital of the company by issuing new shares and every allotment of shares within the issued capital is the first allotment so far as those shares are concerned. Section 81(1) of the Companies Act is not therefore, applicable to the remaining shares which were issued already. The said section is also not applicable to the sale of forfeited shares for which no allotment is necessary.

(Letter No. 2(27)/56-PR dt. 4-10-76 to Registrar of Companies, Madras.)

Further issue of shares.

21.2 The issue of further shares by a company to its members with the right to renounce them in favour of third parties does not require the issue of registration of a prospectus.

(Letter No. 2(41)/66-PR dated 4-11-73.)

Propriety of inclusion of a provision similar to section 81 in the article of a private company.

21.3 Though under subsection (3), the provisions of section 81 of the Companies Act, 1956 do not apply to a private company, there is nothing in the Act to prevent such a company from including in its Articles of Association a provision on the basis of section 105C of the Indian Companies Act or section 81 of the Companies Act, 1956. Such a provision in the Articles will be binding on the company.

(Letter No. 3(81)/58-PR dated the 17th October, 1936.)

Counting of period of one year under Section 81(1)

Query

21.4 Clause (I) refers to 'after the expiry of one year from the allotment of shares in that company'. Sometimes, in respect of an issue of shares, shares are allotted on different dates without closing the subscription list. Are we to take the date of the first allotment as the one on which shares being part of the issue, are allotted for the first time?

Answer

The 'one year' specified in the section is to be counted from the date on which the company has allotted any share for the first time.

(Letter No. 0(96)(I)/61-PR dated the 9th May, 1961.)

Conversion of Loan into Shares is prospective in effect.

21.5 It is clear from the provisions of Section 81(4) of the Act that the order passed for conversion is not retrospective in effect but only prospective in effect. When
Section 81(4) applies to Private Companies—Legal Opinion.

216 Subsection (4) of Section 81 of the Companies Act, 1956 applies to a private company simplifier notwithstanding clause (a) of sub-section (3) of section 81 *inter alia* for the reasons stated below:—

(i) Sub-section (4), (5), (6) and (7) of section 81 were added by section 5 of the Companies Amendment Act (13 of 1963). It is obvious therefrom that section 81(3)(a) which was in the Statute before the introduction of sub-sections (4), (5), (6) and (7) could not possibly refer to sub-section (4).

(ii) It is well known that if two sections of the same Statute are repugnant, the rule is that the last must prevail. Sub-section (4), therefore, must prevail over sub-section (3) of section 81.

(iii) Sub-sections (1) and (2) deal with the offer of further shares to the existing shareholders and renunciation thereof by the said shareholders. Sub-section 1A makes an exception thereto in the circumstances specified therein. Sub-section (5) provides that nothing in this section which, in the context, in my opinion, can only mean sub-sections (1) and (2), apply—

(a) to a private company; or

(b) to the increase of the subscribed capital of a public company caused in the circumstances specified in the said clause.

Sub-section (4), however, dealt with an entirely different subject. It empowers the Central Government alone unilaterally to make the order and not on the basis of consent of the company or pursuant to some option attached to the debentures issued to or loan taken from the Government, by the company. It is a well known principle in interpretation of Statutes that one way in which repugnancy can be avoided is by regarding two apparently conflicting provisions as dealing with distinct matters or situations.

(iv) The opening words of sub-section (4), viz., "notwithstanding anything contained in the foregoing provisions of this section" refer to sub-sections (1), (2) and (3) and as such sub-section (4) prevails over sub-section (3)(a) and in the premises, an order under section 81(4) can be made by the Central Government even in respect of any private company.

(v) The Hon'ble Finance Minister's speech in the Lok Sabha Debate referred to by the Solicitor in para 1 of his note dated 23-5-74 at p. 1213/N ante has been reproduced in "A Guide to the Companies Act" by A. Ramalaya, 5th Edition, pages 142-143. It is well known that debate in Parliament cannot be referred to for the purpose of construction of the statute. However, for the sake of argument only and without admitting, if it is assumed that the speech is relevant, the scope and effect of the speech, in my opinion, is as follows:—

(a) The Honourable Minister did not refer to private company but stated that "progressive thinking is generally not for outright loans by Government to private enterprises". The expression "private enterprise" in this context, it is felt
refers to enterprise which is not public enterprise, i.e., not an enterprise by the Government, and the expression has nothing to do with private company or public company.

(b) The Hon'ble Finance Minister did not refer to debentures to be issued to or loans to be obtained from the Government by a company in future, but to debentures which have already been issued to or loans which have already been obtained from the Government by a company. This is due to the fact that in regard to debentures to be issued to or loans to be obtained in future from the Government by a company, Government has the option even without the aid of the Statute to agree to subscribe for debentures of a company or to grant loans and advances to a company only on the condition that the Government will have the option to convert debentures or loans into equity shares in the company. In regard to debentures which have already been subscribed or loans which have already been granted, however, Government cannot exercise such option unless such option had already been attached to the debentures issued to or loans granted by the Government and in relation to such debentures issued or loans granted by the Government to a company in the past where no such option had been attached, it was necessary for the Government to have such power and that could be done only by amendment of the Companies Act. It is in that context that the Hon'ble Minister made his speech in introducing the Bill resulting in the addition of subsections (4) to (7) after the Bill was passed. The speech, in my opinion, did not refer to any particular class of companies private or public, but to private enterprise comprising both public companies and private companies.

(E.N.O. 38/5073-CL.III)

22. Kinds of Capital

Dividends: Clarification with reference to section 88.

22.1 The abeyance of rights as to dividend on new equity shares till they are fully paid up does not amount to disproportionate rights as to dividend which is prohibited under section 88 of the Act. It is to be noted that on these shares (subsequently issued) becoming fully paid up, they will rank pari passu with the existing shares in the matter of payment of dividend.

(Secretary's reply to Company Law Association of India Bombay-F.No. 224663-PR.)

Clarification regarding section 88 and 93

Query

22.2 Section 88 prohibits issue of shares (not being preference shares) which carry voting right or rights as to dividends, capital or otherwise which are disproportionate to the rights attaching to the holders of other shares (not being preference shares). What is the significance of the word “Otherwise” used in the section? In view of the provisions of this section read with section 93, can a company which had already issued equity shares of a certain nominal value which are fully paid, issue further equity shares of the same face value but call up only a part of the amount with a condition that until such shares are fully called up and paid, no dividend will be payable on such shares?

Answer

This Department's views on the points raised are as follows:

(i) The word 'otherwise' may include inter alia rights as to participating in surplus in the event of winding up, mode of repayment, etc;
(3) There is no conflict between the provisions of sections 88 and 93. It is permissible to issue further equity capital in the manner suggested, subject to an enabling provision in the articles of association of the company.

(Clarification issued by the Department of Company Law Administration (Company News & Notes, dated 14 July, 1963.)

Section 94: Power of a company to alter its share capital

23.5 A company whose authorised capital was Rs. 5 crores, at one of its general meetings, passed two resolutions under clauses (c) and (a) respectively of subsection (1) of section 94 of the Companies Act, 1956, diminishing the authorised capital by the cancellation of a class of its unissued shares and creating at the same time in lieu thereof of unclassified shares of the same denomination. No increase in the original authorised capital of Rs. 5 crores was thus effected. The question has been raised as to whether the creation of such new shares, concurrently with the cancellation of certain unissued share capital of a company, should be deemed to be an 'increase' in the authorised capital of the company over the reduced authorised capital (due to the cancellation of shares), and, if so, whether the company should be called upon to pay registration fees therefor at the time of reporting the transactions in Form Nos. 5 and 6 of the Companies (Central Government's) General Rules and Forms 1956. The question has been carefully considered and it has been decided that, in such a situation, so long as the original authorised capital, on which the company had already paid the prescribed fees under the Companies Act, is not exceeded, the company should not be called upon to pay any further fees. It should however, be required to file both Forms No. 5 and 6 of the Companies (Central Government's) General Rules and Forms 1956, to facilitate completion of the records of the Registrar of Companies.

(Circular letter No. 3(13/91-92-PR, dated 12th February, 1960.)

Section 95: Consolidation of share capital

23.4 The Department is of the view that the consolidation of the equity share capital and the Redeemable preference shares capital and the division of the consolidated share capital of Rs. 5,00,000 into Equity shares of lesser amount i.e., Rs. 10 each is not covered under clause (b) of subsection (1) of section 94 of the Companies Act, 1956 since the consolidation and division of share capital into shares of smaller denominations are not covered thereby. In the circumstances, there is no need for Form No. 5 or Form No. 6. The company should, however, move the court under section 391 of the Act since a reorganisation of share capital will be an arrangement under section 391(b). The change in the share capital can be given effect to in the balance sheets only after its confirmation by the High Court under section 391 of the Act and any further increase in the authorised capital of the company can be effected thereafter.

(Letter No.40/571-CL III dated 21st July, 1965.)


Section 106 vis-a-vis Preference Shares (Regulation of Dividends) Act, 1960

Query

After the passing of the Preference shares (Regulation of Dividend) Act, 1960 the rates of dividend payable, whether less tax or free of tax, to Preference shareholders have been amended. As a result of this, the rights of shareholders have been altered. Since there is a special procedure provided for alteration of rights of holders of special classes of shares under Section 106 of the Companies Act, if a company merely relying on the provisions of the Preference shares (Regulation of Dividend) Act, declares a higher dividend, will it not be a contravention of the provisions of the Companies Act?
Incidentally it is still practicable to convene class meetings of Preference and Equity Shareholders in a company where it is possible to secure 3/4th majority either by proxy or by consent letter of members on the rolls of the company. Amendment to section 106 has still not solved the problem as substitution of this procedure by a special resolution involves a change of Memorandum and Articles of Association which again involves the company in applying to the Court for sanction. This cumbersome procedure could have been avoided by a straightforward amendment of section 106 enabling companies to secure variation of rights by special resolution without qualifying it by reference to Memorandum and Articles having to be altered.

**Answer**

By virtue of section 3 & 5(1) of the Preference Shares (Regulation of Dividends) Act, 1960, preference shares issued and subscribed for before the 1st April, 1960 shall carry a right to be paid income-tax free dividend of 30 per cent notwithstanding anything contained in section 106 of the Companies Act. If any company wants to pay more to its preference shareholders requirements of section 106 of the Companies Act should be followed.

It is not possible to liberalise the provision of section 106 further as the financial interest of various classes of shareholders are involved. It may however be mentioned that as presuemed in the query, alteration in Memorandum will not be necessary except where the capital clause needs to be changed.

---

24. Transfer of Shares and Debentures

**Section 106: Companies to furnish particulars of deceased persons to the controller—Requirement under section 84 of the Estate Duty Act.**

24.1 The attention of the Government of India has been drawn to the existence by many Indian companies on the production of Estate Duty Clearance Certificates under the provisions of section 84(2) of the Estate Duty Act, 1953 before allowing mutation of shares held by deceased members in the name of their heirs or successors. This, it is stated, is causing great inconvenience to such heirs or successors.

Government, therefore, wish to clarify that in their view "transfer of shares" referred to in section 84(2) of the Estate Duty Act, 1953, does not include transmission of shares by operation of law, such as occurs when the shares devolve on the legal heirs of a deceased member or on the survivor or survivors of two or more joint shareholders. Therefore, the provisions of section 84(2) are not considered to be applicable to cases where the heirs or the survivor or survivors of two or more joint holders apply for registration in their names of the shares held by the deceased.

In view of this clarification, it is hoped that Indian Companies will not, in future, insist on the production of the Estate Duty Clearance Certificates in such cases.

**Query**

24.2 Section 108 makes a specific provision only for the contingency of loss of the instrument of transfer but not for the loss of the certificate or allotment letter. It may happen that a purchaser of shares loses both the share certificate and the instrument of
Section 108 being mandatory, can a company give effect to a transfer where both the certificate or allotment letter and the instrument of transfer are lost, if the loss is proved to the satisfaction of the Board and indemnity as the Board may require is furnished by the transferee along with an application signed with the stamps required for the instrument of transfer affixed thereto, and also issue a duplicate certificate to the transferee?

Answer

In the opinion of the Department, section 108 only envisages the case where the instrument of transfer is lost. If, therefore, the share certificate or the allotment letter is also lost then, a duplicate thereof will have to be obtained first. Reference is also invited in this connection to the provisions of rule 4(3) of the Companies (Issue of Share Certificates) Rules, 1996.

(Company News and Notes, dated 1-7-1966)

Section 108: Restrictions on blank transfers of shares—Procedure clarified

24.3 Section 19 of the Companies (Amendment) Act, 1965 which seeks to impose restrictions on the period of currency of blank transfers of shares, comes into force today, April 1, 1966.

The Notification amending the Companies (Central Government's) General Rules and Forms, 1966, whereby a transfer form has been prescribed was published in the Gazette of India Extraordinary dated the 18th March, 1966. The transfer form is required to be presented to the Registrar of Companies before it is signed by or on behalf of the transferee so that the former may stamp or otherwise endorse thereon the date on which it is so presented.

While presenting the transfer form to the Registrar, the first four columns in regard to the name of the Company, description of shares, name of the stock exchange, if any, where the shares are dealt in or quoted on and the name of the transferee in full should be filled in full. The other columns of the form need not be filled in.

(Press Note, dated 21st April, 1966)

Section 108: Clarification regarding fixing a 'record date' without closing register of members

24.4 The action of the company in fixing a "record date" without seeming to close the register of members has no legal validity. If by naming a "record date" the company intends that any proposal for transfer of shares received by the company between the "record date" and the date of the (annual general) meeting at which dividends are declared would not be considered or would be held in abeyance, then, this would amount to closing the register of members on and from the "record date". The effect of the provisions of section 108(1-A) of the Companies Act in such a case will have to be considered in the above light.

(Circular No. 3/1(103)/67-CLV, dt. 4-8-67)

Section 108: Extension of time for registering transfer of shares under sub-section (1D) of section 108

24.5 In seeking extension of time for registering transfer of shares under sub-section (1D) of section 108, applicants often adduce various reasons such as oversight, ignorance of law, misplacement of documents, or ill-health etc., which are vague and not fully convincing. The Company Law Board has, however, at the initial stage of
this change in the law, been liberally granting extensions of the period of validity in respect of instruments of transfer for acceptance by the companies concerned to prevent hardship to members of the public, as the provisions were new and were intended to restrict a practice which had been in vogue for a long time. As these provisions of the Act have been in force more than three years now and the legal provisions should have become sufficiently known, it is expected that the law would be more strictly complied with. It should be noted that extension of time for registration of shares would henceforth be granted only in cases of real hardship and where there are valid reasons for the delay in delivering instruments of transfer to the companies concerned. As such, the applications for extension of time under section 108(1D) should be supported by specific reasons indicating the hardships which the applicant is likely to suffer in case of non-registration of shares or refusal of permission for extension of time. The public are advised to take note of the statutory provisions in this regard, seek the advice of of recognised sharebrokers in time and concise presentation of the instruments of transfer to the companies within the time limit prescribed by law.

(Press Note dated 6th May, 1962.)

Share Transfer Form (Form 7B)—Endorsement regarding

216. "The words 'any entry' in clause (a) of sub-section (1A) of Section 103 of the Companies Act, 1966 should mean 'any material entry' drastic rewriting of the statute is involved in understanding those words in that way, because under the provision of law as it stands at present, it is the form that is stamped and not the instrument of transfer. Therefore, merely filling in the name of the company alone would not disqualify the form (Form 7B)."

(Circular No. 1078 dated 19-3-73.)

Section 108A: Restriction on Acquisition of shares

247. Queries

(1) whether, without previous approval of the Central Government, further shares of a company can be acquired by a group already holding more than 25% shares of the said company;

(2) whether acquisition of shares is permissible by a constituent of a group from another constituent of the same group, without any change in the overall percentage of the shares already held by the Group;

(3) whether shares already purchased and payments made before the Act came into force can now be transferred by a group or not;

(4) whether shares pledged as security for loans with a Bank can be retransferred to the transferor belonging to a group as the same is acquisition of shares by transfer; and

(5) whether a Share Broker Firm which is a member of Stock Exchange can acquire shares exceeding the limit of 25% though without any intention of acquiring any control over the company.

Answers:

(1) No further shares of a company can be acquired by a group already holding more than 25% shares of the said company, without previous approval of the Central Government.
(2) It does not matter whether the persons from whom the shares are acquired is a constituent of the same group as the acquirer. Nor is it relevant to ascertain whether there is a change in the overall percentage of the group in the shares of the company acquired. Whenever a person acquires shares, he has to ascertain for himself whether he is entitled to purchase the shares in terms of the Section or not.

(3) No question of a group transferring shares arises under section 108A which deals with acquisition of shares.

(4) This will amount to restoring of the beneficial interest to its proper place where it will be one with the legal title and cannot be treated as amounting to an acquisition of shares within the meaning of Section 108A.

(5) A share Broker Firm which is a member of stock Exchange cannot acquire share exceeding the limit of 25% because it will amount to cornering of shares whether there is any intention of gaining immediate control or not.

Section 188B: Restrictions on transfer

24.3 Queries

(1) Whether bodies corporate under the same management holding more than 10% shares in aggregate can transfer such shares to a Scheduled Bank as Security against loan without any intimation and/or approval of the Central Government.

(2) Whether shares sold by bodies corporate under the same management holding more than 10% shares, before the Act came into force, but sent for transfer to the Company afterwards by the transferee can be transferred or not, without Central Government’s approval. In such case suppose the sale is to the body corporate under the same management already holding more than 25% shares of such company. Whether such shares could be acquired by transfereree company after the Act came into force though the purchase was on a date before the Amendment Act came into force.

Answer

(1) In this case the intimation to the Central Government is necessary.

(2) It is only when documents of transfer are presented to the company in terms of Section 108 and the transfer is registered by it then the transfer takes place. Hence section 108B applies at the stage.

24.3 List of Prescribed Authority under Section 108 [1A]

All the Registrars of the Companies

1. The Company Prosecutor (Grade II)
2. Accounts officer
3. Superintendent (Grade II)
4. Senior Technical Assistants
5. Superintendent (Grade I)
6. Company Prosecutor (Grade III)
7. Junior Technical Assistants
8. Senior Technical Assistants
9. Superintendent

Office of the Regional Director, C.I.B., Bombay.
Office of the Regional Director, C.I.B., Bombay.
Office of the Registrar of Companies, Bombay.
Office of the Registrar of Companies, Bombay.
Office of the Registrar of Companies, Bombay.
Office of the Registrar of Companies, Bombay.
Office of the Registrar of Companies, Bombay.
Office of the Registrar of Companies, Ahmadabad.
24.10 List of Financial Institutions approved under section 108 (1C) of the Companies Act 1956

1. GSR. 900 dt. 44-66
   (1) Any banking company (other than a scheduled bank) as defined in section 5(c) of the Banking Regulation Act, 1949 (10 of 1949);
   (2) Any co-operative bank as defined in section 2(bii) of the Reserve Bank of India Act, 1934 (2 of 1934).
   (3) The Industrial Development Bank of India (set up under the Industrial Development Bank of India Act, 1951).

2. GSR. 1499 dt. 24-9-66
   (5) All State Financial Corporations (set up under the State Financial Corporations Act, 1951).
   (6) The Industrial Credit and Investment Corporation of India Limited, Bombay.
   (7) The Madras Industrial Investment Corporation Ltd., Madras.
   (9) Life Insurance Corporation of India.
   (13) The Hercules Insurance Company Ltd.

3. GSR. 1918 dt. 12-12-66
   (14) Advance Insurance Company Ltd., Bombay.
4. GSR 699 dt. 14-4-67

(15) Cooperative Assurance Company Ltd.
(16) Great Pyramid Insurance Company Limited, Calcutta
(17) Sundaram Finance Ltd., Madras.
(18) National Insurance Company Ltd., Calcutta.

5. GSR. 1444 dt. 4-9-67

(20) British India General Insurance Company Ltd.

6. GSR. 769 dt. 19-4-68

(21) Madras Motor and General Insurance Company Ltd.

7. GSR 2182 dt. 19-8-69

(22) New Great Insurance Company of India Ltd.

8. GSR. 2761 dt. 9-12-69

(23) Jupiter General Insurance Company Ltd.


(24) Hindusthan Ideal Insurance Company Ltd.

10. GSR. 698 dt. 17-4-71

(25) Risk Capital Foundation.

Section 111: Refusal to register transfers

24.11 Private companies are also liable for prosecution for defaults under sub-section (2) of section 11 of the Act.
CHAPTER IX
25. CHARGES

Section 125: Registration of Charges

25.1 Problem arising out of the registration of prescribed particulars of charges and of modification of those charges and the Department's views thereon.

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Nature of the problem</th>
<th>Department's view to be taken by ROU</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Loan is raised by charging property A.</td>
<td>This is the simplest case where particulars of the charge in Form No. 14 are required to be filed.</td>
</tr>
<tr>
<td>2</td>
<td>The nature of the charge created in (1) above is changed or modified without taking any additional loan, viz., from equitable mortgage Property B to one of the regular legal mortgage etc.</td>
<td>This is also a case falling under section 135 of the Companies Act, 1956 and, as such, particulars of the charge in Form No. 14 are required to be filed.</td>
</tr>
<tr>
<td>3</td>
<td>Without changing or modifying the nature of the charge or raising fresh loan, the other terms and conditions or the extent or operation of the charge created as per (1) above is changed or modified.</td>
<td>This is also a simple case falling under section 135 of the Companies Act, 1956 and, as such, particulars of the modification in Form No. 14 are required to be filed.</td>
</tr>
<tr>
<td>4</td>
<td>Additional loan is raised against remortgage or further charge of the Property A, the further charge not to rank pari passu with the prior charge.</td>
<td>Section 135 of the Act does not appear, to come into play here as the terms and conditions or the extent or operation of the prior charge are not modified and, therefore, particulars of the further charge only are required to be filed in Form No. 8.</td>
</tr>
<tr>
<td>5</td>
<td>Additional loan against remortgage or further charge of Property A is raised with the condition that the further charge will rank pari passu with the old one.</td>
<td>Section 135 of the Act is attracted in this case since the extent of the prior charge is modified and as such particulars of the modification in Form No. 14 are required to be filed.</td>
</tr>
<tr>
<td>6</td>
<td>In respect of the loan already taken, further security is given by charging Property B.</td>
<td>Only section 135 of the Companies Act, 1956 is attracted and and Form No. 14 is required to be filed.</td>
</tr>
<tr>
<td>7</td>
<td>In respect of the loan already taken Property B is charged with option to the mortgagee to proceed against A or B or A and B simultaneously.</td>
<td>Only section 134 of the Companies Act, 1956 is attracted and Form No. 14 is required to be filed.</td>
</tr>
<tr>
<td>8</td>
<td>Additional loan is taken against mortgage or charge of property B with or without referring to the loan already taken by charging property.</td>
<td>This falls under section 125 of the Companies Act, 1956. and such particulars of the fresh charge in Form No. 8 are required to be filed.</td>
</tr>
<tr>
<td>9</td>
<td>Additional loan is raised and it is stipulated that the entire amount of the loan, including the loan already raised, will be secured against Property A already charged and the mortgage of charge of Property B.</td>
<td>Section 125 of the Companies Act, 1956 is attracted in respect of the charge or mortgage of Property B and, as such, particulars thereof, in Form No. 8 are required to be filed. Since the extent of the charge against Property A is modified. Section 135 of the Companies Act, 1956 is also attracted and, as such, particulars of modification in Form No. 14 are required to be filed.</td>
</tr>
</tbody>
</table>

[Extract from enclosure to circular No. 93/39-125/39-PX dated the 29th November, 1939.]
Section 125: Pledge of Moveable assets.

25.2 Section 125(3)(c) of the Companies Act provides that a charge, being a pledge on the moveable property of a company, is not required to be registered with the Registrar of Companies. However, there have been instances in which a company or any interested person, as envisaged in section 134(1) of the Act, had approached the Registrar for registration also of charges which are pledges on its moveable property. It is also stated that in most of such cases, it is the pledgees who desire the registration of the charge. In some cases, however, registration is sought on the ground that the exact legal nature of the document relating to the pledge is in doubt, although it has been called a pledge since it is the whole tenor of the document that will decide its legal character. The question has, therefore, been raised as to whether the Registrar should register a charge which is a pledge on the moveable property of a company, since such registration is not required to be done under the provisions of the Companies Act and if he should so register, whether the company is under a legal obligation to register subsequently the particular, if any, relating to its modification and also send to the company later on a copy of the memorandum of satisfaction in respect of the same.

It is stated in this connection that even if the pledge had been registered by the Registrar, the company would be entitled to disown responsibility for complying with the provisions of section 135 and 138 of the Act on the plea that the original registration of the changes constituted by the pledge was itself not warranted by the provisions of the Act. In such cases, therefore, there is a possibility of the charge appearing as subsisting even after its full satisfaction, in the register of charges maintained by the Registrar under section 199 of the Act.

The matter has been examined in this Department, with particular reference to the point as to what action the Registrar should take in such cases. It is considered that the registration by the Registrar of a charge being a pledge on the moveable property of a company, though not mandatory, is permissible at the instance of the company or of any interested person, provided the latter files the necessary particulars with the prescribed filing fee. The Registrar should, however, point out to the party concerned that such registration is not statutorily compulsory but would be made by him "without prejudice" if the party insists on the Registrar registering the charge. The Registrar should also simultaneously advise the party seeking registration of the charge that in that case it would be in the company's own interest if particulars of any subsequent modification of the charge and of its satisfaction are duly intimated to the Registrar.

(Circular No. 926/97/66 PR dated 7th July, 1966.)

Section 125 and 135: Filing of Form 8 and 14

25.5 While Form 8 requires the company to give the basic information about properties etc. charged, Form 14 does not lay down such requirement. The main underlying purpose of Part V of the Companies Act, 1956 which deals with the registration of charges, is that the members of the public dealing with the company should have notice of the particulars of the properties which might have been subjected to mortgages or charges. This purpose would not be achieved if a company is allowed to file Form 8 for a charge created on an insignificant asset and then cover the rest of the assets in the guise of a modification for which only Form No. 14 may be filed. In view of the fact that the particulars to be furnished in Form 8 and 14 are entirely different and, inasmuch as there is no reference to the additional properties in Form 14 as explained above, there will be no confusion if both forms are filed where the changes in the existing charge are created not only by way of modification of increasing the amount of the loan but also by creation of a charge on fresh properties. In fact, the filing of two forms and entry of the particulars in the register of charges will only make the
position absolutely clear to those who peruse the Register for knowing as to the encumbrances on the properties of the company. Hence there is no need to change the existing instructions issued to the Field Officers in its Circular No. 8/39(125)/59-PR dated the 24th November 1959.

(Circular No. 22/73 dated 12-7-73.)

Section 135: Registration of modification of charges

25.4 So long as the terms or conditions or the extent of operation of any charge is modified for whatever reason the provisions of section 135 of the Companies Act, 1956, would become applicable. Therefore, even in case of modification of charges without any mutual agreement between the parties thereto namely as a result of a change in law, the provisions of section 135 of the Act become attracted.

(Letter No. 8/92(135)/65-CL.V dt. 15-11-66.)

Section 135: Modification of charge—Variation in rate of interest arising out of increase in Bank Rate—

25.5 In a case where under the relevant mortgage deed/agreement, the 'term' as to the rate of interest on a charge etc. has been fixed at a specified percentage above the bank rate as notified by the Reserve Bank, a change in the rate of interest payable on the charge arising out of variation of the Bank Rate would not amount to a change in a 'term' of the charge under section 135 and hence in such a case no return need to be filed under the said section. In such cases, the Registrar of Companies need not insist on the company filing Form No. 14 under section 135 of the Act (in this case).

(Letter No. 8/14(135)/65-CL.V dt. 19-6-63.)

Subject: Filing of Form Nos. 8 and 14 in modification of charges

25.6 I am directed to refer to the correspondence resting with my D.O. letter No. 8/5/(125)/72-CL.V dated the 4th June, 1973 regarding the filing of Form 8 and Form 14 and to state that the replies received from the Regional Directors, to this Department's letter No. 8/5/(125)/72-CL.V dated the 26th February, 1973, have been examined in detail in the context of the suggestion made by the Regional Director Bombay, and that the Department's view on the proposal is as follows:

While Form 8 requires the company to give the basic information about properties etc. charged, Form 14 does not lay down such requirement. The main underlying purpose of part V of the Companies Act, 1956 which deals with the registration of charges, is that the members of the public dealing with the company should have notice of the particulars of the properties which might have been subjected to mortgages or charges. This purpose would not be achieved if a company is allowed to file Form 8 for a charge created on an insignificant asset and then cover the rest of the assets in the guise of a modification for which only Form No. 14 may be filed. In view of the fact that the particulars to be furnished in Form 8 and 14 are entirely different and, inasmuch as there is no reference to the additional properties in form 14 as explained above, there will be no confusion if both forms are filed where the changes in the existing charge are created not only by way of modification of increasing the amount of the loan but also by creation of a charge on fresh properties. In fact, the filing of two forms and entry of the particulars in the Register of charges will only make the position absolutely clear to those who peruse the Register for knowing as to the encumbrances on the properties of the company. Hence the Department is of the view that there is no need to change the existing instructions issued to the Field Officers in its Circular No. 8/39(125)/59-PR dated the 24th November, 1959. I am accordingly directed to reiterate the earlier instructions of November, 1959 for compliance by all the Field Officers.

12-26 M of L/SCA/ND/76
2. From the replies to letter No. 8/5(125)/72-CL.V dated the 26th February, 1973 received from the Regional Directors, it is noticed—

(i) that in the Eastern Region only the Registrar of Companies, West Bengal, is insisting upon the companies to file both Form 8 and 14;

(ii) that in the Northern Region only the Registrars at Delhi and Srinagar are not insisting on filing of Form 8 pursuant to Section 125 of the Companies Act—it may be that other Registrars are rightly insisting on the filing of both the forms;

(iii) that in the Southern Region only the Registrar of Companies, Tamil Nadu, is insisting on the filing of only Form 14—it is not known as to what practice is being followed by the other Registrars in the Southern Region in such cases.

(iv) that no data is available as to the practice in the Offices in the Registrars in the Western Region.

It is thus noticed that the practice followed by some of the Registrars of Companies is not in accordance with the instructions issued in this Department's letter No. 8/39 (125)/59-PR dated the 24th November, 1959; it is unfortunate that some Registrars of Companies have not been following the procedure which was established in 1959 and put in vogue after consultation with the then Regional Directors, and after due consideration of the matter at the appropriate level in the Department. While reiterating the earlier instructions of November, 1959 for strict compliance of the procedure laid down by Government, by the Field Officers, I am directed to point out that the Department has taken a serious view of the above lapse on the part of certain field officers who have not been complying with the instructions of November, 1959, and to state that such lapses on the part of the Registrars of Companies in future would be taken serious notice of.

(Letter No. 8/5(125)/72-CL.V dated 12th July, 1973.)

**Filing of form Nos. 8 and 14 in respect of modification of charges**

25.7 I am directed to invite your attention to this Department letter of even number dated the 12th July, 1973 (Circular No. 22/73) on the above subject wherein it has been stated that both the Forms numbers 8 and 14 will be required to be filed whenever an original charge already registered is modified by raising the limit of amounts as well as by adding some more assets/properties. Since some doubt was expressed from some quarters as to whether the instructions communicated therein are in consonance with the requirements of the Act, the point has been considered by the Department in consultation with the field officers and it is reiterated that the instructions already issued on the point are quite appropriate and do not require any modification.

(Circular No. 28/73 dated the 4th November, 1973 on File No. 8/5(135)/72-CL.V)

**Section 138: Satisfaction of charges notice to the holder**

25.8 Under the provisions of subsections (1) and (2) of section 138 of the Act, the Registrar on receipt of an intimation of satisfaction of a charge from a company is required to send a notice to the holder of the charge calling upon him to show cause within a time (not exceeding fourteen days) specified in such notice as to why the payment or satisfaction should not be recorded as intimated to the Registrar. Although
time limit has been laid down in sub-section (1) for a company to report satisfaction to the Registrar and in sub-section (2), for the holder of the charge to send him reply to the Registrar, no such limit is laid down for the Registrar to send his notice to the holder of the charge. In some cases unusual delay takes place in issuing the notice of the intimation from the company relating to the satisfaction of charge, and consequently in recording satisfaction or payment of charges. It has, therefore, been decided that the notice under section 138(2) should be issued by the Registrar as early as possible and in any case within a week after the receipt of an intimation of satisfaction of charge from the company so that the unnecessary delay in registering the memorandum of satisfaction of a charge is avoided.

(Circular letter No. 2/4/60-F.R. dt. 15-2-1960.)

Section 141: Rectification of the Register of charges

25.9 The Department's view is that if the instrument creating mortgage or charge on company's property or copy thereof is not filed within thirty days on the period extended as per proviso to section 125(1), the Registrar cannot take the documents on record even on payment of additional fee as provided in section 611(2), unless the sanction of the Court (1) is obtained under section 141 as the power to do so has been specifically vested in the Court (1).

NOTE.—(i) For the word "Court" now read "Company Law Board".

(Extract from queries raised by the Maharashtra Chamber of Commerce in a Memorandum submitted to the Department of Company Law Administration on 30-7-1962 and the Department's views thereon, Company News & Notes, dated 1-7-1963.)

Section 141: Application to the Court for condoning delay in filing particulars of charges

Query

25.10 Whether, after making an inadvertent default in filing the particulars of charges in respect of a certain loan from a bank, the company should apply to the Court under section 141, in spite of the fact that the lending bank subsequent to the fact coming to the notice of the Registrar, waives its claim of the charge on the assets of the company.

Answer

The Department is of the view that the company should apply to the Court under section 141 of the Act.

Note.—For "Court" read "Company Law Board" [Company News & Notes, dated 1-6-1963.]

Section 141: Late Filing of returns

Query

Late filing (Section 611)

25.11 Under the amended Act, the Registrar is empowered to accept documents even after expiration of the prescribed period on payment of additional fees; (a) whether this will apply to documents required to be filed before the 28th December, 1980 in case even the prescribed period expires before the date and in case it expired after the date. (b) whether under the provisions, the Registrar will accept for filing a Return of Allotment or Application for registration of creation or satisfaction of charges, etc., without the court's order.
Answer

(a) The answer is in the affirmative in both cases.

(b) In cases where specific provisions in the Act like those of section 141 exist requiring an order of the Court for extensions of time for filing or registering any documents, the Registrar should not accept such documents without appropriate orders of the Court; to accept such documents without the Court's orders by using the power under section 611 would conflict with the jurisdiction of the Court. In such cases if the Court has ordered an extension of the time for filing or registration, the question of the imposition of a penal fee under section 611 will not arise, though if the Registrars get an opportunity to do so they could submit to the Court itself to prescribe a higher fee for the document under the powers the Court has to extend the time "on such terms and conditions as seem to the Court to be just and expedient", always of course keeping in mind the question whether any increase in fees would be commensurate with the cost of making the submission to the Court.

(File No. 01 (1)/61-PR.)
CHAPTER X

26. COMPANIES MANAGEMENT AND ADMINISTRATION

(i) Registered Office

Section 146: Location of the registered office of the company

26.1 Clause (a) of subsection (2) of section 146 of the Companies Act, 1956, lays down that the registered office of a company shall not be shifted outside the local limits of any city, town or village where such registered office is situated unless the company passes a special resolution to that effect. As a result of rapid urbanisation, cities frequently tend to expand beyond municipal limits. In view of this, the expression “local limits” in the aforesaid section of the Companies Act should be taken to mean both the local body limits and the postal limits, and where the two do not coincide, the wider of the two.

Section 147: Publication of name by company

26.2 There appears to be some doubt in commercial quarters as to the language or languages to be employed in exhibiting the names of companies outside their offices or places of business as required by subsection (1)(a) of section 147 of the Companies Act. Unlike the corresponding section (Section 75) in the repealed Indian Companies Act of 1913, which required the name of a company to be shown in the English language, section 147(1)(a) enjoins on all companies to print or affix their names outside their offices or places of business in the language or one of the languages in general use in the locality. Exhibition of the names in English alone without, at the same time, showing them in the local language will not, therefore, be sufficient compliance with the requirements of the section.

Section 147: Publication of company’s name in notices

Query

26.3 Section 147 provides for publication of the address of the registered office in all its “notices” along with other official publications but the word “notices” was not clearly defined. It should, therefore, be clarified as to whether the word “notices” applied to notices to be given under the Act or if it also included the other notices such as notice inviting tenders, employment notices, notice for loss shares or debenture certificates, notice for a change of name by the company or closure of register of members etc.

Answer

As the expression “notice” has not been defined in the Companies Act or in the General Clauses Act, the word “notices” should be liberally construed in the context of Section 147.

(Company News & Notes, dated 1st July, 1958.)
Section 147: Whether share certificate is an official publication within the meaning of subsection (1)(c) of the said section—regarding

26.1 The question is whether a share certificate is an official publication within the meaning of section 147(1)(c) of the Companies Act, 1956. It will be seen that in terms of section 82 of the Act the shares are transferable in the manner provided in the Articles of the company. Section 83 provides that each such share shall be distinguished by its appropriate number. Section 84 provides that a certificate under the common seal of the company specifying any shares held by any member shall be prima facie evidence of the title of the member to such shares. Thus shares are transferable in the manner provided in the Articles of the company and the share certificates are certificates of title and are transferable properties but are not publications in the nature of prospectus, balance sheets, profit and loss accounts, notices and advertisements. The conclusion reached, therefore, is that the share certificate is not an official publication within the meaning of section 147(1)(c) of the Companies Act, 1956.

Section 148: Clarification regarding requirement of specifying authorised capital of the company on its share certificate.

26.5 As section 148 of the Companies Act does not require a company to specify its authorised capital on its share certificates, it is not obligatory for a company to do so. Where, however, the authorised capital is specified either on the company's own volition or otherwise on the share certificates, it is only fair and proper that the subscribed and paid-up capital are also indicated thereon as required by section 148(1) of the Act, inasmuch as the expression 'other official publications' used in sections 147 and 148 of the Companies Act includes the share certificates. Paid-up capital for this purpose would be the capital which has actually been paid up at the time of issue of the share certificate.

(ii) Companies' Seal

Section 147: Manner in which a company's seal should be kept—clarification.

26.6 Though the Companies Act, 1956 or the model regulations in 'Table 'A' of Schedule I to the Act do not provide for the form and manner in which the common Seal of a company should be kept, i.e. whether a metallic one or a rubber stamp—it is understood that the general practice obtaining among enlightened company management is to use metallic 'Common Seals' having regard to the importance of the use of such seals in the day-to-day working of Companies. In view of the above, as also the wordings of section 147(1)(b) of the Act, it is considered that the view that only a metallic seal should be used is correct. The provisions, if any, in the articles of association of the concerned company should also be looked into in this connection to see if they clearly lay down the mode and manner of keeping a common seal.

(iii) Commencement of Business

Section 149: Restrictions on commencement of business—Clarification regarding

26.7 The guiding criterion in such cases is whether the new activity is germane to the original business or not. In case the reply is 'Yes', no special resolution is necessary and vice versa.
This is the general enunciation of the principle.

(Clarification given by the official spokesman of the Department of Company Law Administration in a meeting with Chamber of Commerce).

Section 149: Compliance of the provisions of sec. 149 and sec. 165 by public companies registered under Part IX of the Act.

26.8 A point has been raised as to whether a public company registered under Part IX of the Companies Act, 1956 is required to comply with the provisions of sec. 149 and sec. 165 of the Act. This Department is of the view that as provided under sub-section (1) of section 578, all the provisions of the Act shall be applicable to such companies subject to the exceptions as enumerated under clauses (a) to (g) of the said sub-section of the Act. Therefore, the provisions of sec. 149 and 165 of the Act shall be fully applicable to the public companies registered under Part IX of the Act.

(Circular No. 24/75 dated 20.11.75.)

Section 149: Certificate of commencement of Business—Applicability to private companies converted into public company.

26.9 The provisions of sections 149 and 165 of the Companies Act, 1956 relating to the certificate of commencement of business and the statutory meeting would not be applicable to a private company which has converted itself into a public company.

(No. 11/30-GLIV/82.)

(iv) Register of members and debenture holders

Section 150: Clarification regarding requirement of entering the 'Occupation' of joint shareholders also.

Query

26.10 The section provides for entering the 'occupation' of each member, and as each joint shareholder was also a member, the question arose whether particulars in respect of each joint shareholder such as address, and occupation were also to be recorded in the Register. The record of 'occupation' did not serve any useful purpose as it might frequently change and also by a marriage of a female shareholder. The change in address was notified, but there was no obligation to notify change in occupation. It would serve no useful purpose. The English Act also omitted 'occupation' for record purpose.

Answer

The Department confirms that particulars of each joint shareholder are to be recorded in the register and has to point out in this connection that the requirement about notifying change in the occupation of each shareholder has been in the Indian Companies Act, 1913 and no difficulty could have been created by the Companies Act, 1956.

(Company News & Notes, dated 1st July, 1968.)

Section 150: Shares held by minors—Entry in register of members.

26.11 The minors are incompetent to enter into any contract and as such their names cannot be entered in the register of members of the company. The names of the guardians of the minors in the register of members should be entered with a view to comply with the provisions of law in this respect.

(Circular No. 1968/5614, dated 26th February, 1964.)
Section 153B: Admission of trusts as members

26.12 In some cases, it is noticed that in the share registers of some companies, trusts or trustees described as such, are entered as members. But under the relevant provisions of the Companies Act, shares in a company, being the property of a trust, can be held in the names of its trustees being individuals, corporations, companies or societies registered under the Societies Registration Act, 1860, without the addition of the statement that they are trustees. Shares cannot be held in the name of the trust as such, unless it is a separate legal entity such as a registered society. Companies are requested that wherever necessary, their share registers should be rectified so as to comply with law as explained above.

(Please Note, dated 12th June, 1957.)

(v) Public Trustee—Declaration to Public Trustee

Section 153B: Clarification regarding section 153B(1)

26.13 The expression ‘Value of the shares or debentures of a company’ appearing in section 153B(1) of the Companies Act, does not refer merely to the actual money with which shares or debentures are acquired by a trust either by purchase or by subscription but also covers the value of shares or debentures obtained by a trust as gift from any person or on allotment of bonus shares issued by a company. Such shares and debentures are also, therefore, to be taken into account for the purpose of section 153B(1)(b).

As regards the valuation of the investment of the trust money in shares or debentures in a company for the purpose contemplated in section 153B(1)(b), I am to state that ordinarily, such valuation should be based on the cost of the shares or debentures to the trust. Where, however, these are obtained as gift or on a bonus issue and such shares or debentures are quoted on a stock exchange, the value at which they could have been obtained by the trust from the market at the time of the gift or the bonus issue should be taken as the basis for determining the valuation of the investment. But where the shares of a company are not quoted on any stock exchange and if the shares of that company are obtained as gift or on a bonus issue, then the face value of the shares may be adopted to determine the valuation of the investment for the purpose of section 153B(1)(b).

(Circular No. 8(4)1536(PR, dated 2-2-1964.)

Note:—The words “trust money invested in shares or debentures of a company” do not occur in section 153(4). This was omitted by Amendment Act, 1963.

Section 153B: Declaration should be by all the trustees

26.14 The fact that the resolution (authorising inter alia, the enquiry of the declaration under section 153B by some of the trustees) has been passed by all the trustees does not detract from the necessity of a declaration of the names of all the trustees by all the trustees.

It is not intelligible why if the trustees' names are included in the trust deed itself, the declaration should be made by only some of them.

As a declaration means the personal affirmation, in terms of the Act, of the status of trustee by each one of the trustees concerned, it may be pointed out to the trustees once again that the need for a declaration signed by all the trustees cannot be dispensed with and should therefore be complied with by the trustees without further delay.

(Note 61, 21-12-1972.)

Section 153B: Whether the declaration should be in respect of preference shares as well

26.15 Subject to the exemption limits specified in sub-section (4) of section 153B the declaration under sub-section (1) is required to be made by the trustee concerned to
the Public Trustee. Since the said section does not draw any distinction between equity and preference shares and applies equally to both kinds of shares, it is immaterial for the purpose of the section whether the preference shares are participating preference shares and whether they carry any voting rights or not. Both preference and equity shares have therefore to be taken into account for the purpose of declaration under sub-section (1) and the exemption limits under sub-section (4) of the section.

(Letter No. 8/I(138)/61-PR dated 24-12-1963 to the Public Trustee.)

Section 153B: Declaration in respect of shares and debentures held in trust—clarification of section 153B

26.16 For the purpose of clause (b) of sub-section (4) of section 153, the shares in or debentures of every company held in trust by a trustee have to be treated separately. Thus, where a trustee of a trust holds shares in more than one company, the limits specified in the said clause (b) should be applied in relation to each such company.

F. No. 5/1(319/63-G-IV)

(vi) Register of Members—Closure

Section 154: Notice of closure of transfer books or share transfer books of a company—need for strict compliance with the provisions of section 154.

26.17 It appears that some companies are in the habit of issuing notices in the newspapers regarding closure of “transfer books” apparently pursuant to section 154 of the Companies Act without, however, making any reference in the notice either to the aforesaid section or to the closure of the register of members or of debenture-holders. The notices issued by some other companies, on the other hand refer to the closure of ‘transfer Books’ besides the register of members and/or debenture-holders. This divergence in the practice followed by companies in this regard is likely to create confusion in the minds of the shareholders. As section 154 specifically refers only to the register of members and of debenture-holders, it is considered desirable that notices issued by companies pursuant to the section should expressly refer to the closure of the said registers only. The “transfer books” or “share transfer books” of a company, not being statutory documents, any notice of their closure under section 154 is neither necessary, nor would it be in order, if the said books are different from the Register of members or of debenture-holders.

(Circular No. 8/77/171-43-PR dt. 30.11.65)

(vii) Rectification of Registers

Section 155: Rectification by Court necessary in cases of wrong allotment

Query

26.18 Some times, a company may by mistake allot shares to minors or companies having no power in their Memorandum of Association to subscribe for shares. Will it be in order to cancel such allotments without resorting to a court of law?

Answer

Even in cases where shares have been allotted to the minors or companies having no power in Memorandum to subscribe for shares, it may be prudent for companies to rectify the share register only after obtaining suitable order in this respect from a Court of Law.

File No. 3/16(I)/61-PR

13-29 M of LI&CA/N0/76
(viii) Annual Return

Sections 159 & 160: Purpose of filing Annual Returns

26.19 Apart from providing periodical information to the Registrar, from the point of view of the company, the annual return is intended to provide evidence for determination of questions pertaining to the rights of individuals to attend the general meetings and to vote thereon etc. If annual returns as on the date of the general meetings are not filed, the purpose behind these annual returns would not be fulfilled. However, this Section, as amended, does not require a company that has filed an annual return as on the latest date on or before which the meeting should have been held but has not been held, to file a second annual return when the annual general meeting has been held.

Attention is also invited to the explanation under Section 159(1) which will apply also to Sections 160 and 161.

Sections 159 & 160: Delay in filing annual return—Penal fees

Query

26.20 In cases of default or delay in holding the annual general meeting, what is the date on which the annual returns and balance sheet of a company should be deemed to be due for filing with the Registrar of Companies, for the purpose of charging additional fees pursuant to Section 611(2) of the Companies Act? Should it be the 42nd day after the day in which the company should ordinarily have held its annual general meeting under the provisions of the Act OR should it be only the 42nd day after the day on which the company actually held the Annual General meeting?

Answer

Having regard to the decision in Hirjee Mills case, in which the Supreme Court held that the default either under Section 32(3) or under Section 135(1) of the Indian Companies Act, 1913 occurred after the expiry of 21 days from the last day on which the annual general meeting should have been held within the year, the Department is of the view that a company should be deemed to have defaulted in the matter of filing documents under Section 159 even if these are filed within 42 days of the holding of the annual general meeting where such a meeting has been held after the due date. The clarification made in the Explanation to sub-section (1) of Section 159 of the Act and the provision enabling the company to file annual returns even when the annual general meeting has not been held in sub-section (2) of the said section will strengthen this view. Penal fees should accordingly be levied on such documents wherever they are rendered after 1st February, 1961.

Section 161: Certificate regarding annual return

26.21 The certificate required under sub-section (2) of Section 161 should be insist-
ed upon in respect of all annual returns filed after the 28th December, 1960, no matter when the annual general meeting was held.


*Note—This period is now 60 days.
(ix) Annual General Meeting

Section 166: Holding of annual general meeting—Extension of time

26.22 The liberal policy of granting extensions of time to companies to enable them to call their annual general meetings on the ground that the audit of their accounts has not been completed or that their accounts have not yet been compiled or cast for submission to the auditors or for other similar reasons indicating slowness, negligence or deliberate default on the part of the managers or the auditors of companies can no longer be justified. The law contemplates that the permissible interval between two consecutive annual general meetings should not be lightly extended.

The Government has accordingly decided that delay in the completion of the audit of the annual accounts of a company should not ordinarily constitute a ‘special reason’ justifying the grant of extension of time for holding its annual general meeting. Companies are, therefore, requested to take all suitable steps to ensure that their annual accounts are audited in good time so that their annual general meetings may be called within the statutory time-limit.

Section 166: Annual General Meeting

Query

26.23 The period of six months allowed to hold annual general meetings is too short. It is hoped that the administration would be lenient and grant extension of time.

Answer

The Registrar has no power to grant any extension under Section 210 and the accounts should be laid in the General Meeting within six months of the close of the Financial Year. Subject to this, power has been conferred under Section 166 for extension of time to hold an annual general meeting until three months only, and that too for special reasons only. It is expected that the companies should so organise their business and office that they will be able to hold their annual general meeting within the statutory period.

Section 166: Implication of ‘time’ in sub-section (2)

Query

26.24 The exact significance and the meaning of the word ‘time’ in the second proviso to sub-section (2) may please be clarified. Does it denote the hour at which the meeting will begin or the duration of the meeting?

Answer

‘Time’ in the second proviso to sub-section (2) of the section indicates only the hour and the date of the commencement of the meeting.

Sections 166 and 210: Extension of time regarding Annual General Meeting

Query

26.25 Situations arise when a company is able to comply with the time limit in Section 166 but not with that in Section 210. In such cases, no extension is either
necessary or possible for the purpose of Section 166, and it follows that the provision for extension beyond the period of six months in Section 210 becomes inoperative.

Illustrations

A company's accounts are closed on 31st May, 1960 and the annual general meeting is held in, say January, 1961. The next annual general meeting can be held any time before March, 1962 and, therefore, there is no question of any application of extension of time under Section 166, but as the accounting year ends on 31st May, 1961, the accounts have to be presented before 30th November, 1961. In this case, there is no possibility of the six months being extended because no application can be made under Section 166.

Answer

If there are special reasons justifying an extension of the period of six months referred to in Section 210 an extension of time under Section 166 would be given on the basis of those special reasons.

Sections 166, 210 and 210(1): Time limits

Query

20-26 Under the amended provisions of Section 166, an annual general meeting is required to be held in each year and within a period of fifteen months from the date of the previous meeting. In this section, no reference has been made to the period of the financial year of the company within which the meeting is to be held. The amended section 210, however, requires that the balance sheet made up to a date not more than six months preceding the date of the meeting has to be laid before the annual general meeting. It is possible that a company may comply with the provisions of Section 166 as amended, but fail to comply with the provisions of Section 210 as amended. It seems that both the amended sections will have to be read together particularly in view of Section 173 and particularly also, in view of the fact that Section 210(1) requires the Board of Directors to lay such balance sheet before the annual general meeting. The power of extension has been granted under the amended Section 166 and not under the amended Section 210. The exercise of such power under Section 210, therefore, requires some clarification. It appears that though Registrars may give extension of time under Section 166, they have no power to give any extension of time under Section 210 in the sense that the company may lay before the annual general meeting a balance sheet made up to more than six months prior to the date of the meeting. So also the Registrar's offices are maintaining default cards which are at present worked out on the considerations as required by the un-amended Act, namely, holding the annual general meeting within fifteen months from the date of the previous meeting and within nine months from the close of the financial year. It requires some thought as to the method in which the default cards should now be maintained and the way in which the default notices should be issued, that is to say, whether separate default notices should be issued for defaults under the amended section 166 and amended Section 210 or a combined default notice, having in view of all the requirements of the amended provisions of the Act, is to be issued.

Answer

Sections 166 and 210 when read together clearly suggested that the annual general meeting should be held on the earliest date of the three relevant dates prescribed.
Sections 166(1) & 210: Placing of accounts of foreign business in annual general meetings

Query

2627 Section 166(1) and Section 210 of the Companies Act, as amended, require that the accounts of a company should be placed before the Annual General Meeting within six months from the date of closing and the Registrar has been given power to extend the said period by three months only. Practical difficulties are, however, felt in complying with the provisions in cases where the entire activities of a company are confined to a foreign country, while the registered office of the company is situated in the Indian Union. In such cases and specially in cases where voluminous business transactions are involved, it is almost impossible to complete audit in the foreign country and in India within a period of nine months, particularly as foreign government do not easily permit transmission of the books of account and other relevant papers to the Indian Union for audit.

It is, therefore, desirable that in those cases the time-limit to place the accounts before the general meeting from the date of closing should be extended to twelve months.

Answer

In regard to audit of foreign branches normally if an audit is done by a qualified auditor of the country and a certificate given, that should be acceptable for preparation of consolidated accounts in India and hence, there appears to be no need for granting any further extension in such cases. There is also the power of the C.G. of the Registrar to relax these provisions.

Section 166(2); Date of Annual General Meeting can be fixed by articles of association

Meetings of a company—Holding on public holidays under Negotiable Instruments Act, 1881 for Banks on close of half yearly and annual accounts under the Companies Act, 1956 Request for—

2628 Section 166(2) of the Companies Act, 1956 does not now make it absolutely obligatory on every company to hold its annual general meeting only on a day which is not a public holiday. In this connection, attention is invited to the provisions contained in the second proviso to sub-section (2) of Section 166 of the Companies Act which enable a company to fix by its articles of association or by a resolution passed in the annual general meeting the time of its annual general meetings generally or any subsequent such meeting. A reference is also invited to the Central Government’s order S.O.
1578 dated the 1st July, 1961 issued in exercise of the powers conferred by sub-section (6) of Section 29 of the Companies Act, 1956 exempting wholly a company to which a licence has been granted under the said section, from the provisions of Section 166(2), provided that the time, date and place of each annual general meeting are decided upon beforehand by the Board of Directors having regard to the directions if any given by the company in general meeting.

(Letter No. 85/166/65-P.R dated 21-1-1963.)

Section 166: Clarification regarding extension of time under the second proviso to sub-section (1) of Section 166

26.29 The Department's view is that the Registrar should grant an extension of time for holding the annual general meeting of a company under the second proviso to sub-section (1) of Section 166 only when the application for such extension is made to him before the expiry of the period laid down in sub-section (1) of that section.

(Company News & Notes dated 1-7-1963.)

Section 166: Exercise of powers conferred on Registrar by the second proviso to Section 166(1)

26.30 The question whether the second proviso to sub-section (1) of Section 166 of the Companies Act, 1956 empowers the Registrar of Companies to grant extension not exceeding 3 months, though the company concerned may not be able to hold its Annual General Meeting in a particular calendar year, has been considered by the Company Law Board.

The Board is of the view that the power of the Registrar conferred by the second proviso of the aforesaid section of the Act enabling him to grant extension of time to hold the Annual General Meeting is exercisable by the Registrar of Companies without restriction or qualification up to a limit of 3 months. He can, therefore, grant extension of time for special reasons up to the maximum limit of 3 months, even if such extension allows the company to hold its Annual General Meeting beyond the calendar year.

(Letter No. 34/138/CL.11 dated 13-4-71.)

(x) Section—Mandatory

Section 166(2): Provisions are mandatory

26.31 Section 166 of the Companies Act deals with the actual period during which the annual general meeting is to be held. Sub-section (2) deals with more detailed aspects of time and place. It, inter alia, provides that every annual general meeting shall be called on a day that is not a public holiday. "Public Holiday" has been defined in Section 2(38) of the Act. This provision, that is, the annual general meeting shall be called on a day that is not a public holiday, is mandatory. If the provisions of Section 166(2) are to be considered as "merely regulatory" as suggested, the words "shall be called" used in the section will cease to have any meaning.

(Extracts from the No. 83/23 (106/39-CL V.)

(xi) Annual General Meeting—Public Holiday

Section 166: Holding annual general meeting on 30th June and 31st December.

26.32 The Company Law Board is of the view that since 30th June and 31st December are declared as public holidays under the Negotiable Instruments Act, 1881, the annual general meeting cannot be called on these two days under Section 166(2) of the Companies Act.
As regards exemption to all companies from the requirement to hold the meeting on 30th June and 31st December, under proviso to Section 166(2) it may be stated that the power under the aforesaid proviso is a limited one to be exercised only in the case of a class of companies and that it cannot be exercised in the case of all the companies.

(Circular No. 34/60-GT. III dated the 16th March, 1973.)

Section 166: Annual General Meeting of companies registered in Calcutta

26.33 The Company Law Board is of the view that considering the fact that only a few companies having registered offices in Calcutta are having some difficulties in holding the annual general meeting and many others, with registered offices at Calcutta, have not experienced any such difficulty, it is not possible to treat them as a 'class of companies' within the meaning of proviso to sub-section (2) of Section 166 and grant them exemption under the aforesaid provisions. The companies which desire to hold meeting in terms of Section 166(2) but are unable to do so on account of apprehending violence to the management do not constitute a 'class of companies' based on any objective criteria distinguishing them from other companies similarly situated. Nor can be entire city of Calcutta be treated as a 'disturbed area' as is not even suggested that all companies with registered offices at Calcutta should be exempted.

(Circular from File No. 34/70-GT. III dated 15-1-1974.)

(xii) Defaults

Section 166: Defaults under Sections 166 & 210 of the Companies Act, 1955—Prosecution for—

26.34 It is noticed that where the companies have defaulted under Section 166 and/or 210 of the Companies Act, that is, where they have not held the annual general meeting and/or have not placed the balance sheet and the profit and loss account before the annual general meeting, prosecutions are rarely launched. The fact that the complaint has to be filed in the court of the first class Magistrate having territorial jurisdiction over the place at which the Registered Office of the company is situate, which is at a place other than the Headquarters of the Registrar of Companies, need not prevent the Registrar of Companies from enforcing the penal provisions of the Act in this regard. Therefore, the Registrars should in future ensure that prosecutions for defaults under Section 166 and/or 210 are launched in all cases where merits warrant such action. The fact that such launching of prosecutions outside the headquarters of the Registrars would involve expenditure should not deter from following this procedure in future.

(Circular No. 24/72 dated 24-7-1972.)

Section 166: Holding of meeting during 'business hours'

26.35 In Section 166, "Every annual general meeting shall be called for a time during business hours.............." mean that a time should be fixed in the notice for the meeting to be commenced. "For" shows that a specific point of time must be indicated. A specific point of time is contemplated and this can only be the starting point in the circumstances. If the duration of the meeting were to be covered, the appropriate language would have to be different and would have borne an express reference to a 'period' rather than a 'time'. Since it is clear that the starting point of the meeting should be within the business hours, it is equally clear that the duration is left to the meeting itself, according to the speed with which it is in a position to go through its agenda. The meeting is expected to be in full control of its proceedings under the guidance of its Chairman and determine when it will end its session and for
how many hours depending on the need, it may like to sit in a day and if necessary for
time of days continuing it may sit to complete the consideration of its agenda. These
are details for which the law cannot provide and hence it makes provision only in rela-
tion to the starting point of the meeting which should be held in the notice of the
meeting to fall within the usual business hours of the company. The law does not
choose to define business hours for a company as this could be best left to the con-
venience of each company. Each company has its own schedule of business hours and
this is well known to the public with whom it deals. Hence no practical difficulty has
ever been felt on this score.

Sections 156(2) & 174(4)—Holding of adjourned annual general meetings

Query

26.36 Section 156(2) provides that every annual general meeting shall be called
for a time during business hours on a day, that is, not a public holiday, and shall be
held either at the registered office of the company or at some other place within the
city, town or village in which the registered office of the company is situated.

Section 174(4) provides that any meeting of a company other than that called
upon the requisition of members, shall in the absence of a quorum, stand adjourned to
the same day in the next week at the same time and place, or to such other date and
time as may be determined by the Board.

The following issues arising out of the aforesaid section need clarification:

(a) Is it necessary that notice of the adjourned general meeting is to be given
to the members of a company?

(b) If the adjourned meeting falls on a holiday will there be any contravention
of Section 156(2), when the meeting is held on the holiday?

(c) Is it contemplated by Section 174(4) that a meeting of the Board of Directors
is to be convened to fix another date for adjourned general meeting and, if so, is it
necessary that notice thereof should be given to the members and what will be the
period of such notices?

Answer

(a) Not necessary, unless the date of the adjourned General Meeting is not de-
dcided at the original meeting itself.

(b) There is no contravention of Section 156(2) if the adjourned meeting comes
to be accidentally held on a holiday.

(c) If the Board of Directors fix another date for the adjourned General Meeting,
a notice is to be given to the members in accordance with the provisions of the Act
governing notices of General Meetings.

(xiii) Annual General Meeting—Central Govt. Powers

Section 167: When power conferred on the Central Government is to be exercised

26.87 Section 167 of the Act empowers the Central Government to call, or direct
the calling of, an annual general meeting of a company, where no annual general meet-
ing had been held in accordance with the provisions of Section 156 of the Act.
The power of the Central Government to call, or to direct the calling, of an annual general meeting of the companies was exercised by the Regional Directors on the strength of the delegation of power which has been made in their favour. The power conferred by Section 167 was exercised where the management was found to be unwilling to convene an annual general meeting of the company, with a view to keeping the shareholders in the dark about the affairs of the company or where the management was unable to convene an annual general meeting on account of party faction.

Section 168—Prosecutions for not holding annual general meeting

26.38 In a prosecution for not holding the annual general meeting when the company and/or its officers take the plea that the annual general meeting was held, the Registrars of Companies should make every effort to establish in such a case that the annual general meeting was not held. For this purpose, they should call for from the company—

(i) its minute books;
(ii) its dispatch register, etc., showing despatch of the notices of the annual general meeting; and
(iii) any other document in the custody or control of the company showing that the annual general meeting was held.

Registrars of Companies may also cite one or more shareholders of the company as witnesses for the purpose.

The procedure indicated above is illustrative and not exhaustive. Registrars of Companies may take, such further steps as may be necessary, according to the facts of any particular case, to establish that the annual general meeting was not held.

(Circle No. 42-(7)-CL/II/50 dated 25-2-1960.)

(xiv) Notice of Meeting—Preference shareholders

Section 172—Preference shareholders can attend a general meeting in which no business affecting them is to be considered.

26.39 Under Section 172(2)(i) notice of every meeting of the company is required to be given to every member of the company. From this it may be inferred that although there is no express provision to that effect, every member of a company is entitled to attend every general meeting. However, it is clear from Section 87(2)(a) that the holders of preference shares do not have any right to vote on resolutions placed before the company, which do not directly affect the rights attached to the preference shares. Since the purpose behind the discussion of a resolution, proposed and seconded, is to convince the members as to the manner in which the votes should be cast, it would appear that in respect of resolutions in regard to which preference shareholders have no right to vote, they have also no right to take part in the discussion, even though they have the implied right by virtue of Section 172(2)(i) to attend the meeting.

(Company News & Notes dated 16th June, 1964.)
The Department has recently come across several cases where the letter and the spirit of law in this regard have not been substantially complied with by several company managements. In some cases, the Department found that important material facts relating to the appointment of sole selling agents under Section 294 of the Companies Act such as the nature of services to be rendered by the sole selling agents to the company, the rate of commission or other remuneration to be paid to the sole selling agents, etc., were not set out in the respective explanatory statements attached to the notices of the meetings. It was also noticed in certain other cases that the management did not include in the explanatory note a summary of the important material facts but, instead, had indicated in the explanatory note that the material documents in question were available for inspection at the registered offices of the companies concerned.
The Department is of the view that, apart from the practices vitiating in certain circumstances, the validity of the resolutions passed, the sending of a notice which does not give a sufficiently full disclosure of the important facts relating to resolutions to be voted upon by shareholders cannot be said to conform to good company practice.

It is hardly necessary to emphasize that notices for general meetings which are not accompanied by proper explanatory statements defeat the very purpose for which such statements were prescribed by law; nor can it be said that such purpose is served by the opportunity afforded to shareholders for inspection of the material documents at the registered office of the company especially where a large body of shareholders may reside at great distances from the registered office. There is thus, paramount necessity for fully complying with the provisions of Section 173(2) fully and substantially.

Section 173—Explanatory statement to set out all material facts concerning each item of special business

26.43 Notwithstanding the Department of Company Law Administration's circular letter No. F. 12(39)-C.L.VI.3/ dated 17th October, 1963, the Board has again come across some instances where the letter and spirit of law in regard to the proper compliance of the provision of Section 173(2) which provide that where any items of special business are to be transacted at the annual general meeting or any other meeting, an explanatory statement setting out the material facts concerning each such item of business, shall be attached to the notice of the meeting, have not been observed by the company managements.

It has been noticed that important material facts such as those relating to the quantum of remuneration payable, academic/technical qualifications and business experience of the proposed appointee, the necessity of his appointment, etc., were not set out in the respective explanatory statements attached to the notices of the meetings at which the appointments of managing/whole-time/technical directors or payment of remuneration to them were to be considered. It has also been noticed in some cases that instead of disclosing the details of the quantum of remuneration payable in the explanatory statement itself, the latter merely indicated that relevant agreements relating to the appointments and/or remuneration were available for inspection at the registered office of the companies concerned.

The Company Law Board is of the view that such explanatory statements which do not give a sufficiently full disclosure of the important facts, material to the proposed resolution cannot be said to conform to the provisions of the law and are in any case contrary to good company practice. It is hardly necessary to emphasize that notices for general meetings which are not accompanied by proper explanatory statements defeat the very purpose for which such statements were prescribed by law.

Section 173—Applicability of Section 173(1)(a)(iii) in case of re-appointment of additional directors (appointed under Section 260)

26.44 The appointment of directors in the place of those retiring is an item of ordinary business to be transacted at the annual general meeting of a company vide Section 173(1)(a)(iii) of the Companies Act. The retirement of directors as contemplated by the said section may be by rotation, efflux of time or otherwise. If, therefore, an
additional director appointed by the Board of Directors ceases to hold office under Section 260 and if such a director is to be reappointed as director at the annual general meeting, the provisions of Section 173(1)(iii) would become attracted in the matter.

(Letter No. B/53(178)/L-V dated 1-9-1965.)

(xvi) Quorum

Section 174—Quorum at adjourned meeting

Query

26.15 This section provides that, if at the adjourned meeting also, a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

It is requested that the Government should clarify as to whether a single member can form a quorum if at the adjourned meeting, he is only personally present.

Answer

In the view of this Department a single member present cannot by himself constitute a quorum.

(File No. 8/15(1)/51-PR.)

Section 174—Presence of preference shareholders—whether count for quorum

26.16 If business proposed to be transacted at a general meeting does not include any item or resolution proposed to be passed which directly affects the rights of the preference shareholders, their presence should not be taken into account for purposes of determining the quorum but where the subject matter includes any resolution in which the rights of preference shareholders are directly affected, their presence should be taken into account for the purpose of the quorum.

(Company News & Notes dated 16-6-1964.)

Section 176—Form of instrument appointing Proxy

26.17 Section 176(1) of the Companies Act, 1956, authorises every member of a company entitled to attend and vote at a meeting of the company to appoint another person as his proxy to attend and vote in the meeting on his behalf. The form of proxy prescribed by the companies in their Articles of Association, which may be as near as possible to the form prescribed in Schedule IX to the said Act, requires, inter alia, the date of the meeting (with reference to which the said instrument is executed) to be mentioned. It has been alleged that, in some cases, the shareholders while appointing the proxies have failed to fill in the date of the meeting and that this has enabled certain unscrupulous company managements to make use of such forms even at meetings subsequent to the ones for which the said instruments of proxies were actually intended and executed. This Department would, therefore, emphasise the imperative need to fill in the date of the meetings for which the proxies are executed so as to obviate any possible misuse of the proxy forms, as alleged in some quarters.

(Circular letter No. 2/52/50-PK dated 23-10-1926.)

Section 187—Can a donee of a general power of attorney act as representative at general meetings

26.48 The donee of a general power of attorney cannot be equated with that of a representative appointed by a body corporate under Section 187. If the member concerned desires to appoint the donee as proxy, he can do so but in that case, the donee can act only in the same way as any other proxy.

(Secretary's reply to point raised by the Maharashtra Chamber of Commerce on 29-7-1963, File No. 2/39/63-PK.)
27. Shares held in Trust

Section 187B—Holding of shares in a company in trust by a Society—Applicability of Section 187B.

27.1 Section 187B applies "where any shares in a company are held in trust by a person". A society registered under the Societies Registration Act, 1860 is a 'person'. If such a society holds share in a company in trust, the section would become attracted but not otherwise. (Shares in a company may be held in the name of such a society Section 5 of the Act of 1860 does not affect the position).

Section 187B—Public Trustee cannot give consent under Section 171(2)

27.2 This Board has been advised that under Section 187B of the Act the Public Trustee exercises the rights and powers exercisable at a meeting of a company by the trustee as a member of that company. The Public Trustee does not take the place of the trustee who is a member of the company except at a meeting. Since the right of a member to give consent under subsection (2) of Section 171 is not a right exercisable at a meeting of the company, that right cannot be exercised by the Public Trustee.

28. Declaration of Beneficial interest

Section 187C—Scope of the section and the rules made thereunder

28.1 A question has been raised as to whether shares held in joint names, for the sake of convenience and easy transmission to survivors in the case of death of any of the holders would attract the provisions of Section 187C. On this, the view of the Department is that in the case of registered joint holders of shares, no trustee-beneficiary relationship arises inter se in the eye of law. The provisions of the section and the rules are also not applicable to shares owned by Public Charitable Trusts held in the name of trustees, since there is no distinctive individual beneficial interest in the case of this kind of shareholding.

The rules are applicable to shares held by a guardian in his own name without reference to the minor's name in the Register of Members, but if the name of the minor as such appears, being represented by guardian the provisions of Section 187C will not be attracted.

As regards shares belonging to a Hindu undivided family held by the Karta of the family, having regard to the peculiar position of the Karta and to the peculiar character of the interest which accrues to the coparceners in the joint estate, it is not possible to postulate separate legal and beneficial interests in respect of such shares as between the Karta and the other members of the family. Hence the Rules under reference do not apply. However, where the person who is in the position of Karta happens to have any special relation with any person who is a member of the Hindu family in respect of shares not comprised in the family estate, Section 187C, and the Rules thereunder will apply.

A partnership firm is not a person capable of being a member within the meaning of Section 41 of the Companies Act, 1956 and since a partnership is not a legal entity by itself but only a convenient way of describing the partners constituting the firm, it is necessary that the names of all the members of the partnership firm should be entered in the Register of Members in order that the right of the partnership as a whole to the shares in question may prevail. The holding of shares by only one or more partners on behalf of other partners of a firm should not, therefore, ordinarily
arise. However, where in a given case, the name or names of only one or some of the partners is entered in the Register of Members while the intention is that the partnership as a whole should have the right of membership in respect of the shares in question, it is obviously necessary for such partners who hold shares not only for themselves but for the benefit of all partners constituting the firm whose names are not entered in the Register of Members, to comply with the rules under Section 187C.

An apprehension has been expressed that the Rules will hinder trading in shares of companies listed on the Stock Exchanges. On this, the Department's view is that the Rules apply to completed transfers where the names of the transferor and the transferee are known, and where the physical possession of shares passes, along with formal documents executed by both transferor and the transferee and presented to the company concerned in terms of Section 108 of the Companies Act, 1956. It is well settled that until that stage, the person who deals in such shares on the Stock Exchange through a Stock Broker without executing the prescribed form of transfer deed, gets only the equity in respect of the consideration paid by him, which is enforceable in the event of the company's non-registration of the transfer of shares against the purported transferor of the shares, and until that stage, the property in the shares, a specific of goods transferable only in the manner contemplated by the law, does not pass. In view of this legal position, the apprehension expressed is not tenable. In this view of the matter, in the case of any shares traded on the Stock Exchange without the transfer deed prescribed under Section 108 of the Act duly executed both by the transferor and the transferee, there is no legal transfer of shares for the purposes of giving rise to the relationship of the trustee and beneficiary as between the transferor and the unknown transferee.

The rules are applicable if shares stand in the name of a Bank in the Register of Members of a company, while the rights, pertaining to the shares are exercisable by some other person or persons whose names do not appear in the register, as there is thus a clear separation of the legal and beneficial interests in the shares. On the other hand, if the fact that the name entered in the Register of Members is that of the executor under a will or an administrator to whom letters of administration have been granted is clear from the entry, the rules will not be applicable; but if that fact is not thus clear, the disclosure required by the Rules will have to be made.

The Rules are not applicable to shares held by Official designations only, e.g. Court Receiver, Official Liquidator, Administrator General, Income-tax or Wealth Tax Commissioner, Custodian of Evacuee or enemy properties etc. since no title to the shares vests in the officials who deal with the property under special judicial or statutory authority.

Section 187C—Applicability to private trusts

28.2 A question has since been raised whether provisions of Section 187C are applicable to private trusts. Private Trusts are governed by the Indian Trusts Act, 1882. That law contemplates the existence of two clear interests, namely, the legal interest which vests in the trustees and beneficial interest which vests in the beneficiaries. This dichotomy is envisaged by Section 187C of the Companies Act, 1956, as well, which lays down that a person whose name is entered in the Register of Members of a company as the holder of a share in that company but does not hold the beneficial interest in such shares shall make a declaration specifying the name and other particulars of the person who holds the beneficial interest in such shares. This dichotomy is kept up in the other sub-sections of this section as well. Where the legal interests vests in trustees,
it is only to be expected that the names of trustees would find a place in the Register of Members of a company. It is, therefore, the duty of the trustees to make the declaration as the persons legally entitled and to specify the persons for whom they hold the shares. It is not possible to limit the application of Section 187C, on its own terms to the type of constructive trust arising under Section 82 of the Indian Trust Act and if that is the sense to be attributed to the word 'benami' occurring in the Statement of Objects and Reasons and the Notes on Clauses preceding the Act, it is of little relevance at the present state to control the clear language of the relevant statutory provisions. Hence, non-compliance with the requirements of Section 187C of the Companies Act, 1956, in cases of private trusts will amount to an infringement of the law which will attract the consequences laid down in it.

(Circular No. 1275 dated 7-6-1975)

Some clarifications under the Companies (Declaration of Beneficial Interest in shares.)

Suggestion

25.5 I. The declaration should not be insisted upon in the case of holding of shares if the nominal value of shares did not exceed Rs. 10,000.

2. Filing of return by the company should be made once a year instead of within 30 days from the receipt of declaration from the shareholder/beneficiaries by the company. As numerous declaration were received by the company from time to time annual return would save lot of clerical work and would be a more administrative convenience for the companies.

3. Penalties imposed are quite stringent and there is no relationship with the amount or the value of shares in respect of which there is contravention.

Secretary Shri Ray's reply

The suggestion for not insisting upon declaration in the case of holding of shares upto Rs. 10,000 could not be accepted as it goes beyond the law.

In regard to filing of return annually instead of monthly, the matter would be looked into when the Act is amended so that complications are avoided.

So far as benami holdings are concerned the Department's interpretation is rather liberal and the problem would be looked into. It is clarified that all shares belonging to trusts should be held in the name of trustees and not in the name of any other person.

Heavier penalties have been prescribed with a view to discourage contraventions and plug loopholes. This would, however, be looked into when the Act is amended.

[Reply given by Secretary Shri Ray at meeting of Punjab, Haryana & Delhi Chamber of Commerce]
CHAPTER XI
29. FILING OF RESOLUTIONS—MINUTES

Section 192—Clarification regarding subsection(2) of Section 192

The language of subsections (1) and (2) of Section 192 is clear. Under subsection (1) a copy of each resolution of the type specified should be filed with the Registrar within 15 days (now 20 days) from the passing thereof. Under subsection (2) a copy of such resolution is to be annexed to (or embodied in) any copy of the articles of the company which may be issued at a date subsequent to the date of the passing of the resolution. Both the requirements should be fulfilled irrespective of whether the resolution is subsequently acted upon or whether the necessary approval of the Central Government to the implementation of the resolution is applied for or obtained or not. However, the company need not embody or annex a copy of the resolution in or to its articles till it has received clearance to the proposal contained in it, provided it does not issue any copy of the articles subsequently to the passing of the resolution.

(Letter No. R/35(172) SLFR dated 31.1-1962.)

30. Minute Book—Maintenance

Section 193: Clarification regarding maintaining minutes in the loose-leaf form

Representations have been received from a number of companies pointing out that if the word ‘books’ were to be interpreted strictly to mean only bound books, some of the companies would be bound to discontinue their previous practice of keeping the minutes in loose-leaves which were bound up at suitable intervals and they would be forced to have the minutes written out by hand in the bound books. This, according to them, would be a retrograde step and would be detrimental to the expeditious and neat recording of the minutes.

The Department has decided that it would refrain from taking any action against a company which maintained its minutes in the loose-leaf form, provided it complied with the other procedural requirements of the section and at the same time took all possible safeguards against manipulation or interpolation of the minutes and bound up the loose-leaves in books at reasonable intervals, say six months.

(Extract from the Fifth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1961.)

Section 193: Clarification regarding the provisions of Section 193(1B)

With reference to the correspondence relating with your letter No. F. 1563/CAm/10 dated the 23rd February, 1971, on the above subject I am directed to say that suggestion that minutes of the general and board meetings may be (i) typed written and then passed in bound minutes book or loose leaves and (ii) entered by chemical process, have been duly considered in the Department. The Department's views in the matter are that (i) Section 193(1B) is against the pasting of the minutes in the minute book. Minutes of the general and board meetings cannot, therefore, be typed written and then pasted in bound minute book or in loose leaves, and (ii) entering of minutes in the bound minute book by a chemical process which does not amount to attachment to any book by pasting or otherwise is permissible provided on the mechanical impression of the minutes the original signature of the Chairman is given on each page.

(Letter No. 1044/70-CL T/H, dated 27-3-71.)
Section 193: Keeping of minutes of meetings

30.3 In view of the provisions of sub-section (1B) of Section 193, which prohibits attachment of the minutes of a meeting in the minutes book by pasting or otherwise every company has, apparently to maintain the minutes in a bound book only. However, this provision is not incapable of a different interpretation. Maintenance of minute books in loose-leaf form, whereby loose leaves which were serially numbered could be taken out and re-inserted after the proceedings had been typed on them would not, strictly speaking, amount to 'attachment' within the meaning of the sub-section. In view of this and also in view of the fact that the use of loose-leaf forms for minute books is a convenient modern technique for neat and expeditious recording of the minutes, especially for big companies where the minutes may run into many pages, Field Officers are advised not to insist on minutes being kept in a bound book. No general advice in this regard need, however, be issued by them to the business community, on the contrary companies which may approach the Field Officers in the matter may be given the suggestion that it would be preferable for them to keep bound minute books. No action, however, need be taken if a company is found to be keeping loose-leaf books, unless there is any interpolation in the minutes.

Section 193: Writing of minutes within thirty days—Clarification

30.4 How can it be ensured that minutes have been written up within 14 days (now thirty days) of the meeting? When should minutes be circulated among the members of the Board of directors—whether after they have been finalised—or before? If before finalisation, should all these take place within the 14 days' (now within thirty days) period?

The details as to when and how the minutes of the meetings of the Board of Directors as well as of the general meeting may be written up may be left to the managements of companies, who are expected to fulfil the requirements of the section. The Department of Company Law Administration or the Registrars of Companies can hardly undertake an investigation or enquiry to ascertain that each company is complying with the law in this respect. Section 196 of the Act confers a right on shareholders to have inspection of the minutes book of general meetings and if a complaint is made that a shareholder has not found the minutes written up within the prescribed time, action can be taken under Section 193(6) in suitable cases. Where the Registrar of Companies has reason to suppose that the minutes have not been written up in due time, he can (where such action is really justified) independently find an excuse to call for the minutes book in exercise of his powers under Section 234(3A). As regards the minutes of the Board meetings, in view of the provisions of Section 193(1A)(a), it is likely that they would be written up before the next meeting of the Board in any case. These minutes are in the nature of confidential papers and unless any complaints are received, the matter may be left to the good sense of the directors and no interference need be made in what really is a domestic affair of the company.

Section 193: Keeping of minutes

30.5 For the sake of convenience, the Department does not propose to take objection to minutes being kept in the loose leave form where they are already being so maintained. But it is necessary that the pages should be serially numbered and there should be proper locking device to ensure security and proper control to prevent irregular removal of the loose leaves. However, at regular intervals, say at six months, the loose leaf books should be bound up to the stage the minutes have been entered.
Section 193: Maintenance of minutes of proceedings of Board of Directors.

30.6 (i) It is not obligatory to wait for the next Board meeting in order to have the minutes signed of the meeting already held. Such minutes may be signed by the Chairman of the meeting at any time before the next meeting is held.

(ii) The course of confirming the minutes of any Board meeting by members of the Board at the next meeting is not contemplated by the law.

(iii) Since as stated in the immediately preceding paragraph, the confirmation of minutes of a Board meeting is not required, the question of postponing action on the resolutions already passed by the Board for want of such confirmation would not arise. Since by such postponement of action, legal consequences are liable to be incurred, it would serve to indicate why the law does not contemplate confirmation of the minutes of any Board meeting as such.

(iv) Where there is a practice of presenting the minutes of a meeting for confirmation by the Board of Directors at the next meeting, it may be noted that if such minutes have already been signed by the Chairman of the meeting concerned, the minutes attract the presumptions contained in Section 195 of the Act and as such it will be possible to have any alteration in the minutes only by way of fresh resolutions of the Board meeting in which the minutes of the meeting in question are discussed. Even if the minutes have not been signed but have been approved by the Chairman of the meeting concerned, the same position as indicated above will prevail. In order that any change in such minutes may be effected, the only way open is to adopt fresh resolutions in modification on the footing that the minutes as recorded on the approval of the Chairman stand.

(Letter No. G/2(Misc) (75-CL 5 dated 5-8-1975)

Section 196: Place of keeping the minute books

Query

30.7 It is submitted that Section 196 should provide for the keeping of the Board Minutes and the Minutes of the shareholders' meeting at any other place in the same city where the Registered Office of the company is situated by a resolution of the board in the same manner as for Register of Members etc. under Section 163 and the Books of Accounts under Section 209.

Answer

As the minute books of the meeting of the Board of Directors or of the general meeting of a company are primary documents and are evidence of the proceedings recorded therein and where minutes are duly drawn and signed, presumptions, as specified in Section 196 of the Act, are required to be drawn until the contrary is proved, it has been provided in the Act that the minute books should be kept at the registered office of the company.

(File No. B/16(3)/61-PR.)

Signing of the Minutes pursuant to Section 193 vis-a-vis the provisions of Section 285 of the Companies Act, 1956—Clarification regarding etc.

30.8 Recently the Department had an occasion to consider the question whether a Chairman of one Board Meeting or a Committee of the Board should cause minutes of all proceedings of every meeting of its Board within 30 days of the conclusion of every such meeting as per sub-section (1) of section 193 of the Companies Act, or whether
it can be legally contended that the Chairman of the next Board meeting to be held within the meaning of section 285 of the Companies Act, can validly sign such minutes.

2. The question has been examined in consultation with the Department of Legal Affairs and this Department has been advised that clause (h) of Section 193(1A) shows (i) what is to be done and (ii) the period within which it is to be done. Clause (a) of Section 193(1A) on the other hand shows only what is to be done but is silent regarding the period within which it is to be done. However, regarding the period within which it is to be done there is a clue. There is an indication from the fact that section 193 (1A)(a) provides that in the case of minutes of the meeting of the Board of Directors every page of every book is required to be initialed or signed and the last page of the record of proceedings of each page of each book is required to be dated and signed either by the Chairman of the said meeting or the Chairman of the next succeeding meeting. Thus section 193(1A)(a) gives option to Chairman of the meeting of the Board of Directors or the Chairman of the next succeeding meeting of the Board of Directors to initial or sign every page of every book and to date and sign the last page of the record of the proceedings of the meeting. Section 285 of the Act shows that next succeeding meeting can be held within three months. The company has got absolute option under the Act by virtue of Section 285 to hold its Board meeting at intervals of not exceeding three months subject to fulfilments of the other condition. If this option is meant to be fully and really exercised by the company after any Board meeting is held, either the Chairman of the meeting the minutes of which are required to be signed or the Chairman of the next Board meeting can sign the minutes. Thus it cannot be insisted upon that the minutes of the Board meeting have to be signed within 90 days. Insistence can be made only as to the writing of the minutes within the period of 90 days from the date of the meeting held.

3. The above views may please be kept in view while taking up the matters with the companies or at the time of inspection under section 209A of the Companies Act, 1956.

(Circular No. 25/70 dated 1st September, 1976.)

31. Misleading nomenclature

Section 197A—Managerial personnel of companies—Adoption of new nomenclature—Need for close watch by Registrars of Companies

31.1 There is no objection to the adoption by companies of the American nomenclature of President and Vice-President for designating their managerial personnel provided that in their Articles of Association, it is made clear that these terms precisely mean in the context of company Management by clearly defining their duties and powers. It is also essential that the company concerned should make it quite clear to the prospective investors if and when a public issue is contemplated by it, or in its public announcements, what such nomenclature means in terms of the conventional nomenclature of managing director, executive director etc., ordinarily used by companies.

Registrars should keep a note of all companies adopting such new nomenclature. They should be watchful to ensure that all the statutory provisions relating to managing directors are complied with by companies which designate their managerial personnel as President/Vice-President and that the provisions of Section 197A are not infringed in any way.

(Letter No. 14/37/83-PR dated 22-9-1983.)
Sections 197A, 267 and 316(1)—Employment & Appointment

Query

31.2 It is requested that the Government would give proper interpretation of the word 'employment' which has been used in addition to the word 'appointment' in—

(i) Section 197A prohibiting simultaneous appointment or employment or continuation of the appointment or employment of different categories of managerial personnel,

(ii) Section 267 debarring certain persons from appointment or employment as the managing or whole-time director of a company, or debarring continuation of such appointment or employment;

(iii) Section 316(1) which restricts the number of companies, of which one person may be appointed as the managing director.

Answer

Appointment is the initial step taken to bring about the stage of employment while employment is a continuing state of relationship. No subtle difference need be drawn between these two terms in so far as the provisions of the Companies Act are concerned. The addition of the word 'employment' was presumably intended to ensure that with the initial act of appointment and the continuing state of employment were brought within the scope of these sections.

(File No. 8/16(1)/61-PR.)
CHAPTER XII

32 REMUNERATION—COMMISSION

Section 198: Overall managerial remuneration

32.1 A prominent business house in the country sought Government’s approval to revise the terms of remuneration of its managing directors so as to increase their annual basic salaries by a sum equivalent to the average commission on net profits per annum earned by them during the last few years. Government was also simultaneously requested to issue an order under the proviso to Section 198(4) for raising the minimum remuneration of the managing directors to the extent of the increased basic salaries plus the permissible perquisites. As a matter of principle, Government could not agree to the absorption, in full, into the basic salary of a managing/whole-time director the entire commission on net profits calculated on the basis of the average commission earned by him in the last few years.

Government, therefore reaffirmed their view that in the interest of the efficient management of companies, commission on net profits should stay as an item of incentive payment, and that the protection given by proviso to Section 198(4) should not ordinarily give any cover to the commission on net profits which the managing directors could expect to earn only in those years when the company made good profits, but which could not be guaranteed during lean years when the company either made no profit or its profits were inadequate even to cover the basic salaries, allowances and perquisites payable to the managing directors under the terms of their service agreements.

(Extract from the Second Annual Report on the Working & Administration of the Companies Act, 1956—Year ended March 31, 1958.)

Section 198: Managerial remuneration—Clarification regarding perquisites

Queries

32.2 (a) The explanation to this section needs clarification. Could the value of perquisites, such as rent-free quarters and free use of office car, be evaluated on the basis adopted for income-tax assessments of the individuals concerned?

(b) Are items, such as free lunch and tea, medical expenses, passage expenses and entertainment allowances which are excluded from the income-tax assessments of the individuals to be evaluated and included in remuneration?

(c) Purchase of goods by officers of the company or provision of services to them might involve some concession. Does the explanation contemplate the value of the concession being determined and included in remuneration?

(d) Where the accounting period falls on either side of 28th December, 1960 could the computation of the perquisites to be included under Section 198 as amended be determined on a proportionate basis?

Answers

(a) to (c) The amended section requires evaluation of the perquisites, and management have to provide the auditors with statements showing the evaluation of the perquisites on the basis of prevailing market value. It is difficult to provide more specific answers.

(d) Yes.

(Letter No. 8/1611/IR dated 9-5-1961.)
Section 198: Clarification regarding Section 198

Query

33.2 If a whole-time sales manager or works manager is appointed on the Board of Directors but his primary functions remain the same, whether his salary will attract the provisions of Section 198, on his appointment as a director.

Answer

Appointment of a whole-time sales manager or works manager on the Board of directors would attract the provision of Section 269 of the Companies Act as from the date of his appointment since, as a director, he will be in the position of a whole-time director. The provision of Sections 409 and 198 of the Act would also be attracted.
Section 198: Clarification regarding Section 198.

Query

The deputy managing director of a public company need not necessarily be a member of the Board and, therefore, his remuneration is not attracted by the provisions of Section 198 relating to managerial remuneration.

Answer

The Companies Act does not recognise a 'Deputy managing director'. The designation would be misleading if the incumbent is not a director. However, if the person concerned is in fact not a director and is not occupying the position of a managing director, manager or holding other managerial office, his remuneration would be outside the scope of Section 198.

Overall Managerial Remuneration

Section 198: Minimum remuneration—Government’s power under proviso to subsection (4).

33.3 Under subsection (4) of Section 198 of the Act, provision has been made for the payment of a minimum remuneration to the managerial personnel not exceeding Rs. 50,000 in any year, if the company has no profits or its profits are inadequate. The proviso to that section empowers the Government to increase the minimum remuneration payable to managing or whole-time director or directors and managers to such sum, for such period and subject to such conditions, as may be specified by the Government. In the case of companies managed by managing directors, the monthly salaries and allowances and the monetary equivalent of the perquisites (excluding commission on net profit) to which they are entitled are taken as the minimum remuneration payable to them in terms of this section. In such cases, Government’s power under the proviso to that section to fix the minimum remuneration at a figure higher than Rs. 50,000 are exercised with due regard to the size of the company, the scale of its operations, the terms of services applicable to the managerial personnel under the contracts existing on the date of enforcement of the Act, the scales of remuneration generally prevailing in companies of similar size and nature and such other factors as may be taken into account in any particular case.

(Second Annual Report on the Working and Administration of Companies Act for the year ended March 31, 1958.)

Section 198: Clarification regarding scope of subsection (4)

Query

33.4 The wording of subsection (4) is not very happy. It states that notwithstanding anything contained in subsection (1) to (3) if in any financial year a company has no profit or its profit is inadequate, the company may subject to the approval of the Central Government pay to its directors and other managerial personnel, to all of them together a minimum remuneration not exceeding Rs. 50,000. To know whether there is a profit in a year or the profit if any, is inadequate, one has to wait until the whole year’s working results are available. If Government’s approval is to be sought after knowing the results of the working of the year, it would not be possible to pay a monthly remuneration for that year. The sub-section requires modification.
Answer

Companies can always seek Government's approval to the payment of minimum remuneration either at the time of appointment of the managerial personnel or at any time thereafter when the company anticipates that its profits are likely to be inadequate. The Department has not come across any difficulty in this regard.

(Company News & Notes, Vol. 1, July 1, 1968.)

Section 198: Payment of minimum remuneration in the event of absence or inadequacy of profits

33.5 Minimum remuneration in the event of absence or inadequacy of profits will not be allowed as a matter of right. Companies are expected to earn adequate profits before paying managerial remunerations as envisaged by the statute. In those cases where there is actual or apprehended absence or inadequacy of profit, reasonable minimum remuneration will be allowed for not more than two to three years at a time during the formative stages or during losses inadequate profits arising out of circumstances beyond the control of the company. Minimum remuneration will not be allowed in those cases where the companies are earning or have good prospects of earning sufficient profits to pay the proposed remuneration within the statutory limits.

(Extract from the Fourteenth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1970.)

Section 198—Criteria for approving proposals involving payment of remuneration in excess of prescribed limits in the event of absence or inadequacy of profits

33.6 Proposals involving payment of remuneration to managing directors which may exceed the statutory limits fixed in Section 198, in the event of absence or inadequacy of profits, are considered on merits with due regard to the nature of the business of the company and functions of the managing directors. The Commission recognises that even in such cases, the managing directors are entitled for the services rendered by them to the company to a certain minimum remuneration irrespective of the profits the company makes. The factors taken generally into account in fixing the remuneration are

(a) the magnitude of the company,
(b) the nature and extent of its operations,
(c) the number of managing directors and the powers assigned to them,
(d) whether the remuneration proposed is necessary for the efficient management of the company having regard to the considerations enumerated above, and
(e) such other factors as would make it inequitable to apply the limit of Rs. 50,000 in the particular case.

Ordinarily it has been ascertained only at the end of the financial year of the company whether the proposed remuneration payable to the managing directors etc., will be within the statutory limit of 11% of the net profits of the company or not. But since monthly salary and allowances payable to the managing director will be deemed to be the minimum remuneration in the event of absence or inadequacy of profits in any year for the purpose of Section 198(4), the Commission necessarily has to consider all these matters before agreeing to any fixing of remuneration on the proposed scales.

(Extract from the Report of the Advisory Commission for the year ended 31st March, 1959.)
Section 198—Remuneration paid to technical directors or directors designated as technical advisers whether outside the purview of Section 198(1)

33.7 Cases have come to the notice of the Department where companies paid or proposed to pay remuneration to directors in excess of the ceiling of 11% prescribed under Section 198(1) of the Act, on the assumption that remuneration paid to ‘technical directors’ or directors designated as Technical Advisers, was outside the purview of Section 198(1). It was argued in such cases that such remuneration should not be treated as ‘managerial remuneration’. A detailed scrutiny of some of these cases, revealed that though the directors had been designated as ‘technical advisers’ or as ‘technical directors’ the functions entrusted to them were not of a purely advisory nature and in fact considerable administrative and executive powers, involving the exercise of managerial decision had been entrusted to them, and consequently the remuneration paid to them was held to fall within the scope of Section 198(1) of the Act.

It is hardly necessary to stress the point that the formal designation given to a director is in no way significant, so far as the question of applicability of the provisions of the Act is concerned. The important point is whether the nature of the duties and powers delegated to a director would, in fact, place him in the position of a managing director or a director in the whole-time employment of a company.

(Extract from the Fifth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1961.)

Section 198—Appointment of a company as secretary to another company—Whether circumvent Section 198(1)

33.8 A company appointed another company as its secretaries by a board resolution passed on the 30th April, 1960. The secretaries were entrusted with the handling of so-called secretarial work of the company according to the instructions of the Board. They were responsible for keeping the statutory books, filing returns with the Registrar, arranging and keeping records of Board meetings and general meetings and also carrying out the instructions of the Board from time to time.

The appointment of secretaries and the payment of remuneration to them did not apparently come within the scope of any of the provisions of the Companies Act.

It is considered that in this case an attempt has been made to circumvent the provisions of the Companies Act, by the company in respect of payment of remuneration to the officers specified in this case which cannot be considered as managerial remuneration.

(Extract from the Fifth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1961.)

Section 198—Overall managerial remuneration

33.9 Under sub-section (4) of Section 198 of the Act, provision has been made for the payment of a minimum remuneration to the managerial personnel not exceeding Rs. 50,000 in any year, if the company has no profits or its profits are inadequate. The proviso to that section empowers the Government to increase the minimum remuneration payable to managing or whole-time directors or directors and managers such sum, for such period and subject to such conditions as may be specified by the Government. In the case of companies managed by managing director, the monthly salaries and allowances and the monetary equivalent of the perquisites (excluding commission on net profits) to which they are entitled are taken as the minimum remuneration payable to them in terms of this section. In such cases, Government’s powers under the proviso...
to that section to fix the minimum remuneration at a figure higher than Rs. 50,000 are exercised with due regard to the size of the company, the scale of its operations, the terms of service applicable to the managerial personnel under the contracts existing on the date of enforcement of the Act, the scales of remuneration generally prevailing in companies of similar size and nature and such other factors as may be relevantly taken into account in any particular case.

The business circles in the country have been made fully aware of the Government's view that the minimum remuneration referred to in Section 198 covered only monthly salaries and allowances and monetary equivalent of perquisites payable to managing directors or whole-time directors or directors and managers of companies managed by directors, and that the aforesaid minimum remuneration did not afford any protection to the element of commission on net profits payable to such managerial personnel.

A prominent business house in the country sought Government's approval to revise the terms of remuneration of its managing directors so as to increase their annual basic salaries by a sum equivalent to the average commission on net profits per annum earned by them during the last few years. Government was also simultaneously requested to issue an order under the proviso to Section 198(1) for raising the minimum remuneration of the managing directors to the extent of the increased basic salaries plus the permissible perquisites. As a matter of principle, Government could not agree to the absorption, in full, into the basic salary of a managing/whole-time director the entire commission on net profits calculated on the basis of the average commission earned by him in the last few years.

Government, therefore, reaffirmed their view that in the interest of the efficient management of companies commission on net profits should stay as an item of incentive payment and that the protection given by the proviso to Section 198(4) should not ordinarily give any cover to the commission on net profits which the managing directors could expect to earn only in those years when the company made good profits, but which could not be guaranteed during lean years when the company either made no profit or its profits were inadequate even to cover the basic salaries, allowances and perquisites payable to the managing directors under the terms of their service agreements.

(Extract from the Second Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1958.)

Section 198—Increase in the remuneration of directors whether in accordance with the provisions of Section 198

83.10 The practice of increasing the remuneration payable to the working directors on the ground that the payment of commission to which they were formerly entitled was being discontinued and their total emoluments would be only in the form of fixed remuneration. This practice seems to have been adopted by company management to ensure a steady income for the directors irrespective of the fluctuations in the net profits of the company from year to year.

This was not in accordance with the intention underlying the provisions of the law in proviso to Section 198.

(Extract from the Second Annual Report on the Working and Administration of the Companies Act, 1956—Year ended 31st March, 1958.)
Section 198—Banking companies to obtain approval of the Central Government when remuneration exceeded the prescribed limits

33.11. By virtue of the amendment effected in Section 35B of the Banking Companies Act, 1949 by Section 7 of the Banking Companies (Amendment) Act, 1962 (which came into force on the 16th September, 1962) the approval of the Reserve Bank of India is now necessary to the appointment of managers/managing directors by banking companies but no approval of the Central Government (in the Company Law Department) will be required in addition under Sections 256, 309(3), 310 and 317 of the Companies Act. In view, however, of the fact that there is no provision in the Banking Companies Act for the exclusion of the operation of Section 198 of the Companies Act, in such cases, in addition to the approval of the Reserve Bank of India under the Banking Companies Act, the approval of the Central Government (in the Company Law Administration Department) would be necessary where the remuneration exceeded the limits laid down in section 198 of the Companies Act.

(Extract from Circular Letter No. 13/7502-IR dated 1-3-1963.)

34. Calculation of Commission

Section 198—Whether applies to private companies

It appears from the records connected with the legislation of the Companies Act, 1956 that present Section 199 (included as clause 296) of the Companies Bill, 1953 as (introduced in Parliament) was intended to be made applicable to all companies, whether public or private. The words now appearing in Section 199 within brackets, viz., “not being a director, the managing agent, secretaries & treasurers or a manager” did not occur in the clause as introduced but were inserted in consequence of the introduction of the provisions which now appear as Section 198 by the Joint Committee. Therefore, a private company simpliciter will be well advised to act in accordance with the provisions of Section 199, not only in respect of its non-managerial staff but also in respect of its managerial personnel, such as directors, managing agents, etc.

(Important Clarifications Part I, pp. 41-42. Published by the Association of Company Secretaries & Executives.)

35. Reimbursement of Expenses

Section 261—Reimbursement of the expenses to the Managing Directors etc. in connection with criminal cases instituted against them

Companies sometimes place funds at the disposal of their managerial personnel for defending themselves in criminal proceedings instituted against them. Section 261 specifically provides that any provision either contained in the articles of a company or in an agreement with a company or in any other instrument, for exempting any officer of the company or any person employed by the company as auditor from, or indemnifying him against, any liability which, by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, misfeasance, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void. It has also been laid down in the proviso to sub-section (1) of the said section that a company may, in pursuance of any such provision, indemnify any such officer or auditor against any liabilities incurred by them in defending any proceeding whether civil or criminal in which judgment is given in his favour or in which he is acquitted or discharged or in connection with any application under Section 533 of the Act in which relief is granted to him by the Court. Thus, it is not permitted to a company to make any funds available to the managing directors etc. in connection with any civil or criminal case instituted against them unless they are found by a competent court
to be innocent and the question of reimbursement will arise only after the termination of the proceeding in favour of the officers of the company concerned.

(Circular No. 8 of 1972 dated 8-5-1972.)

36. Managing Agents—Secretaries and Treasurers Restrictions on their appointments.

Section 204—Restrictions on appointment of firm and body corporate to office or place of profit under a company—Contravention of Section 204(1) of the Companies Act, 1956.

36.1 The Company Law Board had occasion to study an instance where a body corporate had been appointed by a company to render secretarial and other services to the latter. The contract of appointment was silent on the question of the tenure of the appointment, and only mentioned that the appointment was terminable at the will of the company.

On an examination of the case, it has been decided that the appointment of any firm or body corporate to an office or place of profit under a company by a contract or arrangement terminable at will and/or without the approval of Central Government, is in contravention of Section 204(1) of the Companies Act, 1956 and prosecution for the same lies under Section 629A of the said Act.

Since the appointment is in contravention of Section 204(1), it should also be treated as void under Section 29 of the Indian Contract Act and the company should be asked to recover the remuneration paid, in addition to the liability to prosecution under Section 629A.

(Circular No. 12 of 1975 dated 12-9-1975.)

Section 204A—Restriction on the appointments of associates of managing agents

Query

36.2 Whether approval of the Central Government is necessary for appointment of the associates of the Managing Agents to the following posts—

(1) As a Director without any remuneration;

(2) As a Power of Attorney with or without remuneration entrusted with certain executive powers but not any power of a Secretary, Consultant or Adviser; and

(3) Chief Accountant and/or Deputy Chief Accountant of the Associates as Secretary and Joint Secretary of the erstwhile managed companies.

Answers

(1) The approval of the Central Government is not necessary.

(2) The approval of the Central Government is necessary.

(3) For Secretary and Joint Secretary, the approval is necessary. But if a person had been associated as Chief Accountant or Deputy Chief Accountant of a firm or body corporate which had been an associate of the erstwhile managing agent, his appointment in the company once managed by such managing agents, would not ipso facto require the approval of the Central Government under Section 204A of the Companies Act, 1956.

(Letter No. 82/ Misc./75-CL. V dated 6-9-1975.)
Section 204A—Clarification regarding—

36.3 A question has been raised as to the scope of the phrase 'any other office' used in Section 204A of the Companies Act, 1956, as amended in 1974, i.e., whether it will cover such managerial offices as managing director/whole-time director. Under Section 204A of the Companies Act, 1956, a power has been conferred on the Central Government to regulate arrangements which have been or may be entered into between the former managing agents or secretaries and treasurers of companies, in order to ensure that such arrangements are in the interests of the company concerned and are not a device to circumvent the provisions of the law abolishing those systems of management. This is clear from the Statement of Objects and Reasons appended to the Companies (Amendment) Bill, 1972. The Notes on the relevant clause of the Bill envisage these arrangements in terms of ‘service agreements’. It is thus clear that the words ‘any other office’ will cover offices of the nature of secretary, consultant or adviser—which offices are in the nature of service agreements. It is, therefore, clarified that provisions of Section 204A of the Companies Act, 1956, do not apply to commercial transactions as in the case of purchase and sale of goods or services on a principal-to-principal basis. Nor do they apply to the offices of the managing or whole-time director as their appointments to these offices do not fall under this category. Further, in the case of the public companies, the appointment of managing/whole-time director requires approval of the Central Government under Section 269 of the Companies Act, 1956, and this is an additional reason in such cases why the approval under Section 204A would be superfluous. This reasoning applies also to the office of manager and hence, though the office of manager will otherwise be covered by Section 204A, it will not be necessary to obtain approval under that section where approval has been or is to be obtained for any appointment to the said office under Section 388 of the Act.

(Circular No. 15 of 1975 dated 5-6-1975.)
CHAPTER XIII
37. DIVIDEND, MANNER AND TIME OF PAYMENT

Section 205—Treatment of depreciation

37.1 The deduction of normal depreciation from the written down value of the fixed assets as shown in the books of account of a company at the end of the financial year ending on the date of the commencement of the Companies Act, 1956, that is 1st April, 1956 or immediately thereafter, is for the limited purpose of determining the written down value according to Section 350 of the Act. It may be further pointed out that so far as Section 205 is concerned, the depreciation already provided in the books of accounts would be taken into account and the depreciation determined in accordance with Section 205(7)(a)(c) would have to be deducted from the written down value only. If the method set out in this Department’s Memorandum on depreciation is followed, in no case the depreciation deducted under Section 350 or provided under Section 205 of the Companies Act, 1956, will be greater than the cost price of the asset.

(“Important Clarifications, Part I”, pp. 22/23. Published by the Association of Company Secretaries and Executives.)

Section 205—Depreciation in respect of assets used in earning agricultural income

37.2 This Department would be prepared to consider an application from the company concerned for approval of the Central Government under Section 205(7)(d) to the company providing depreciation in respect of assets which are used in earning Agricultural income at the rates prescribed in States Agricultural Income-tax Acts in case the Indian Income-Tax Act does not provide for rates of depreciation relating to such assets.

(“Important Clarifications, Part I” pp. 13/16 Published by the Association of Company Secretaries and Executives.)

Section 205—Depreciation in respect of assets used in earning agricultural income

37.3 As regards the rates of depreciation in respect of agricultural assets for which no rates of depreciation are specified in the Income-tax Act, 1922 or the rules made thereunder, there is no statutory obligation for a company to provide for depreciation in respect of such assets for purpose of Section 350 of the Companies Act, 1956 but, if in conformity with sound company practice, a company desires to provide for depreciation in respect of agricultural assets, it may adopt the rates as prescribed by the respective State Agricultural Income Tax Acts.

(“Important Clarifications, Part I” pp. 22/23. Published by the Association of Company Secretaries and Executives.)

Section 205—Declaration of dividends a second time out of a past year’s profits

37.4 One public limited company, in its annual general meeting held in 1969, approved of the declaration of dividend at a certain percentage and appropriations were made to various reserves from the surplus profits. The statutory returns were also duly filed with the Registrar. Several months later, the company sought to convene an extraordinary general meeting and declare dividends in addition to what had already been declared at the annual meeting, restating thereby the appropriations made in the earlier meeting.
Section 205—Calculation of depreciation

Query

37.6 For purposes of sub-section (1) of Section 205, if a company were to charge depreciation in accordance with the provisions of the Indian Income-tax Act, 1922 as it has been doing all these years, will it be sufficient compliance with the provisions of Section 205(1)?

Answer

For the purpose of Section 205(1) depreciation may be provided at the quantum arrived at by the application of the ratio specified by the Income-tax Act, 1922, and as laid down in Section 356.

Section 205—Mode of calculating depreciation

Query

37.7 Referring to the alternate methods of depreciation for purposes of Section 205, the 'specified period' is not capable of precise determination, because calculation of depreciation in accordance with Section 356 contemplates inclusion of the shift allowance, and this factor of shift allowance cannot be foreseen. Therefore, the 'specified period' has to be determined either by assuming full shift allowance of 50% of the normal rate of depreciation or ignoring altogether the shift allowance.

Assuming a rate of 10%, the 'specified period' without shift allowance is 26 years and with full shift allowance at the rate of 5% the 'specified period' is 19 years. If depreciation is to be provided on a straight line basis, the rate of depreciation in the first case will be 3.66% and 5.3% in the other. It is desired to know which will be the acceptable basis?

Answer

Before determining the 'specified period' it will have to be seen whether the company has consistently worked the fixed asset, in respect of which depreciation is to be
provided for, on double/multiple shift basis in the past and whether it is doing so presently. If the answer is in the affirmative, obviously the company will have to take into account extra/multiple shift allowance rate in computing the specified period. However, if such a company discontinues double/multiple shift working after some years, clearly it would be necessary to recalculate the quantum of annual depreciation by determining the ‘specified period’ on the revised basis. In the converse case, where a company does not work the fixed assets on double/multiple shift basis, it would not be necessary to take into account extra/multiple shift allowance rate for calculating the ‘specified period’, but if such a company resorts to double/multiple shift working after some years, it will have to recalculate the annual quantum of depreciation by determining the ‘specified period’ after taking into account extra/multiple shift allowance rate.

38. Depreciation of Assets—Providing for

Sections 205 and 350—Depreciable assets.

38.1 What is a depreciable asset? Is it one in respect of which depreciation allowance is mentioned under Section 10 of the Indian Income-Tax Act, 1922, or one the income arising out of which is taxed under section 9 of the said Act.

Section 205 of the Companies Act is based on Section 350 and Section 350 clearly provides that depreciation shall be provided in respect of assets for which rates have been specified by the Indian Income-Tax Act and the Rules made thereunder for the time being in force. All assets in respect of which such rates have been prescribed in the Income-tax Rules would be deemed to be “depreciable assets” for the purpose of Section 205. The provisions of the Indian Income-Tax Act under which the income from the asset is assessed are not relevant for purposes of Sections 205 and 350.

Under Section 205, any asset which is subject to wear and tear and has a “useable” life should be regarded as depreciable asset. For the purpose of Section 205(1), a company should apply to the Central Government for an order under Section 205(2)(d), if no rate of depreciation is laid down for such an asset under the Income-Tax Act or the Rules made thereunder. It is to be observed that there is no provision in Section 350 similar to the one in Section 205(2)(d). This may be a lacuna.

Section 205: Determination of specified period.

Query

38.2 It is not clear how the ‘specified period’ as referred to sub-section (5) is to be worked out in existing companies where a portion of depreciation has already been written off. It may be considered whether as a matter of practical convenience, the balance of the written down cost could be divided by the number of years (specified period) as provided in sub-section (5)(a) for computing annual depreciation to be provided hereafter or otherwise how computation of net depreciation is contemplated, keeping into consideration the amount of depreciation already written of and the residual term of the specified period.

Answer

The specified period will have to be determined with reference to the original cost and the yearly quantum of depreciation. Under the straight-line method depreciation will have to be determined accordingly. However, reference to original cost is for
the above limited purpose of determination of the specified period and quantum and once the instalment has been determined, it will be deducted from the written down value and not from 'original cost'. It would, therefore, not be necessary to provide again the depreciation already provided in the books in respect of a particular asset in any financial year ending prior to 28th December, 1960.

Section 205 : Declaration of dividend without providing for depreciation on immovable properties:

38.3 A case has been brought to the notice of this Department in which a company declared and paid dividends in respect of its financial year ended 31st March, 1961, without providing for depreciation on its immovable properties (which were stated to be its substantial source of income) as required by Section 205 on the grounds that (a) its immovable properties were held as capital investments (though shown in the balance sheet under the head 'Fixed Assets') and were not used for the purpose of any business carried on by the company and (b) that for purposes of calculating the total income of the company, no allowance by way of depreciation on the said properties was admissible under the Indian Income-tax Act and the Rules made thereunder.

The Central Government is of the view that the contention of the company in the case mentioned above, is not tenable in law. The provisions of sub-sections (1) and (2) of Section 205 are mandatory in nature and must be strictly complied with by every company before declaring or paying any dividend. For purposes of determining the amount of depreciation to be provided under Section 205 read with Section 350 it is immaterial as to whether depreciation in respect of any assets is actually admissible under the Indian Income-tax Act and the Rules made thereunder. The only provision of the Income-tax Act that is relevant for the above purpose, is the provision specifying the rates of percentage as contained in the Indian Income-tax Rules for the purpose of determining depreciation on various assets as referred to therein. Provisions of the Indian Income-tax Act relating to the admissibility of depreciation allowance for the purpose of calculating the total income of the assessee are not relevant for the purpose of Section 205 read with Section 350. In support of this view, attention is also invited to the provisions of Section 205(2)(d) which apply in cases where no rate of depreciation is allowed by the Income-tax Law.

Therefore, if a company has calculated its distributable profits without providing for depreciation in the manner required by Section 205 and if the profit and loss account of the company does not provide for depreciation accordingly, the balance sheet and profit and loss account of the company for a relevant year cannot be said to give a true and fair view of its state of affairs or of its profits and losses as contemplated by Section 211(1) and (2). With the result the officers of the company would become liable to the penalty as provided in Section 211(7) of the Act.

(Circular letter No. 16 (1) CI-VI/61 dated the 21st May, 1962)

Section 205: Depreciation in respect of assets for which no provision is made in the Income-tax Act

38.4 The Department's view on the question of provision of depreciation under Section 205 of the Companies Act, on assets in respect of which no depreciation allowance is granted under the Income-tax Act, 1961, have been set out fully in this Department's Circular letter No. 16(1)/CI-VI/61 dated the 21st May, 1962 (given above).
As regards the possible difficulty arising out of Section 283A of the Indian Income-tax Act, 1922 or Section 10 of the Income-tax Act, 1961, such difficulties are not likely to arise in many cases in view of the consolidated allowance available under Section 5(1)(i) of the Indian Income-tax Act, 1922 or the corresponding provision in the Income-tax Act, 1961. It may also be pointed out that if no depreciation is provided in respect of an asset in the books of the company, it would not be correct to hold that such a balance-sheet would show a true and fair view of the state of affairs of the company.

Section 205: Clarification regarding clause (b) of the first proviso to Section 205(1)

Query

38.5 (Clause (b) of the first proviso of Section 205(1) provides that if a company has incurred any loss in previous financial year or years falling after the Companies Amendment Act, 1960, then the amount of loss or an amount which is equal to the amount provided for depreciation for that year or those years, whichever is less, shall be set off against the profits of the company for the year for which dividend is proposed to be declared or against the profits of the company for any previous financial year arrived at in both cases after providing for depreciation in accordance with the provisions of subsection (2) or against both. The clause does not specify that the amount provided for depreciation in the past year or years shall be in accordance with the provisions of Section 205, and it would mean that the provision to be made out of the current year’s profits in that respect is only that amount which is provided for depreciation or the loss whichever is less. A company may not have provided full depreciation and also not declared any dividend in that year.

Answer

For purposes of clause (b) of the first proviso, the amount provided for depreciation in the past year or years which falls or fall after the commencement of the Companies (Amendment) Act, 1960, must be in accordance with the provisions of subsection (2) of Section 205.

(Company News & Notes dated 1st July, 1963.)

Section 205: Writing back of the depreciation on the fixed assets provided in excess in previous years

38.6 It appears that several companies have written back a portion of the depreciation on the fixed assets previously charged in their profits and loss account on the ground that the amount so charged was subsequently found to be in excess of the requirements of Section 205 of the Companies Act, 1956. In this connection, a question arose as to whether such practice was in conformity with the provisions of law and in consonance with good company practice. The question has been carefully considered by the Department of Company Law Administration and they have been advised that even though there is no legal bar to the writing back of excess depreciation if the directors are of the view that the depreciation provided in previous years was in excess of what was reasonably necessary for the purpose, it would not be in accord with sound company practice to utilise the excess amount resulting from the recomputation of depreciation for distribution to members by way of dividend or otherwise. It would also be appropriate to show the amount so written back under a separate head "Reserve not available for distribution" in books of the company as well as in balance-sheet. All companies would follow the above advice.

(Company News & Notes dated 1st July, 1963.)
Section 205: Dividend warrants issued by some companies encashable only at particular branches of the companies' bankers

38.7 Representations were received by the Company Law Board that there was a practice adopted by some companies of issuing dividend warrants encashable only at particular branches of the banks of the companies and this had caused some hardships to small investors, who normally reside outside the registered offices of the companies concerned, in obtaining payment. It was also represented to the Company Law Board that should companies issue dividend warrants encashable at par at all branches of the companies' bankers, it would, apart from reducing the hardships to small investors, also act as an inducement to small outstation investors in taking up shares of companies, the essential reason being that in case of small investments...........the cost of collection may not be commensurate with the dividends received.

It is understood that in respect of companies listed on the stock exchange, the stock exchanges themselves have suggested the issue of dividend warrants payable at par at all branches of the bankers of the companies concerned. Some companies, it is reported, have already adopted the practice of issuing dividend warrants encashable at par at all branches of the companies' bankers. It would be desirable if companies fall in line with this wholesome practice.

(Circular No. 15 (34)-CL VI/64 dated the 1st September, 1964.)

Section 205: Depreciation in straightline method

Query

38.8 Section 205(2) of the Companies Act provides for different methods of depreciation of assets. The word 'specified period' occurring in some of the subclauses has been explained in Section 205(5)(a) as that period at the expiry of which at least 95% of the original cost of the asset would have been written off if depreciation were to be calculated in accordance with the provisions of Section 350. Section 350 of the Act refers to "Reducing Balance" method of depreciation and the depreciation rates specified in the Indian Income-tax Act, and the rules made thereunder. To be precise, the final rate of depreciation for this purpose consists of normal depreciation plus extra and multiple shift allowances.

Now a company, wishing to adopt the 'straightline' method of depreciation provided for in Section 205(2)(b), works out a straight line rate of depreciation by dividing 95% of the original cost of the asset with the 'specified period'. It will obviously base its calculations of such 'specified period' on the prevailing rules of income-tax. But since the rate of depreciation and extra shift allowances keep on changing (for example, the third shift allowance has been provided for only under the Finance Act, 1964) and also because the management cannot correctly predict in advance the number of shifts its factory will run in the years ahead, the 'specified period' will change along with change of any of the above factors, viz. (a) depreciation rates and allowances and (b) number of shifts run. So will it not become necessary for the company, in case of such changes:

(1) To revise its straight-line rate of annual depreciation, and

(2) To set right the net difference, consequent to such changes in the amount of previous depreciation provisions so to abstain from such revision will defeat the purpose of the provision of 'specified period'.

But on the other hand feasibility of effecting such revision and the voluminous calculations involved therein is very doubtful and open to questions.
Under the circumstances and existing legal provisions, can you suggest us some method of calculating straight-line rate of annual depreciation which (a) is practicable, (b) always holds good and does not warrant any revision at short intervals, and (c) does not violate the provisions of the law?

Answer

The provisions of Section 205(2)(b) have to be read with those of Section 356 thereof which inter alia provides that depreciation should be provided at the rate specified in the Income-tax Act and the Rules made thereunder for the time being in force including therein extra and multiple shift allowances. Any depreciation provided in terms of Section 205(2)(b) should, therefore, reflect any change made in the Income-tax Act or the Rules made thereunder. In this view of the matter, it would appear necessary for companies, which had hitherto been providing depreciation in terms of Section 205(2)(b), i.e. on the ‘straight line’ method, to recalculate the specified period for the assets concerned and provide for depreciation taking into consideration the recent re-introduction of triple shift allowance.

(Circular No. 81/9 (207/54-PR dated 15-9-1964.)

Section 205: Clarification regarding computation of depreciation under the straight line method as contemplated in Section 205(2)(b)

39.8 One of the important problems relating to the accounting and financial provisions of the Act, that gave rise to a large number of inquiries in the Department was the computation of the depreciation under the straight line method, as contemplated in Section 205(2)(b), in the light of the re-introduction of the third shift allowance under the Income-tax Act.

The Department, in consultation with the Technical Advisory Committee which is consulted on all major problems of company accounts and finance, advised that it would be necessary under Section 205(2)(b) to recalculate the rate of depreciation taking into account three shift working which is now allowed by the Income-tax Act. In other words, where machinery does in fact work three shifts, a higher allowance for depreciation should be provided for.

(Extract from the Ninth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1965.)

39. Transfer to Reserve

The Companies (Transfer of Profits to Reserves) Rules, 1975 and the Companies (Declaration of Dividend out of Reserves) Rules, 1975—Clarification regarding

39.1 I am directed to say that the Department has received a number of queries in respect of the above mentioned rules. The points raised have been duly considered and the Department’s view thereon are indicated below:

(1) Whether amount of depreciation mentioned in sub-section (1) of Section 205 of the Companies Act, 1956 should also be provided before arriving at the profits for the purpose of transfer of specified percentage thereof to reserve in terms of rule 2 of the Companies (Transfer of Profits to Reserves) Rules, 1975.

Answer

Yes, amount of depreciation mentioned in sub-section (1) should also be provided.

(2) Whether the term ‘Current Profits’ used in rule 2 refers to profits after tax or before tax?
Answer

It refers to profits after tax.

(3) Whether the profits transferred to Development Rebate Reserve should be excluded in working out current profits for ascertaining the amount to be transferred to reserve under the rules?

Answer

The current profits, mean profits after statutory transfer to the Development Rebate Reserve.

(4) Whether reference to dividend made in the rules is to both equity and preference dividend or to equity dividend alone?

Answer

The reference is to equity dividend and also to that portion of dividend relating to participating preference shares.

(5) Whether transfer to Development Rebate Reserve, Capital Reserve or Special Reserve will meet the requirement of transfer to Reserves under the rules?

Answer

The reply is in the negative.

(6) Whether in case the proposed dividend is less than 10%, it is necessary to transfer any amount to reserves under the rules?

Answer

No amount is required to be transferred to reserves in such cases.

(7) Whether a Company can transfer to reserves a higher percentage of its dividend than that applicable to the proposed dividend slab with transfer being of less than 10% of its current profits?

Answer

The reply is in affirmative.

(8) Whether for the purposes of rule 3(i) it is necessary to declare a dividend?

Answer

Yes, it is necessary to declare dividend.

(9) Whether these rules make the provisions of Section 3A of the Companies (Temporary Restrictions on Dividend) Act, 1974 mandatory in certain cases?

Answer

Since there is no inconsistency with the provisions of the Companies (Temporary Restriction on Dividend) Act, 1974, the provisions of these Rules will have to be complied with.
(10) Whether after transfer of 10% of the current profits to reserves, the remaining undistributed profits could be carried forward in the Profit & Loss Account?

Answer

The rules do not prohibit a company from carrying forward any balance of current profits in the Profit & Loss account without transferring them to reserves.

(11) Whether for working out of the average rate of dividends for the purpose of rule 2(1) of the Companies (Declaration of Dividends out of Reserves) Rules, 1975, no dividend years should be excluded?

Answer

The reply is in the negative.

2. I am to request that the contents of this circular may be brought to the notice of your constituents for their information and guidance.

(Circular No. 9/76 dated the 16th May, 1976 or Pub. No. 6, 31/76-CL-XIV.)

Section 265(2A): Transfer to General Reserves

Query

39.3 Whether transfer to General Reserve can be made through Profit and Loss Appropriation Account from current year’s profit which carries forward considerable amount of profit from previous year. As in such case it is difficult to ascertain whether the transfer is from current year’s profit or from earlier year’s profit.

Answer

The amount to be transferred to the General Reserves would be worked out in respect of the profits of the year in question and without bringing in the profits of the past years.

(Circular No. 12/76 dated the 10th June 1976.)

Section 265A(2): Transfer of unpaid dividend

Query

39.4 Whether payments cannot be made to the persons claiming dividends from the unpaid dividends lying with the company on 12-1975 within a period of six months until which time the company has an option to transfer such amount to the Unpaid Dividend Account.

18–26 M of 1975 & CAND/75
There is no option for transferring the unpaid dividend to the unpaid dividend account as at the commencement of the Act. There is an obligation to comply within six months from the 1st February, 1976.

(Letter No. 3/2 (Mnr.)75.C1. V. dated 6-6-1975.)

40. Payment of Dividends

Section 207: Distribution of dividend within 42 days

40.1 Since the requirement as to the obtaining of the previous permission of the Reserve Bank in regard to a remittance to a non-resident shareholder is in pursuance of a statutory provision in the Foreign Exchange (Regulation) Act, 1947, any procedural delay in the distribution of dividend attributable solely to the compliance with the said statutory requirement would be saved either by clause (a) or clause (c) of the proviso to Section 207 of the Companies Act, 1956.

(File No. 10/1/U. S-1/7.)

Section 207: Clarification regarding penal provision

Query

40.2 Section 207 prescribes penalty of fine and imprisonment for failure to distribute dividends within forty-two days. If staff delay to post the dividend warrant in time, directors become punishable for it; the dangers inherent in this can be readily seen. It is suggested that the penal provision be laid down that before any action can be taken under this section, the shareholder concerned should first give notice individually to the directors about non-receipt of the dividend, and giving a time limit of at least eight days for despatch of the dividend warrant; if thereafter the default continues then the penalty be attracted.

Answer

The penal provision for failure to distribute the dividend within 42 days has been included therein in view of the past experience that dividends are not paid for years even though declared. The directors should exercise proper supervision over the staff so that delay in posting dividend warrants does not take place. The penal provision of the law is intended as a deterrent so as to ensure proper compliance. Prosecution under this section is not a common feature; only those who knowingly and willfully commit a default will be prosecuted (See Section 5).

(Company News & Notes, dated 1st July, 1962.)
CHAPTER XIV

41. COMPANIES BOOKS OF ACCOUNT—BALANCE SHEET

Section 209: Accounts

41.1 Keeping the accounts of a company on cash or receipt basis would not amount to keeping "proper books of account" in terms of the provisions of sub-sections (1), (2) and (3) of Section 209 of the Companies Act, 1956.

(Letter No. 0/30/209/61-PR dated 21-1-1960.)

Section 209: Accounts—Submission of summarised returns to Registrar

41.2 Though no time limit has been laid down in sub-section (2) of Section 209 within which the summarised returns referred to therein should be sent to the registered office of a company, it is expected that they will be sent within a reasonable time of their compilation.

(Letter No. 0/30/209/61-PR dated 21-1-1960.)

Section 209: Accounts to be kept by a company—Filing of notice with the Registrar of Companies under Section 209

41.3 It has been brought to the notice of this Department that pursuant to the decision of the respective Boards in this regard, a number of companies were not accordingly keeping their books of accounts at their registered office but at some other place e.g. the head office. Though the proviso to the amended Section 209(1) has no retrospective effect, it would be advisable for all such companies to file with the Registrar of Companies concerned, as early as possible, the necessary return in Form No. 23A of Annexure 'A' to the Companies (Central Government's) General Rules and Forms, 1956, along with the usual filing fee. The companies, which were keeping all or any of their books of accounts at any place other than the registered office on the date of commencement of the Companies (Amendment) Act, 1960, should, therefore, file the necessary notices with the Registrars of Companies concerned.

(Circular No. 8/14 (209)/61-PR dated 9th January, 1969.)

Section 209: Maintenance of books of account at a place outside the State in which companies are registered

41.4 Though the Act permits a company to maintain its books of account at any place in India, if a resolution to that effect is passed by the Board of Directors of the company, it is felt that this concession should be availed of only when it is absolutely necessary to do so, e.g. where there is a shortage of accommodation (as is generally the case in big cities), and for some other comparable compelling reasons.

(Eract from the Sixth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1962.)

Section 209: Clarification of Section 209(4A)

Query

41.5 Sub-section (4A) of Section 209 introduced by the Companies Amendment Act, 1960 provides that all books of accounts shall be maintained in good order for a period of 8 years immediately preceding the current year. In reply to a letter from the
Chamber, the Department of Company Law Administration have clarified that the books of account to be maintained are those mentioned in subsection (i) of Section 209 and that the companies in addition to maintaining such books should also maintain vouchers, invoices, bills, etc. for a like period. It may be pointed out that the preservation of such a large number of documents will accentuate the already existing problem of storage space. In any case, vouchers, invoices, bills, etc. are not a part of account books and they stand duly recorded in the relevant account books.

Answer

The vouchers, invoices and other connected records should be preserved along with the books of accounts as the relevant entries in the books of accounts cannot be substantiated without the supporting documents, voucher, etc.

(Circular No. 52/AS/2 dated 27-6-1961)

42. Inspection of Books of Account

Section 209A: Inspection of Books of Account—Instruction regarding

42.1 The matter regarding inspection of books of accounts etc. of joint ventures in which the company inspected is a partner, during the course of inspection of any such company has been examined. It would appear that the phrase "books of account of every company" occurring in sub-section (1A) of Section 209 only carries forward the subject matter of Section 209, which requires the maintenance of some books by a company and indicates the specific period for which they should be preserved. That phrase in its context, does not raise the question whether it would extend to other books not required as such to be maintained by the company but none the less belonging to it on account of its interest in joint venture with some one else. The new section 209A has been formulated with a new subject matter as denoted by its different marginal heading. The power of the Government and the Registrar is also expressed in relation to "the books of account and other books and papers of every company" a phrase not to be found in subsection (4) of Section 209 as it stood prior to the Amendment Act. The intention is to provide as much of relevant information as possible to the Government as to the fortunes and failures of any company. Therefore, an inspecting officer can seek information about company's joint ventures with other bodies that are not companies.

(Circular No. 25/7/1 dated 18-11-1973)

Section 209A: Inspection of documents relating to appointment of former managing agents

42.2 After the Managing Agency System was abolished with effect from 3-4-1970, it has been noticed that after the abolition, the former Managing Agents have been getting remuneration from the companies previously managed by them in one form or other by getting themselves appointed as Technical Consultants, Advisors etc., and also for performing a host of other services like management, economic, financial, statistical and marketing services. With a view to ensure that the former Managing Agents do not get themselves so appointed, especially where the so called services are not really needed by the companies, the amended provisions of Section 204A of the Companies Act provide restrictions on the appointment of former Managing Agents or Secretaries and Treasurers to any office in the company except with the previous approval of the company in general meeting as well as of the Central Government. It has come to the notice of the Department, that some appointments made in this regard are only a cover for the continuation of the managing agency system. It is, therefore, necessary to ensure that the new appointments are not just a change of name or label for the old managing agents. For this purpose, it
43. Annual Accounts

Section 210: Annual Accounts

43.1 The provisions contained in sub-section (1) of Section 210 apply to the profit and loss account referred to in clause (a) of sub-section (3) of the said section in the same way as they apply to the profit and loss account referred to in clause (b) of subsection (3) of Section 210.

(File No. 310/CT/NT/61)

Section 210: Holding of adjourned annual general meeting

Query

43.2 What is the remedy if companies adjourn the annual general meeting and hold the adjourned meeting a year or so after the relevant financial year? This will give them a lot of more time for making up their accounts.

Answer

The provisions of Regulation 53 in Table A of Schedule I to the Companies Act or the provisions of Sections 191 or 219 of the Act provide no safeguard against a company adopting the device of adjourning the annual general meeting to gain time. The remedy lies in launching prosecutions in such cases, under sub-section (5) of Section 210.

(File No. 3286/L-PR.)

Section 210: Accounts—Clarification

43.3 The intention underlying this section is that every company should render to its shareholders an account of its expenditure and income even though they may have been incurred or received during the period of construction. It is no doubt true that a company does not really commence its business operations till the period of construction is over. There will of course be no objection if such account is called “Development Account”, “Expenditure During Construction Account” or by any other suitable name so long as these accounts give details of the revenue expenditure and income during the period covered, in the manner required by Part II of Schedule VI to the Act. Sub-section (3) of Section 210 makes it quite clear that it is mandatory for every company to prepare a “Profit and Loss Account” from the date of its incorporation.

(Letter No. 247/64-L-PR dated 29-1-1964.)

Section 211: General instructions for the preparation of Balance-Sheet—Redeemable Preference shares.

43.4 The 'notes' at the end of Part I of Schedule VI to the Act should be followed by every company both in letter and spirit.
It would not accordingly be desirable to use the General Reserve of a company for the purpose of redeeming the preference shares as long as there is a debit balance in the profit and loss account.

Section 211: Display of the corresponding figures for the immediately preceding financial year

43.5 As far as possible, in every balance-sheet prepared in accordance with the Schedule VI of the Companies Act, the corresponding figures for the immediately preceding financial year for all the items in the balance-sheet and the profit and loss account shall be given. However, if the company finds it difficult to give the corresponding figures for the immediately preceding year for each of the items shown in the balance-sheet and profit and loss account, Government would deem it sufficient compliance of the provisions of Section 211(1) and (2) if the corresponding figure is given for each 'Group Lead' as a whole (with a suitable explanatory note) instead of for each item, as indicated in the illustration contained in the specified table.

It will be seen from the above illustration that in the previous year's balance-sheet details about the investments, details of bonus paid to employees and the contribution to provident fund were not given. Instead of reiterating these figures, it will serve the purpose if figures against groups are shown as illustrated above.

While displaying the figures for the previous year care should, however, be taken to ensure that all the items in the audited balance-sheet and the profit and loss account are fully incorporated in the current year's balance-sheet and profit and loss account as corresponding figures for previous year.

The intention of displaying the figures relating to the previous year is to facilitate the comparative study of the items in the balance-sheet and the profit and loss account, so that the significance of the figures for the current year can be more readily appreciated and understood. It is necessary that beginning should be made with the commencement of the Act, although complete corresponding figures will be available only for the next financial year.

Section 211: Form of balance sheet—Other than set out in Part I of Schedule VI

43.6 Sub-section (f) of Section 211 as amended by Section 62 of the Companies (Amendment) Act, 1960, permits companies to make out their balance sheet in such form other than the form set out in Part I of Schedule VI to the Act, as may be approved by the Central Government either generally or in any particular case.

In this connection a form of columnar balance sheet (given on the next page) has been prepared by the Department of Company Affairs and is intended to serve as a model in case any company should like to make out its balance sheet in a form other than that set out in Schedule VI. The design and contents of the model form may be kept in view by every company when it seeks the approval of the Central Government under Section 211(1) of the Act to the alternative form of balance sheet that it may desire to adopt. It is, however, not proposed to issue any general order in exercise of the powers vested in the Government under Section 211(1) of the Act.
## Balance Sheet

### Instructions in accordance with which assets and liabilities should be stated out

**Terms of redemption or conversion (if any) of any Redeemable Preference Capital to be stated, together with earliest date of redemption or conversion.**

**Particulars of any option on unissued share capital to be specified.**

**Particulars of the different classes of preference shares to be given.**

**Specify the source from which bonus shares are issued, e.g., capitalization of profits or Reserve or from share Premium Account.**

### Description

<table>
<thead>
<tr>
<th>I. SHARE CAPITAL</th>
<th>Figures for the Current Year</th>
<th>Figures for the Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorised: shares of Rs. ... each.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issued (distinguishing between the various classes of capital and stating the particulars specified below, in respect of each class): ... shares of Rs. ... each.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subscribed (distinguishing between the various classes of capital and stating the particulars specified below, in respect of each class): ... shares of Rs. ... each.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Of the above shares: ... shares are allotted as fully paid-up pursuant to a contract without payments being received in cash of the above shares: ... shares are allotted as fully paid-up by way of bonus shares.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### I. EAST POSTED ACCOUNT

(a) By managing agents or secretaries and treasurers, and where the managing agent or secretaries and treasurers are a firm by the partners thereof, and where the managing agent or secretaries and treasurers are a private company by the directors or members of that company.

(b) By direction.

(c) By others.

**Any capital profit or vice of forfeited shares should be transferred to capital Reserve.**

**Add: Forfeited shares (amount originally paid-up).**

### II. RESERVES AND SURPLUSES

(1) Capital Reserves.

(2) Capital Redemption Reserve.

(3) Shares Premium Account (ve)

(4) Other Reserves specifying the nature of each reserve and the amount in respect thereof.

Less: Debt balance in Profit & Loss Account (may) (h).

(5) Surplus, i.e., balance in Profit and Loss A/c, after providing for proposed allocations, namely, Dividend, Bonus, or Reserves.

(6) Proposed additions to Reserves.

(7) Sinking Funds.

Total Shareholders' Funds
Employment of Share Holder's Funds

III. Fixed Assets

*Under each head the original cost, and the addition thereto and deductions therefrom during the year, and the total depreciation written off, shall be stated.

Distinguishing as far as possible between expenditure upon (a) goodwill, (b) land, (c) buildings, (d) machinery, (e) furniture and fittings, (f) development of property, (g) patents, trademarks and designs, (h) livestock and (i) vehicles, etc.

In every case where the original cost cannot be expressed without unreasonable expense or delay, the valuation shown by the books shall be given. For the purposes of the paragraph and valuation shall be the net amount at which an asset stood in company's books at the commencement of this Act after deduction of the amount previously provided or written off for depreciation or diminution in value, and where any such asset is sold, the amount of sales proceeds shall be shown as deduction.

Where sums have been written off on a reduction of capital or a revaluation of assets, every balance-sheet, (after the first balance-sheet) subsequent to the reduction or revaluation shall show the reduced figures and with the date of the reduction in place of the original cost.

Each balance-sheet for the first five years subsequent to the date of the reduction, shall show also the amount of the reduction made.

Similarly where sums have been added by writing up the assets, every balance-sheet subsequent to such writing up shall show the increased figure, with the date of the increase in place of the original cost. Each balance-sheet for the first five years subsequent to the date of writing up shall also show the amount of increase made.

IV. Investments

Showing nature of investments and mode of valuation, for example cost, or market value and distinguishing between:

*Aggregate amount of company's quoted investments and also the market value thereof shall be shown. Aggregate amount of company's unquoted investments shall also be shown.

*1. Investment in Government or Trust securities.

*2. Investment in shares, debentures or bonds showing separately shares, fully paid-up and also distinguishing the different classes of shares and showing also in similar detail investments in shares, debentures or bonds of subsidiaries companies.

(3) Immovable properties.
**Instructions in accordance with which assets and liabilities should be made:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Figures for the Current Year</th>
<th>Figures for the Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>V. CURRENT ASSETS, LOANS &amp; ADVANCES:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(A) Current Assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Interest accrued on Investments,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) Shares and Spare Parts*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3) Loan Tools,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(4) Stock-in-trade*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(5) Works in Progress*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(6) Sundry Debtors**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(6a) Debts outstanding for a period exceeding six months,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Other debts. Les Provision.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Debits due by directors or other officers of the company or any of them either severally or jointly with any other person or debt due by firms or private companies respectively in which any director is a partner or a director or a member to be separately stated.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Debts due from other companies under the same management to be disclosed with the names of the companies (vide Sec. 566)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The maximum amount due by directors or other officers of the company at any time during the year to be shown by way of a note.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Provision to be shown under this head should not exceed the amount of debts stated to be considered doubtful or bad and any surplus of such provisions, if already created, should be shown at every closing under “Reserve and Surplus” (in the Liabilities side) under a separate sub-head “Reserve for Doubtful or Bad Debts.”</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*The balances being with bankers on current accounts, all accounts and deposit accounts shall be shown separately.*

**The above instructions regarding “Sundry Debtors” apply to “Loans and Advances” also.**

| (7) Cash and bank balances | | |
| (8) Loans and Advances* | | |
| (9) Advances and loans to subsidiaries. | | |
| (10) Bills of Exchange. | | |
| (11) Advances recoverable in cash or in kind or for value to be received e.g. Rates, Taxes, Insurances, etc. | | |
| (12) Balances on current account with Managing Agents or Secretaries & Treasurers. | | |
| (13) Balances with Customers, Part Trust, etc. (where Payable on demand). | | |

**VI. MISCELLANEOUS EXPENSES TRUE:**

(To the extent not written off or adjusted).

(1) Preliminary expenses.

(2) Expenses including commissions or brokerage on underwriting or subscription of shares or debentures.
In accordance with which assets and liabilities should be made out

<table>
<thead>
<tr>
<th>Description</th>
<th>Figures for the Current Year</th>
<th>Figures for the Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3) Discount allowed on the issue of shares or debentures.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Interest paid out of Capital during construction (also stating the rate of interest).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(5) Development expenditure not adjusted.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(6) Other items (specifying nature).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Show here the debit balance of profit and loss account carried forward after deduction of the unallocated reserves, if any.

VII. *PROFIT AND LOSS ACCOUNT*

Current Assets

**Loans from Directors, the Managing Agents, Secretaries & Treasurers, Manager, should be shown separately.**

Interest accrued and due on secured loans should be included under the appropriate sub-heads under the head "Secured Loans".

*The nature of the security to be specified in each case.

Where loans have been guaranteed by managing agents, secretaries and treasurers managers and/or directors a mention thereof shall also be made and also the aggregate amount of such loans under each head.

**Terms of redemption or conversion (if any) of debentures issued to be stated together with earliest date of redemption or conversion.**

**Loans from Directors, the Managing Agents, Secretaries and Treasurers, Manager, should be shown separately.**

Interest accrued and due on Unsecured Loans should be included under the appropriate sub-heads under the head "Unsecured Loans", where loans have been guaranteed by managing agents, secretaries and treasurers, managers and/or directors, a mention thereof shall also be made and also the aggregate amount of such loans under each head.

*See note (d) at foot of Form.

VIII. *SECURED LOANS:*

**1** Debitors

**2** Loans and Advances from Banks.

**3** Loans and Advances from subsidiaries.

**4** Other Loans and Advances.

IX. *UNSECURED LOANS:*

(1) Fixed Deposits.

(2) Loans and Advances from subsidiaries.

(3) Short Term and Long Term Advances;*

(a) From Banks

(b) From others.

X. CURRENT LIABILITIES AND PROVISIONS

A. Current Liabilities:

(1) Acceptances.

(2) Sundry Creditors.

(3) Subsidiary Companies.

(4) Advance Payments and Unexpired Discounts for the period for which value has still to be given e.g. in case of the following classes of companies; Newspaper Printers, Theatres, Union Banking, Steamship Companies, etc.
Instruction is accordance with which assets and liabilities should be made out.

Description | Figures for the Current Year | Figures for the Previous Year
---|---|---
(5) Unclaimed Dividends. |  |  
(6) Other Liabilities (if any). |  |  
(7) Interest accrued but not due on loans. |  |  
B. Provisions: |  |  
(8) Provision for Taxation. |  |  
(9) Proposed Dividends. |  |  
(10) For contingencies. |  |  
(11) For Provident Fund Scheme. |  |  
(12) For Insurance, pension and similar staff benefit schemes. |  |  
(13) Other provisions
   Current Liabilities |  |  
   Not Current Assets |  |  

XI. A footnote to the balance sheet may be added to show separately:

(1) Claims against the company not acknowledged as debts.
(2) Unpaid liability on shares partly paid.
(3) Arrears of fixed cumulative dividends.
(4) Estimated amount of contracts remaining to be executed on capital account and not provided for.
(5) Other money
   (for which the company is contingently liable).

Total Fixed and Net Current Assets

NOTES

General instructions for preparation of balance sheet:

(1) The information required to be given under any of the items or headings in this Form, if it cannot conveniently be included in the balance sheet itself, shall be furnished in a separate Schedule or Schedules so as to be annexed to and to form part of the balance sheet. This is recommended when items are numerous.
(2) Notes: Part can also be given in addition to figures, if desired.
(3) In the case of subsidiary companies, the number of shares held by the holding company as well as by the ultimate holding company and its subsidiaries must be separately stated.
(4) The auditor is not required to certify the correctness of such shareholding as certified by the management.
(5) The item "Share Premium Account" shall include details of its utilization in the manner provided in Section 78 in the year of utilization.
(6) Short Term Loans will include those which are due for not more than one year as at the date of the balance sheet.
(7) Depreciation written off or provided shall be allocated under the different asset heads as deducted in arriving at the value fixed assets.
Section 211: Company accounts—Some important problems

43.7 It has been the constant endeavour of the Department of Company Affairs to develop and maintain sound company practices in conformity with the best traditions of corporate management. Certain matters and transactions which had given rise to differences of opinion between company management, their auditors, share holders and creditors were examined in consultation with recognised professional experts, and the views of the Department as to the best company practice in regard to such matters were formulated and duly published, were considered necessary. Some of the more important problems considered in this context may be of general interest.

(i) In regard to the treatment of previous years expenditure in the final accounts of the company, it was felt that prudent accounting would demand that where estimated provision was made in the accounts of any particular financial year and the payment actually made during the subsequent financial year fell short of the estimated provision so made on this account, there would be no objection to such shortfall being included in the profit and loss account of the financial year in which the payment was actually made with an explanatory note where the amounts were mentioned to indicate that the amounts related to the previous financial year. If, however, no provision was made in the accounts of the previous financial year to which such payments related, it would be desirable from the accounting point of view as well as from the point of view of the requirements of
Part II of Schedule VI to the Companies Act, that such payments made during the course of the subsequent financial year should be shown "below the line", i.e., in the appropriation section of the profit and loss account.

(ii) In regard to the question whether interest charges paid on deferred payments for purchase of machinery, etc., would require to be deducted for the purpose of calculation of the net profit under section 349 of the Companies Act, it was felt that during the construction period, the interest charge arising out of the deferred payment could legitimately be capitalised and ultimately charged off in the form of depreciation provision. When the assets acquired out of such deferred payment system went into full production, it would be necessary to debit the interest charges thereafter to the revenue account. It however, the companies desire to treat the interest charges even initially as revenue expenditure, there was no prohibition for their doing so.

(iii) In a particular case, the difference between the actual cost of production and the production cost estimated on normal overheads anticipated when the factory would be in full production, was capitalised. The view was held that once the period of construction was over and the company had gone into production there would be no justification for treating a part of current overhead costs as deferred revenue expenditure. It was felt that unless all the revenue expenditure for the period was debited to the profit and loss account, it might not show a true and fair view as required under section 211(2) of the Act. In such cases, it would be desirable to carry forward the full loss of the year as a debit balance of the profit and loss account and to set it off gradually from the future profits of the company.

(iv) It was observed in some cases that very large amounts, sometimes running into lakhs of rupees, were shown a miscellaneous expenditure or general charge in the profit and loss account without disclosing the broad nature of the main expenses included in them. It was felt that all material particulars should be shown in the profit and loss account, if necessary, by a note, and that whether any particular information was material enough to be disclosed, to the shareholders depended essentially on the judgement of the management and the auditor.

(v) Some companies had made allocations in reserves and appropriations of profit in the profit and loss account itself without preparing separate appropriation sections of the profit and loss account. In such cases it was not possible for a person, not versed in the complexities of accounting techniques to find out readily the true profit of the year, without making a number of involved or complicated adjustments, particularly if withdrawals had been made from reserves, etc., before making the appropriations. It was, therefore, recommended that the profit and loss account for the year should indicate the profit for the year and that expenses chargeable to that extent should necessarily be charged to the said account, and that appropriation of profit should be to the profit and loss appropriation account. Thus, the companies should normally prepare and publish a profit and loss appropriation account as distinct from the profit and loss account.

(vi) It was observed that in providing for depreciation certain companies had adopted different basis from year to year for example, while depreciation had been provided on the basis of "normal" depreciation under the Indian Income-tax Act in one particular year, in the subsequent year, some different basis was adopted to suit the convenience of the company. It was felt that while it was for each company to adopt a norm for itself, indicating this norm by a suitable note on the face of the balance sheet, and to adhere to it in the subsequent years, it was essential that deviation should not be made from the basis once adopted, unless there were compelling reasons to do so. Even in such cases, suitable notes in this regard should be inserted in the balance sheet and/or profit and loss account.
On the basis of a sample study conducted during the year, it was observed that a number of companies, whose principal business was other than trading in shares, were showing these investments in shares and securities etc., under the head 'stock-in-trade' on the ground that such companies transacted substantial amounts of business in shares and securities as a secondary business. The requirements of note (h) to Part I of Schedule VI regarding disclosure was to be evaded by this procedure as it was contended that these provisions would have no application to assets under 'stock-in-trade'. It was decided that irrespective of the fact whether shares and securities etc., were held as fixed investment or as stock-in-trade, it would be desirable from the point of view of sound company practice to make a full disclosure regarding the details of shares and securities.

(Extract from the Fourth Report on the Working and Administration of the Companies Act, 1956 year ended March 31, 1967.)

Section 214: Charging of bonus payable to the profit and loss account

43.8 A provision for bonus should be made in the accounts of the year for which the bonus is payable, although this bonus is paid in the following year. A provision for bonus is a charge on the profits before arriving at the profits for the year. Otherwise the profit arrived at will not represent a true and fair view of the profit for the year. As the amount is necessarily a provision, the provision may not be exactly equal to the payment in the following year. Therefore, any excess or shortfall should be shown in the appropriation account for the following year or in the profit and loss account, with a suitable note to the effect that it relates to the preceding year.

(Circular No. 3(20)/VI dated 22nd September, 1969.)

Sections 211 and 220: Balance-sheets of companies engaged in the generation and supply of electricity

43.9 In view of the proviso to sub-sections (1) and (2) of section 211 of the Companies Act, 1956, the requirements of Parts I and II of Schedule VI to the Act shall not apply to a company engaged in the generation and/or supply of electricity, for which the forms of balance-sheet, etc., have been specified in the Indian Electricity Rules, 1956, framed under Section 35 of the Indian Electricity Act, 1910. It would thus be sufficient compliance of provisions of section 220 of the Act, if such a company files with the Registrar the copies of balance-sheets and other accounts it is required to draw up under the said Indian Electricity Rules.

(Circular No. 8/111/67 PR dated 20th November, 1957.)

Section 211: Clarifications of the form in Schedule VI

Query

43.10 (a) The notes given in the form of the balance-sheet in Schedule VI are intended to exhibit the balances as per books. We would like to be assured that in respect of the directions given in note (a), there is no necessity to pass entries in the books of accounts debiting the general reserve and crediting the profit and loss account with the debit balance in the profit and loss account.

(b) No specific place is given for the exhibition of 'calls in advance'. Will it be in order to give it a place immediately after 'reserves and surplus'?

Answer

(a) Notes at the end of Part I of Schedule VI are general instructions for the preparation of balance-sheet. As the balance-sheet is required to give a true and fair view
of the state of affairs of a company and be in the form set out in Part I of Schedule VI, it is necessary to adjust all uncommitted reserves against the debit balance in the profit and loss account.

(3) It will be better to show "call in advance" under the head Current Liabilities and Provisions.

Section 211: Notification amending Schedule VI to the Companies Act, 1956—G.S.R. No. 494(E) dated the 26th October, 1973 and Published in the Gazette of India Extraordinary dated the 9th November, 1973

43.11 The Notification effecting certain amendments to Schedule VI to the Companies Act, 1956 was published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) of the 9th November, 1973. In view of sub-section (2) of Section 211 of the Companies Act, this Notification takes effect from the date of its publication.

2. Numerous enquiries have been received in the Department asking for a clarification as regards the accounts to which the said Notification will be applicable. It has also been represented that if the Notification is made applicable to all companies in respect of the balance sheet and profit and loss account to be placed at their annual general meetings to be held on or after 31st December 1973 it would be difficult to comply with the same. These points have been examined and it is felt that the Notification under reference is mostly in the nature of clarification to the requirements in relation to Schedule VI as notified in 1971 vide Notification No. G.S.R. 1069 dated 9th October, 1971 effective from 6th November, 1971. Even the additional requirements contained in the present Notification do not, as a rule, require maintenance of any new books of account but only involve collection of information from the books, which are already required to be maintained by companies. The general plea taken in this respect is therefore not acceptable. However in order to give companies a little more time to familiarise themselves with the latest requirements, it has been decided that the compliance of the new requirements as per the latest Notification under reference may be enforced strictly only in respect of the financial years ending on or after 31st December, 1973.

3. Individual cases of hardship which may be occasioned by the immediate applicability of the Notification can be brought to the notice of the Government by the companies concerned and exemption may be sought to which they may be eligible in terms of Section 211(4). But it is hoped that the need for such exemption will not normally arise in the case of companies whose financial year end on or after 31st December, 1973.

(Circular No. 32/73 dated 22-10-73.)

44. Authentication of Balance Sheet

Section 215: Authentication of Balance Sheet, etc.

44.1 A Secretary by authenticating the Balance Sheet assumes on himself the same responsibility for the correctness of the statements made therein as the directors who authenticate it.

(File No. 0/10(1)/71-FR.)

Section 215: Authentication of the annual accounts by the secretary of a company

44.2 Where a company employs a Secretary, that officer usually provides liaison between the Board and the executive management of the company. A Secretary is also responsible for ensuring due performance by the clerical and other staff of the office of their duties with diligence and accuracy. These responsibilities of the Secretary assume
greater importance where the company does not have either a managing agent, secretaries and treasurers or a manager. It would, therefore, be only proper that in the absence of a managing agent, secretaries and treasurers or a manager, the Secretary should be one of the officers who should authenticate the balance-sheet and the profit and loss account of a company testifying to the accuracy of the figures included therein and also to the fulfillment of the formal requirements as to the accounts. It appears that it is for these reasons that the legislature thought it fit to lay down as a requirement in section 215 of the Companies Act that where a company does not have a managing agent, secretaries and treasurers or a manager, at least the secretary (if any) must join in authenticating the company’s annual accounts.

(Note.—The system of managing agency and Secretaries & treasurers has since been abolished.)

Section 215: Authentication of the annual accounts by the Secretary of a company

444.3 It has come to the notice of the Department that frequently the question as to how far the secretary of a company renders himself liable for errors etc. in a balance sheet when he authenticates the same in substance of the provisions of section 215, is being raised. The Department is of the view that as the authentication by the secretary is “on behalf of the Board of Directors” and not in his personal capacity, the secretary can be held responsible regarding errors etc. only as an “officer” of the company within the meaning of Section 628 and not because of authentication by him under Section 215 as such. Where, however, the Secretary is charged with the responsibility of maintaining the accounts and also assisting the auditor at the time of auditing, he cannot conceivably escape consequence of any wrong statement in the accounts.

Section 215: Authentication of the Balance Sheet and Profit & Loss Account and signing of the same by the auditors

444.4 It has been represented by the Institute of Chartered Accountants of India that some of the Registrars of Companies are raising queries about the adequacy or otherwise of audit in cases where there is no time gap or very little time gap between the date of approval of accounts under Section 215 by the Board of Directors of the company concerned and the date of the audit report thereon. The Department is of the view that responsibility for the preparation of the accounts of a company belongs to the directors who have to approve them before the auditors make their report thereon. The Act is apparently silent on when the auditors may commence their work of audit. In other words, it does not clarify whether they have simply to await the directors’ report on the accounts or proceed with the audit work in the meantime immediately after their appointment at the last annual general meeting. The auditor’s report comes at the end of the audit process and Section 215 mentions nothing of the process preceding the preparation of the audit report by the auditors. Section 227 of the Companies Act, 1965, gives the auditor access at all times to the books and accounts and vouchers of the company, which amply suggests that they do not have to remain idle at any time after their appointment as auditors. Subject to the convenience of the company, he may actually commence the checking up of vouchers etc., and the company may prepare trial Balance Sheets etc., which will save time for the auditors in the preparation of their report in due course. Thus, if the auditor signs the balance sheet on the same date on which the directors have approved it, it may not be inferred from this solitary circumstance that the auditor has not performed the audit efficiently.

(Circular No. 6/16(1)/61-TR dated 26-6-61.)
Section 215: Authentication of the Balance Sheet and Profit & Loss Account and signing of the same by the auditors

45. With reference to your letter No. CLC/20/73 dated the 28th August, 1973, on the above subject, I am directed to say that the Department agrees with the view that there is no presumption to be drawn that the auditor has not done his job merely because the date of his report is the same as the date on which the authentication of the Balance Sheet and Profit & Loss Account is made under Section 215 of the Act, by the Board of Directors of a company. At the same time there should be no objection merely because a Registrar of Companies, enquiries of the auditor concerned in a case of that kind as to how he has fulfilled his responsibilities under the Act having regard to the concurrence of the two dates mentioned above.

(Letter No. 322/215/71-CL V dated 28-8-74.)

45. Directors' Report

Section 217: Board's Report

Query

45.1 The term "material changes and commitments" needs clarification.

Answer

The amendments in section 217 are based on the recommendations contained in para 92 of the report of the Companies Act Amendment Committee to which a reference is invited.

As usually, an event occurring after the balance-sheet date which affects materially the solvency of the undertaking of the company or is otherwise of great importance to the shareholders, cannot be taken into account in drawing up the balance sheet or the profit and loss account. Professional bodies in advanced countries have recommended that such an event should be brought to the notice of the shareholders either in the directors' report or in the Chairman's statement accompanying the accounts. Although the expression "material changes and commitments", if any affecting the financial position of the company,..." occurring in the new clause (d) of sub-section (1) of section 217 seems to be clear enough in itself, it may be stated, purely by way of illustration, that the expression would include events such as the following, namely, the disposal of a substantial part of the undertaking or the profits or loss whether of a capital or revenue nature, changes in the capital structure, alteration in the wage structure arising out of (Trade) Unions negotiations, purchases, construction, sale or any catastrophe befalling the fixed assets, incurring or any reduction of long term indebtedness, awards in litigation, entering into or cancellation of contracts and refund of taxes or completion of assessments.

(S/B No. 8/167/61-PR)

Section 217: Whether Managing Director is an employee of the company

Query

45.2 Is a Managing Director is an employee within the meaning of Subsection (2A) of Section 217?

Answer

No.

(Reply sent to Myrene Kirkoar Ltd. to their query dated 11-11-76.)
Clarifications under the Companies (Particulars of Employees) Rules 1975.

1. **Suggestion**

45.3 Perquisites should be valued on the basis of Income Tax Act and Rules for purposes of 'remuneration' u/s 217(2A) so that the information to be given in the Board's Report and in the Schedule VI attached to the Balance Sheet are identical.

2. In view of the undesirable effect which the disclosure of detailed information regarding salary etc. paid to employees will have on companies, they should not be required to publish the details in the Balance Sheet or the Director's Report. The information could be furnished to the Government for statistical purposes or to shareholders who ask for it.

Secretary Shri Ray's reply

The first issue had also come up before the Advisory Committee where number of other related issues were raised. On balance of merits, it would be desirable to continue with the status quo.

In regard to disclosure of information, ours is an open society and information ought to be given so that the public and shareholders also know as to what is happening. No change was therefore considered necessary.

(Reply given by Secretary Shri Ray at a meeting of Punjab, Haryana & Delhi Chamber of Commerce and Industry.)


45.4 With reference to your letter No. RD: 7 (1053) K&P dated the 11th February, 1976 on the above subject, I am directed to confirm the views expressed in your letter (copy enclosed) under reply.

(Letter No. 8/27 (217)/75-CL-V dated 30th March, 1976.)

**Enclosure**

From the printed booklet containing the Annual Accounts of M/s. Voltas Ltd. for its Financial Year ended 31-8-1975 and the Directors' report thereon, it is found that the particulars of employees as required to be included in the Directors' report pursuant to the provisions of Section 217(2A) of the Act, have not been so included in the said booklet. The Director's report (dated 16-1-1976) stitched in the said booklet makes a reference (in para 45 thereof) that a statement of the required information relating to employees covered by this Section (i.e., 217(2A) of the Act) is given in the enclosed annexure forming part of this Report'. But the annexure referred to is not stitched together in the same booklet. It is possible that the company might have prepared an annexure separately with a view to circulate it as a loose annexure by inserting it in the booklet. This cannot be deemed to be a proper compliance of Section 217(2A) of the Act.

2. The provisions of Section 217(2A) specifically provide that the directors' report shall also include the statement showing name of every employee who is in receipt of remuneration not less than Rs. 30,000 per annum. In accordance with this specific provision, Companies Particulars of Employees Rules, 1975 also similarly provide that a statement to be included in the Director's Report in terms of Section 217(2A) shall also contain various prescribed particulars. The particulars of employees remuneration exceeding Rs. 30,000 per annum are, therefore, to be necessarily included either in the body of the Directors report or by way of addendum attached and stitched together in the booklet.
containing the relevant Director's report and accounts. It cannot be given by way of loose sheets. It is seen that some other companies too are adopting such a practice, by giving particulars of employees' remuneration in a loose form/annexure. Apart from not meeting the requirements of law, the possibility of such particulars being lost or misused in transit (since these are in loose form) cannot be completely ruled out. Apart from this fact, it may in some cases be made use of by an unscrupulous company in holding back knowingly the said information from the shareholder and on a complaint by a shareholder it may further afford an excuse to the company that the particulars were in fact supplied to the shareholders along with the Balance Sheet. It seems that the intention of the Legislature in using the word 'included' in the Director's Report was with a view to avoiding the chances of loss in the transit or misplacement.

Unfortunately contrary to the requirement to include particulars of employees' remuneration in the Directors' report certain companies have gone to the extent of keeping information in loose form in the Directors' Report, which, it appears, does not comply with the law as contained in Section 217(2A) of the Companies Act, 1956.

46. Filing of copies of Balance Sheet

Section 220(1): Filing of balance sheet etc. with Registrar

46.1 Filing of return by companies is necessary even when their books of accounts were seized by the police.

No separate filing fee in respect of the profit and loss accounts of private companies filed under section 230 need be charged, if filed at the same time as the balance sheet is filed.

If a person seeks inspection of the profit and loss accounts of a private company, the Registrar should make sure that he is a member of the company by referring to the list of members and demanding to see share certificate endorsed in his favour.

[Fact. Cir. No. 2 E. No. 116(1)(1)PR dated 25th February, 1961]

Section 220(1): Filing of the profit and loss accounts of private limited companies—(Section 220(1))

46.2 A private company is not required to attach to its profit and loss account filed with the Registrar of Companies a separate auditor's report signed by the auditors. Unless a private company has on its own volition reproduced the auditor's report in full on the Balance Sheet as well as in the profit and loss account, all that the company should be asked to do is to adopt either of the following two alternatives:

(i) to attach to the profit and loss account a copy, authenticated in the manner specified in section 220(1)(a) of the full auditor's report as attached to the balance sheet;

(ii) to attach to the balance sheet a copy of the relevant extracts from the auditor's report pertaining to the balance sheet only and to attach to the profit and loss account a copy of the full auditor's report—the copy of the auditor's report in each case to be authenticated in the manner specified in section 220(1)(a).

The Registrar should put to the company concerned both the alternatives and leave to it the choice of adopting either of the alternatives. While doing so, he should also explain the reason for the advice given.
2. The clarification given above may be borne in mind by all the Registrars and in no case should they call for a separate report by the auditor on the profit and loss account of a private company.

(Letter No. 15(62)-CL-VL/61 dated 2-3-1962.)

Section 220: Filing of Board's report along with the accounts with the Registrar

46.3 Section 220(1)(a) provides that three copies of the balance sheet and the profit and loss account together with three copies of all documents which are required to be annexed or attached to the Balance Sheet and profit and loss account shall be filed with the Registrar of Companies. Since by virtue of Section 217, the Board's report is a document required to be attached to the Balance sheet, necessary copies of the said report have also necessarily to be filed with the Registrar in terms of section 220(1)(a) of the Act.

Section 222 of the Act merely distinguishes a document that is required to be annexed from other documents and that the said section does not affect the requirements of Section 220 of the Act in any way.

(Letter No. 15(62)-CL-VL/61 dated 11-12-1961.)

Section 222: Accounts may be filed with the Registrar without director's report or notice of the annual general meeting

46.4 In the interest and for the convenience of the public, the Registrars of Companies have been instructed to take the accounts on file though not accompanied by the directors' report or the notice of the annual general meeting (which later is not required by law to be attached to the accounts) provided the accounts are filed along with the auditors' report (including special or separate reports, if any) provided the Registrars point out the incompleteness of the accounts of the company at the same time and calls for the missing documents.

(Circular issued by the Department of Company Law Administration-Company News & Notes, dated 1st July, 1961.)

Section 229: Laying of balance sheet and profit and loss account before the annual general meeting

46.5 It has come to the notice of this Department that a company sent to a Registrar of Companies for filing under section 229 of the Companies Act, 1956, its balance sheet and profit and loss account which had been laid before a general meeting and not at an annual general meeting. In this context the question arose for consideration as to whether the Registrar of Companies could take the document on record in view of the clear provisions of sub-section (1) of section 210 read with sub-section (1) of section 229 of the Act requiring the balance sheet and profit and loss account to be laid before a company at an annual general meeting before sending it to the Registrar for filing. The Department has been advised that the balance sheet and profit and loss account are required to be placed only at an annual general meeting and not at any other general meeting. In case the annual accounts are not ready for laying at the appropriate annual general meeting, it is open for the company concerned to adjourn the said annual general meeting to a subsequent date when the annual accounts are expected to be ready for laying. This may be done by adopting a suitable resolution authorising the said annual general meeting to a specified date, or to a date to be specified later on.

In future balance sheets and profit and loss accounts which are not laid before an annual general meeting of the company but submitted to Registrar of Companies, for filing under section 229 of the Act would not be taken on record. The question of launching prosecution in such cases would be considered.

(Circular No. 4/74, dated 22-2-74.)
CHAPTER XV

47. AUDIT AND AUDITORS

(1) Auditors

Section 224: Auditors—Remuneration of

47.1 I am directed to say that this Department is of the view that any sum paid by the company in respect of the expenses of its auditor in connection with his services as auditor appointed under section 224 of the Act should also be disclosed in the profit and loss account of the company in the manner provided in para 4R(a) of Part II of Schedule VI to the Act.

Section 224: Auditors—Appointment/re-appointment of

47.2 The appointment/re-appointment of auditors at the annual general meeting is one of the items of ordinary business to be transacted at such a meeting. As provided by Section 224(2) of the Act at any annual general meeting a retiring auditor shall be re-appointed except in four type of cases referred to therein. The expression 'shall be re-appointed' postulates some action on the part of the company resulting in the re-appointment of the retiring auditor. The retiring auditor cannot be deemed to be re-appointed or automatically re-appointed at the annual general meeting. The passing of the resolution for the purpose at the annual general meeting seems essential for the re-appointment of the retiring auditor who is still qualified and willing to act. (In this connection 'shall be appointed without any resolution being passed used in the corresponding section 159(2) of the (English) Companies Act. 1948 may be noted by way of contrast). Till this is done, a retiring auditor cannot be said to have been re-appointed as contemplated by the section. In this view, it is not correct to say that in the absence of the resolution to the effect that the retiring auditors shall not be re-appointed, the retiring auditors shall stand re-appointed as auditors of the company.

2. In view of section 225 special notice shall be required for a resolution appointing as an auditor a person other than the retiring auditor. Non-compliance with the provisions of the said section would render such a resolution illegal and ineffectual.

3. Government's power to appoint auditors under section 224(3) becomes available where at an annual general meeting no auditors are appointed or re-appointed. Where auditors are not appointed or re-appointed in accordance with the provisions of the Act including section 224(2), as read with Sections 225 and 199, section 224(3) becomes attracted in the matter.

(Circular No. 6 of 72 dated 21-2-72.)

Section 224: Tenure of office of the auditors—Clarification regarding

47.3 The issue regarding the tenure of office of auditors appointed in terms of section 224 of the Act has been under consideration of this Department for some time. The point for consideration was whether the tenure of office of the auditor expired on the last date on which the annual general meeting was due to be held in terms of section 166 of the Companies Act or whether it expired only on the actual conclusion of the next annual general meeting held by the company. It may be stated that divergent views had been expressed by eminent lawyers in the country. The matter has been
examined in great detail. The Board has come to the conclusion that the advice given by the Ministry of Law in 1955 and reiterated by that Ministry in 1958 may be followed until any contrary view is expressed by a competent Court of Law in this regard. The view confirmed is the following:

"The tenure of an auditor is laid down in section 221(1); it is from the conclusion of the annual general meeting to the conclusion of the next annual general meeting and cannot therefore be for any particular year or financial year as such. The duty of the auditor is laid down in section 227(2), whereunder the auditor in office has to audit 'every balance sheet and profit and loss account' and every other document in it or annexed to it which are laid before the general meeting held during his tenure of office. In view of the provisions in section 224 (1) there can be only one annual general meeting held during the tenure of office of any particular auditor. That also shows that the auditors appointment is not related to any particular balance sheet or profit or loss account or to any particular financial year."

2. The Board took into consideration the views expressed by the Ministry of Law in 1958 on the question of the competence of the auditor appointed at an annual general meeting to audit the accounts for more than one year intervening during the general meeting at which the auditor was appointed and the next annual general meeting held by the company. The Board also noted the opinion given by the Ministry of Law in 1958 that the auditor appointed for the year 1954 could audit the accounts of the company for the years 1955, 1956 and 1957 during which no annual general meeting was held.

3. In the above context, the Board decided that the tenure of an auditor appointed under section 224 of the Companies Act will continue into the factual conclusion of the next general meeting held by the company.

(Circular No. 1973)

Section 224: Auditor—Acceptance of appointment

47.1 The information given by the auditor under Section 224(1A) that he accepts or does not accept the appointment should be taken on the document file of the company and no filing fee in respect of the information should be charged.

(Int. Circular No. 2 (No. 8/16(1)/61-PB) dated 25th February, 1961)

Section 224: Certificate by an auditor under proviso to sub-section (1) and applicability of sub-section (1B) and (1C) of section 224—Clarification thereof

47.5 I am directed to say that according to the provisions of section 224 (1B) of the Act on and from the financial year next following the commencement of Companies (Amendment) Act, 1974, no company or its Board of Directors shall appoint or re-appoint any person or firm as its auditor if such person or firm is holding appointment of more than the specified number of companies, and according to the provisions of subsection (1C) a person or firm holding the appointment as auditor of more than the specified number immediately before the commencement of the Amendment Act, shall, within 60 days from such commencement, intimate his unwillingness to be re-appointed as the auditor from the financial year next following such commencement to the companies of which he or it is not willing to be re-appointed as auditor. Further, according to the provisions of the proviso to sub-section (1) the appointment of auditor of a company must be based on a written certificate from the auditor to the effect that the appointment or re-appointment, if made, will be in accordance with the limits specified in sub-section (1B). A question has been raised whether when subsection (1B) and (1C) speak of the financial year next following the commencement of the Companies (Amendment) Act, 1974 and the
proviso to sub-section (I) requires an auditor to give a certificate as aforesaid in respect of appointments which may take place at any time after the commencement of the Amendment Act, the certificate in terms of the said proviso will be feasible, taking the companies whose financial year started before the commencement of the Amendment Act but end after such commencement and whose audit work is already in the charge of the auditor concerned, into account.

The Department is of the view that this issue is of a transitional nature. The provisions of sub-section (II) and (IC) of section 224 of the Companies Act, 1956, become effective with reference to the financial years of the companies commencing after the date of commencement of the Companies (Amendment) Act, 1974 viz. 1-2-1975. It may be that till the commencement of the financial year of such companies, if an auditor has such companies among others, the auditor would be keeping more than 20 audits but the excess number would be restricted only to those companies whose financial years having begun before the commencement of the Amendment Act end after the commencement of the said Act. In other cases the auditor will be having only 20 audits.

The above view does not result in any conflict with the proviso to sub-section (I) since the auditor is required to give his certificate keeping in view the limit as conceived of by sub-section (IB). The auditor may, thus, issue a certificate that his appointment would be in accordance with sub-section (IB) but while giving such a certificate the auditor will have to keep in mind that on the beginning of the financial year of the companies whose current financial year ends after 1-2-1975, the number of company audits with him shall not exceed 20.

(Circular No. 7/75 dated 7-5-75 P. No. 35/5/75-CL. III.)

Section 224: Certificate of auditors to be sent to Registrar of Companies under section 224(1C).

47.6 Under subsection (1C) of Section 224 of the Companies Act, 1956 a person or firm holding, immediately before the commencement of the Companies (Amendment) Act, 1974, appointment as the auditor of a number of companies exceeding the specified number shall, within sixty days from such commencement, intimate his or its unwillingness to be re-appointed as the auditor from the financial year next following such commencement, to the company or companies of which he or it is not willing to be re-appointed as the auditor and shall simultaneously intimate to the Registrar the names of the companies of which he or it is willing to be re-appointed as the auditor. A question has arisen whether the said intimation to the Registrar of Companies should be in any particular form and whether it is to be registered by the Registrar of Companies and any fee is to be charged thereon.

The Department is of the view that the said subsection does not provide for prescribing any form for furnishing the said intimation to the Registrar of Companies. Hence the intimation can be in the form of a letter addressed to the Registrar of Companies and it would not be required to be registered and hence no fee would be required to be paid. Since the intimation would not relate to any one company, it should be kept in a separate folder auditor-wise.

(Circular No. 20/75 dated 22-9-75, P. No. 35/5/75-CL. III.)

Section 224: Whether the branch audit of the Indian Companies and the audit of the Indian Business Accounts of the foreign Companies are to be included while calculating the specified number—Explanation I of subsection (1C) of Section 224.

47.7 A question has been raised as to whether the audits of the branches of the Indian Companies and the audits of the Indian business accounts of the foreign companies
which have established place of business in India and are doing business in India are to be taken into account while calculating the specified limit on the number of audits as laid down in Explanation I of sub-section (1C) of Section 224 of the Act. This Department is of the view that the branch auditors of the Indian Companies appointed under section 222 of the Act audits the accounts of the particular branch only for which he is appointed and forwards his report to the auditor appointed under section 221 of the Act and hence he cannot be equated with the company auditor appointed under section 224 of the Act who has to report to the Annual General Meeting on the accounts of the company as a whole including the branches audited by a branch auditor. The words ‘any part of which’ appearing in Explanation II cannot have any reference to branch audit which as noted above does not fit into the context of Section 224. The said words relate to the antecedent number and not ‘companies’ is so far as they are of any material significance to the context. Hence the branch audits are not to be included while calculating the specified number of 20 audits.

As regards the audit of the accounts of foreign companies the Department is of the view that foreign companies are outside the scope of Section 224 since the definition of the company under section 3 of the Companies Act, 1956 does not include a foreign company. Hence the audit of the accounts of foreign companies is also not to be included within the specified number of 20 as laid down under Explanation I to Sub-section (1C) of section 224 of the Act.

Section 224: Application to the Central Government under section 224(3)—Payment of fees—Clarification regarding.

47.9 In some field offices fee is charged on notices under section 224(4) of the Companies Act, 1956, received from companies for appointment of auditors under section 224(3) of the Companies Act, 1956. The Board is of the view that notices under section 224(4) of the Act cannot be considered as applications within the purview of the Companies (Fees on Application) Rules, 1961 and as such are not chargeable with the prescribed fees. On receipt of such notice, it is the statutory duty of the Central Government/Regional Directors to appoint auditors under section 224(3) of the Act. No fee is chargeable on such notice for appointment of auditors under section 224(3) of the Act.

Section 224: Appointment of auditors under section 224(3).

47.9 It is only where an auditor is not appointed at an Annual General Meeting that the Central Government can exercise the powers under Section 224(3) of the Act. According to the provisions of section 224(1) of the Act, the auditors are appointed for the period beginning from the conclusion of the Annual General Meeting (in which they are appointed) till the conclusion of the next Annual General Meeting. The appointment of auditors is made in terms of this period and not for any financial year. The auditors shall audit all the accounts of the company which are to be placed in the next Annual General Meeting. Thus, when the Annual General Meeting could not be held on 29th June, 1974 the date for which it had been convened or on the adjourned date, the auditors who had audited the company’s accounts for the year ended 31st December, 1973 will continue to be the auditors till the conclusion of the next Annual General Meeting, whenever it may be possible to hold it, and shall be competent to audit all the subsequent accounts as authorised by the Authorised Controller which may be placed at such next Annual General Meeting.

(Circular No. 21 of 75 dt. 11-9-75 F. No. 35/3/75-CL. III.)

(Letter No. 35/13/74-CL. III dt. 21-11-74.)
Section 224: Power of the Central Govt. to appoint an auditor under section 224(3)

47.10 Section 224(3) of the Act empowers the Central Government to appoint an auditor of the company where no auditor had been appointed or re-appointed by the company at its annual general meeting. The power of the Central Government to appoint auditors was also exercised by the Regional Directors on the strength of the delegation of power which has been made in their favour.

The appointment of auditors is made from panels of names suggested by the applicant companies. Before making any appointment the antecedents of the auditor concerned are ascertained from the records maintained in the Department.

(Extract from the Fourth Annual Report on the Working and Administration on the Companies Act, 1956—Year ended March 31, 1960.)

Section 224A: Clarification of the provisions of section 224A

47.11 According to section 224A of the Companies Act, 1956 as incorporated by the Companies (Amendment) Act, 1974, a special resolution is required for appointment and reappointment of an auditor in the Annual General Meeting of those companies in which not less than 25% of the subscribed share capital is held whether singly or in combination by public financial institutions, nationalised banks etc., mentioned in that section. A question has been raised whether it is only those shares in a company which are beneficially held by a nationalised bank that will be taken into account in calculating the 25% of the subscribed share capital of that company or even those shares of the company which having come into the custody of the nationalised bank as security for loans advanced to the constituents are got transferred by the nationalised bank in its name for making the security effective, will also be taken into account.

It is clarified that irrespective of the circumstances in which a nationalised bank is holding shares, if the name of the bank is entered in the register of members of the company as holder of shares, such holding of shares will have to be taken into account, for the purposes of Section 224A of the Companies Act, 1956.

(Circular No. 18 of 74 dated 12-12-74.)

Passing of Special Resolution—Relevant time for holding 25% of the subscribed share capital—Section 224A of the Companies Act, 1956—Clarification thereof

47.12 I am to invite your attention to the provisions of Section 224A of the Companies Act, 1956, which inter alia require a special resolution to be passed for the appointment/re-appointment of an auditor by a company in which not less than 25% of the subscribed shares capital is held by public financial institutions etc.

2. A doubt has been expressed as to the material date, i.e., whether the date of the notice of the meeting, or the date of passing the special resolution shall be taken into consideration. The matter has since been examined in the Department, and it is to be clarified that the material date is the date of the Annual General Meeting at which the special resolution is required to be passed. Moreover, since generally, Articles of Association of Companies provide for closure of the Register of Members before general meeting during a period not exceeding thirty days at any one time, it is unlikely that the position regarding shareholding in the company will be different between the date of issue of notice and the date of the general meeting.

3. In exceptional cases, however, where a change in the shareholding pattern in the company has taken place, between the date of issue of notice of the General Meeting 21—26 M of LJ & OA/ND/74.
and the date of actual passing of this resolution regarding appointment of auditor, the company may either—

(i) adjourn the meeting to another date, and later issue the required notice in accordance with law and thereafter pass the special resolution required to be passed under Section 221A of the Companies Act, 1956, or

(ii) Quit or pass over the item on the agenda regarding appointment of auditor.

In the event of the company adopting the procedure at (ii) above, the situation would be then covered by sub-section (2) of Section 221A of the Companies Act, 1956.

Section 225: Appointment of auditor other than a retiring auditor—notice to retiring auditor

47.13 The object of Section 225 is to see that a special notice of a resolution to be moved at an annual general meeting for appointing or removing an auditor is given to the company, that the retiring auditor receives a copy of the notice of such a resolution and that he shall have the right to make representations in writing to the company and, where practicable, to call upon the company to send a copy of the representation to every member of the company. The use of the expressions “shall be required”, “shall forthwith send”, etc., occurring in the said section 225 show that the provisions of the section are mandatory in nature and must therefore be strictly complied with. Further any resolution requiring special notice must comply with the requirements of section 160. Contravention of the provision of section 225 would attract penalty to the company under section 629A. Further, if the new auditor being a Chartered Accountant in practice, accepts the position as auditor previously held by a retiring auditor, being another Chartered Accountant in practice, without first communicating with him in writing, the new auditor shall be deemed to be guilty of professional misconduct as contemplated by clause (8) of the First Schedule to the Chartered Accountants Act, 1949. Finally, if the appointment is accepted by the new auditor, without first ascertaining from the company whether the requirements of section 225 in respect of such appointment had been complied with that would attract clause (9) of the First Schedule to the Chartered Accountants Act, 1949.

(ii) Auditor’s Qualification

Section 226: Qualifications and Disqualifications of auditors

47.14 It is the view of this Department that it would not be a desirable practice for a practising Chartered Accountant 'X', who is connected with the managing agent or managing director of Company A or where X acts as auditor of company A, to be on the Board of Company B or to act or be employed as tax or financial adviser to company B, where company A and Company B are in the same group, because he may find it difficult to exercise an independent judgement.

Section 226(1): Appointment of auditor

47.15 Since only one person is a proprietor of the firm, it cannot be regarded as a partnership firm which may be properly appointed as the auditor of a company under the proviso to section 226(1) of the Companies Act, 1956. It follows that a company...
must appoint the proprietor of the 'so-called' firm, by his name in his individual capacity, as its auditor, and the auditor report will have to be signed by the proprietor himself in his own name.

(Circular No. G22956-FR dated 20th March, 1957.)

Section 228: Interpretation of Clause (b) of Sub-section (3)

47.16 Government have examined the question whether on his engagement as the income-tax consultant of a company either on payment of ad hoc fee or fees plus retainer or on fixed periodical remuneration, a practising Chartered Accountant is to be regarded as an officer or employee of the company for the purpose of section 226(3)(b) of the Act, and consequently as being disqualified for appointment as auditor of the company. The legal position is as follows:

Where the Chartered Accountant is employed whole time, he is an employee of the company. In other cases, generally speaking, there would appear to be only a contract for service and not a contract of service between the company and the Chartered Accountant. In Dhavanidhara Chemicals Works vs. State of Saurashtra—(1957-SCA, pp. 216) the Supreme Court has laid down "that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing that work the servant is to do, but also in the manner in which he shall do his work, or to borrow the words of Lord Utiliatt, the proper test is whether or not the hirer had authority to control the manner of execution of the act in question".

Applying this test in any case, where the Chartered Accountant is consulted only professionally on income-tax matters by a company he cannot be said to be an officer or employee of the company.

A chartered Accountant’s main business is to render professional service for reward like a lawyer or a doctor. Where such services are rendered professionally and not as an officer or employee of the company, a Chartered Accountant is not disqualified under section 226(3)(b) of the Companies Act, 1956.

(Circular letter No. B/1/57-FR dated 11th July, 1957.)

Appointment of auditors—Section 225 and 224(2)(c) of the Companies Act, 1956—Clarification thereof

47.17 I am directed to say that a point has been raised as to whether the words ‘other than a retiring auditor’ occurring in section 225(1) of the Companies Act, 1956, should be mentioned in the special notice under section 225(1) of the Act while proposing a new person to be appointed as auditor and whether the words ‘instead of him’ should be mentioned in the resolution passed in the annual general meeting appointing a person other than a retiring auditor as an auditor of the company under section 224(2)(c) of the Companies Act, 1956. The issue has been examined in detail and this Department is of the view that the provisions of Section 225(1) or 224(2)(c) do not require that the words ‘other than a retiring auditor’ or ‘instead of him’ should be specifically mentioned either in the special notice or in the resolution of the annual general meeting respectively. Since the reappointment of the retiring auditor is not automatic and a specific resolution for the re-appointment of the retiring auditor is a must and in the absence of such a resolution the term of the retiring auditor shall automatically come to an end at the conclusion of the annual general meeting, these words have no specific meaning attached to them. These words are suggestive only to indicate a new person, and are not mandatory requirement of law requiring these words to be included in the special notice under section 225(1) or in the resolution passed under section 224(2)(c) of
the Act. Thus passing of a resolution in the annual general meeting appointing another person as an auditor of the company without mentioning the words 'instead of him' is quite sufficient and valid under section 222(2)(c) of the Act and similarly a special notice proposing to move a resolution to appoint a new person as an auditor of the company without mentioning the words 'in place of retiring auditor' is sufficient compliance under section 223(1) of the Act.

Internal Auditor who is also the statutory Auditors

47.18 I am directed to say that a question has been raised whether a statutory auditor of a company can also be its internal auditor, which has been carefully examined in this Department, and its view is as follows.

2. The internal auditor is appointed by the management and hence is in the position of an employee, whereas the statutory auditor is appointed by the company in accordance with the provisions of Section 221 of the Companies Act, 1955, and the auditor is required to perform the duties enjoined on him under Section 227 of said Act and the Rules/Orders issued thereunder. In this connection, I may also refer to para 4(v) and (xi) of the Manufacturing and Other Companies (Auditors' Report) Order, 1975 in GSR No. 339(F) dated the 7th November, 1975, notified by this Department in accordance with which the statutory auditor has to include in his report under Section 227 of the Companies Act, 1955 whether there is adequate internal control procedure commensurate with the size of the company and the nature of its business for the purchase of stores, raw materials including components, plant and machinery, equipment and other assets and in the case of companies having Rs. 25 lakhs or more paid-up share capital, whether there is any internal audit system commensurate with its size and nature of business. It is, therefore, obvious that if the statutory auditor of the company is also the internal auditor, it will not be possible for him to give an independent and objective report under Section 227 of the Act read with the Order under sub-section (4A) thereof. As such, in the opinion of this Department, a statutory auditor of a company cannot also be its internal auditor.

(Circular No. 29/76 dated 27-8-76.)

(iii) Auditor—Duties

Section 227: Duties of auditor

Query

47.19 It is believed that the company's auditor need refer in his report to the branch audit only when the branch accounts are audited by a person other than himself. This needs confirmation.

Answer

Yes.

(Finance No. 8/16/1/61-PR)

Section 227: Authentication under Audit Section 215

47.20 Section 227(2) of the Act cast a duty on the auditor not only to report on the balance sheet and profit and loss account but also on the accounts of the company. There is nothing in section 215 or section 227 which can be construed as prohibiting the auditors from conducting the audit of its accounts till the balance sheet and profit and loss account are approved by the Board. Any such prohibition might delay the audit and lead to delay in placing the annual accounts before the company's general
meeting as required by section 210. The Company Law Board does not therefore consider that there is any contravention of section 215 in a case where the audit of the final accounts is completed before the approval of the balance sheet by the Board of Directors of the company. In this connection, reference is also drawn to the observations of the Viswanatha Sastri Committee in para 91 of its report.

(Letter No. 8113(215)63-CL V dated 29.9.1963.)

(iv) Branch Audit

Section 228: Audit of Branch Office Accounts

47.21 The branch/ internal auditor shall forward his report on the accounts of the branch direct to the statutory auditor. If the statutory auditor required any explanation/comments from the management in regard to the branch audit report, he would no doubt do so before making the observations in his audit report. There would, however, be no administrative objection to a copy of the branch audit report being sent to the Board of directors simultaneously with the direct transmission of the original branch audit report to the statutory auditor.

(No. 19.15-CL.V161, d. 27th April, 1961.)

Section 228: Audit of Branch Office Accounts

Query

47.22 Under the amended provisions of section 228 an audit of a branch office has now become obligatory. If a company has a place for manufacturing its products and despatches goods from there to its purchasers, the invoices are made out at the registered office of the company or its main branch and other entries regarding the sales and receipt of sale proceeds are recorded at the place although stores and stock records are maintained at the place of manufacture. Will the place of manufacture be deemed to be a branch office for purposes of carrying out an audit or will it be sufficient compliance with the provisions of the Companies Act, if the books maintained at the manufacturing place are brought to the registered office of the main branch for the purpose of carrying out an audit?

Answer

The term "branch office" has been defined in section 2(a) and includes any establishment engaged in any production, processing or manufacture. Accordingly, the place of manufacture referred to in the query, should be regarded as a branch office and should be audited as such under section 228 unless it is exempted from audit under the Companies (Branch Audit Exemption) Rules, 1961. As regards any accounts or other papers relating to this Branch office kept at the head office, it is for the concerned auditors to decide about the procedure he should follow.

(File No. 016/1/61-PR.)

Section 228: Audit of Branch Office Accounts

Query

47.23 It is believed that there is nothing in the section which required that the audit of the branch accounts should be carried out at the branches. Where accounts are maintained for the branches at the head office or where the branch accounts, books and vouchers are made available to the auditor at the head office, it will not be necessary for the company's auditor to visit the branches. This needs confirmation.
Answer

There is no compulsion to visit branches, but here again, it is a matter for the auditors to decide.

Section 228: Audit of branch office in a foreign country

47.24 The branch in foreign territory, say Pakistan need not be audited by a Chartered Accountant of India. It is enough if it is audited by a qualified Accountant in accordance with the law of that country. In view of this no hardship is contemplated.

Section 228: Definition of “accounts” used in section 228(3)(c).

47.25 An enquiry was made as to the true meaning of the word “accounts” in terms of section 228 (3)(c) of the Companies Act, read with Rule 6(b) of the Companies (Branch Audit Exemption) Rules, read with section 209 of the Act.

It was felt that the accounts maintained in the branch office would necessarily depend largely on the type of business or activity carried on in the branch, and no principles of universal applicability could obviously be laid down. However, it was pointed out that the auditor concerned must satisfy himself that proper books of accounts under section 209 were being maintained at the branch. It was also felt that the formal audit certificate in respect of the audit of the branch office account should be worded, where a branch was run as an independent unit carrying on manufacturing business or trading activities in the same form as visualised in section 227 (2) and (3) as if the branch itself were a separate company. In respect of branches where only a certain type of activity was carried on, e.g., sales depot, or purchase depot, the form of the audit certificate prescribed in section 227(2) and (3) of the Act would have to be modified or adopted to suit the type of activity carried on at the branch, the books of account maintained there and the nature of returns sent from the branch to the registered office of the company. It was felt that, in any case, two requirements, in addition to the other requirements of section 227 that might be applicable to any particular branch would have to be complied with, namely the auditor should certify that:

1. Proper books of account have been kept at the branch;
2. That the accounts or returns of the branch show a true and fair view of the working of the branch.

(Extract from the Fifth Annual Report on the Working and Administration of the Companies Act, 1956-Year ended March 31, 1961.)

Section 228: Audit of branch accounts—Exemption Rules

47.26 One of the important amendments in the Companies (Amendment) Act, 1969, which has already come into force, relates to the audit of the branch accounts of a company. As a result of the amendment, the accounts of every branch office of a company will be required to be audited either by the auditor of the company or by some other person appointed by the company, who is qualified for appointment as an auditor, unless, under the rules to be framed under the relevant section of the Amendment Act by the Central Government, a branch office of a company is exempted from this requirement. It follows that the branch accounts of a company in respect of a financial year which has ended or may end after the coming into force of the Companies
(Amendment) Act, 1960, will have to be audited as required by the provisions, unless exemption, from branch audit has been obtained under the rules framed by the Central Government on this subject.

2. In order that a company, if it so desires, may claim or apply for exemption from this requirement, in respect of the financial year ending immediately after the coming into force of the Companies (Amendment) Act, 1960, at the earliest opportunity, the Department of Company Law Administration has already promulgated certain rules, the gist of which is as follows:

With a view to relieving such hardship as might arise if comparatively small branch offices were required to be audited, it has been laid down that where a company carrying on any manufacturing, processing or trading activity has a branch office, "the average quantum of activity" of which during the relevant financial year does not exceed Rs. 2 lakhs or two per cent of the total turnover of the company (including all its branch and other offices), whichever is higher, the branch office will be exempt from the provisions of section 228 relating to branch audit. The expression "average quantum of activity" has been suitably defined in this connection.

3. In all other cases, it will be necessary for the company to make an application to the Central Government for exemption, stating the grounds on which it seeks exemption from the above requirements, and where the necessary exemption is granted, the Central Government may lay down in its order the period and the conditions subject to which the exemption will be granted. All such applications should be in the form prescribed under the rules and should be accompanied by the necessary documents.

If any application is made for exemption from branch audit on the ground that the company has arranged for the audit of its branch accounts by a person otherwise qualified for appointment as a branch auditor, even though such person is an employee of the company, it will be necessary for the company, in case exemption is granted, to comply with the following conditions—

(a) the company shall give such person access at all times to the books of accounts maintained at the branch office and furnish such information or explanation as he may require;

(b) such person shall, every year, make out a report on the accounts of the branch office examined by him and forward it to the company’s auditor; and

(c) the management of the company shall attach to the balance-sheet a certificate to the effect that no material change has taken place in the arrangement for internal audit of branch accounts.

It is expected that the provisions would encourage the larger companies to build up within their organisation sound systems of internal audit.

4. So far as a company carrying any activity other than that of manufacturing, processing or trading is concerned, the rules provide that it may apply for exemption from branch audit on the ground that it has made satisfactory arrangements for scrutiny and check, at regular intervals of the accounts of the branch office by a responsible and competent person.

(Press Note, dated January, 1961.)
Section 228: Exemption of banking companies from the requirement of branch audit.

Clarification One

17.27 The guiding principles formulated by the Department [see below] in regard to audit of branches of banking companies had been applied in granting exemptions from audit to branches of banking companies during the years 1962, 1963 and 1964. In the light of the experience gained during these three years and in the light of some practical difficulties experienced by banking companies, these principles were modified in consultation with Reserve Bank of India and Department of Economic Affairs, who administer the Banking Companies Act. While retaining the core of guiding principles earlier laid down, certain adjustments were made in formulating the revised principles. Briefly these are the number of branches to be audited compulsorily and audited under the rotational quota should be worked out with reference to the number of branches in existence on the first day of the financial year to which the audit relates. It was also clarified that all branches of banking companies in existence on 1st January, 1965 should be audited at least once during the three years period ending 31st December, 1967. Branches opened during a year would normally qualify for exemption from audit during that year but such branches should be audited within the following two years.

In considering applications for exemption from audit to branches of non-banking companies, the above principles are applied.

(Excerpt from the Ninth Annual Report on the Working and Administration of the Companies Act, 1956 - Year ended March 31, 1966.)

Clarification Two

In order to rationalize the basis on which applications of banking companies for exemption from branch audit may be dealt with by Government the Department formulated certain guiding principles in consultation with the Ministry of Finance (Department of Economic Affairs and the Reserve Bank of India) keeping in mind the fact that the accounts of the branches of banking companies are generally inspected regularly by their trained inspectors, and the further fact that many banks have large numbers of branch offices spread throughout the country. The principles are briefly set out in the following paragraph. The prescribed form in which applications for exemption are to be submitted by banking companies has also been amended suitably so as to include certain additional particulars to enable Government to apply the principles in each individual case.

Banking companies having branch offices have been divided into six categories on the basis of their individual total deposits (comprising of time and demand deposits) as on 31st December, 1960 and a limit has been prescribed in regard to the outstanding advances (including loans and bills purchased and discounted) as on that date for individual branch offices under each of the aforesaid six categories. The accounts of these branch offices, whose outstanding advances as on the said date exceeded the prescribed limit, would require to be compulsorily audited by either the statutory auditors or the branch auditors. It has also been provided that the number of branches to be so audited in any year should not in any case be less than one-third of the total number of branch offices of the bank concerned. If the number of the branches required to be audited, on the basis of the prescribed limit of outstanding advances applicable to the banking company concerned, happens to be less than one-third of the total number of its branch offices, such number of branches having the highest outstanding advances below the prescribed limit would also require to be audited, so that the total number of branches to be compulsorily audited every year will be at least one-third of the total
number of branches. In regard to the remaining branch offices, the banking company concerned should ensure that the accounts of at least one third of such branch offices are audited every year by rotation by either the statutory auditors or the branch auditors. In effect, therefore, all branch offices of a banking company would be audited over a period of three years. Those branch offices which according to the above formula would not have to be audited by either the statutory auditor or the branch auditor in any particular year would be eligible for audit in that year on the grounds specified in Rule 4(1)(a) or Rule 4(1)(b) of the Branch Audit Exemption Rules, 1961 depending upon whether the branch offices are inspected by responsible officers belonging to the Inspection Department of the banking company or are internally audited by Chartered Accountants who may be employees of the company. Each application will be considered on its merits and before granting exemption, the Central Government will have to be satisfied about the adequacy of the inspection or internal audit of the branch offices by the officers of the banking company. If the Central Government consider it necessary, the banking company concerned may be required to have the accounts of any of its branch offices audited by the statutory or the branch auditor even if it has been so audited during either of the last two financial years.

(v) Auditor's Report—Signing

Section 229: Signing of auditors' report—

4728 On a review of the existing practice of signing auditor's reports on the Balance sheets and Profit and Loss Accounts of companies in a "firm name", this Department is advised that in view of Sections 4 and 5 of the Indian Partnership Act, 1932, there cannot be a "firm name" without a contract of partnership between two or more persons. Hence the question of a single Chartered Accountant, carrying on his profession in a firm name should not arise. Nor can a firm be appointed in its "firm name" as auditor unless all the partners practising in India are qualified for appointment as auditor of a company as provided for in Section 223 of the Companies Act, 1956. This again postulates the existence of two or more partners for a firm of Chartered Accountants to be appointed in its firm name as auditor.

2. Further, as Section 229 of the Act clearly provides that if a firm of Chartered Accountants is appointed as auditor, only a partner in the firm may sign the auditor's report or sign or authenticate any other document required by law to be signed or authenticated by the auditor, the practice of merely affixing the "firm name", on the audit report or such other document is not correct in the eyes of law. In this Department's view the partner concerned should invariably sign in his own hand for and on behalf of the firm appointed to audit a company's accounts, and this is what is required by the provisions of the Companies Act, 1956. The existing practice of a separate disclosure to the Registrar of Companies about the identity of the partner of a firm the name of which is affixed to the auditor's report, and other documents annexed thereto, will not suffice and is not a procedure contemplated by the statute.

(Circular No. 26 of 72 dated 29.7.72)

Section 229: Signing of auditors' reports in firm's name

4729 It is confirmed that the previous system of the firm of Chartered Accountants disclosing the name of the partner who has signed the accounts to the concerned Registrar of Companies by separate communication may be discontinued.

(Circular No. 973 dated 16.8.72)
Section 235A: Special Audit

481 "I may now mention about the provision which has been made in clause 71 empowering the Central Government to direct a special audit of the affairs of a company in certain cases. The traditional techniques of financial audit and the terms in which the annual audit report on the accounts of companies are drawn up do not directly reveal if their affairs are being conducted in accordance with sound business principles or prudent commercial practice. Nor will the usual audit report indicate if the company is being managed in a manner injurious to the interests of trade or industry to which it belongs.

As the auditor cannot normally be expected at the present stage to go into matters which are traditionally for the company's management to decide, the Joint Committee made provision empowering the Central Government to direct a special audit to be made into the affairs of a company by a qualified accountant when, in the opinion of the Government,—

(a) the affairs of the company are not being managed according to sound business principles or prudent commercial practices; or
(b) the financial position of the company is such as to endanger its solvency.

This clause came in for a good deal of discussion in the Lok Sabha. As I indicated there, the Government intend to use their powers under this clause after due deliberation and normally the company would get an opportunity to explain its point of view before a special audit of its affairs is ordered by the Government."

(Speech by Shri N. Kamaraj in Rajya Sabha on 12th December, 1960.)

"Sir, in regard to certain provisions about which criticisms have been made, I shall refer first to special audit. Personally I feel that the special audit clause is absolutely necessary both for the companies as well as for the Government. It is useful, Sir, to interfere in any company administration or in any company matter when things have gone beyond redemption. I could have quoted a number of cases but there is hardly any time. I am in possession of reports of different companies which go to show that they have either gone into liquidation or they have closed down because of gross mismanagement or bad investments. These reports are not given by Government officers, but they have been given by a committee consisting of one officer, a representative of the industry and the third, either a chartered accountant or another representative of the industry. So, this is a non-official committee. It has looked into different cases of a number of concerns, and they have come to the conclusion that the company was mismanaged and there were other failings. Then, when all that happened, the Government was asked to intervene or was asked to take over, which is not a very good proposition for the Government. There are cases of textile mills and other also. So, it is better that the Government should be armed with powers to intervene at a stage when it might be possible to prevent the company from being closed down or from deteriorating further. That is, its deterioration is to be checked. Therefore, we feel that it is necessary that the Government should intervene at the proper time. But, I must say that great care has to be taken in taking this step.

Sir, this special audit is not going to be a normal affair. I do not agree with what Shri Sasthamangal said that special audit should almost be made a regular feature. There should be a dozen or two dozen special auditors who should go about visiting companies, he said. I have no doubts that there are many companies which are managing
their affairs very well indeed. They will consider it an encroachment on their right for any other auditor to go and look into their accounts. Therefore, I do not favour that idea. But if reports are available with us, if there is a prima facie case, Government should send a special auditor to look into those concerns. But, as I said, it will have to be done very carefully."

(Speech by Shri Lal Bahadur in Rajya Sabha on 14th December, 1966.)

Section 233A: Special Audit

49.2 Power conferred by section 233A will be exercised not as a matter of routine but in special circumstances and after making such enquiry as the Central Government might consider necessary on the facts and circumstances of each case.

As regards the appointment of a person not in practice, this might be required by the special circumstances of the case and does not run counter to the Chartered Accountants Act. It may also be mentioned that Government will themselves consider as to who should be appointed as Special Auditors. There is no inconsistency between the provisions of the Chartered Accountants Act and section 233A whereby the Central Government has been empowered to appoint a Chartered Accountant who is not in practice for the special audit of a company. Even though the auditor appointed by a company is required to audit its books of accounts in accordance with law, in fact, however, cases may occasionally arise when the said auditor may not be considered suitable for the purpose of special audit. Government has to exercise its discretion in such cases.

(Nos. 3(I)-CL. I/60.)

Section 234: Registrar's power to call for information—Investigation

49.1 If, on the basis of the materials furnished to the Registrar by a complainant, there is, prima facie, a case for further enquiry under section 234, the enquiries should be pursued to their logical conclusions irrespective of the subsequent withdrawal of the complaint.

(Circular letter No. 8/92/PR dated 9-5-84.)

Section 234: Completion of documents by annexing additional papers

49.4 If, on the basis of the materials furnished to the Registrar by a complainant, 234 is reasonably necessary for the completion of the document filed by the company, the relevant papers should be annexed to the concerned document and be available for inspection, otherwise they may be filed separately.

(Circular letter No. 8/92/PR dated 9-5-84.)

Section 234: Clarification regarding power of Registrar to call for information and explanation

Query

49.6 The power of the Registrar under section 234 to call for information or explanation is interpreted by the Administration to extend to calling for information or explanation in respect of purchases, etc., even where such purchases are not made from associates or organizations in which relative of directors are interested. It appears to us that such interpretation is likely to interfere with and delay, the day-to-day working of industries and other organisations.
The Department's view on the subject is that the information or explanation called for under subsection (1) of section 234 should have some bearing on items mentioned in the balance-sheet, profit and loss account, annual returns, etc. However, in case of complaints from creditors of contributors of a company, the Registrar has the power to call for information or explanation on the allegations made.

(Company News & Notes, dated 1st July, 1963.)

50. Investigation

Sections 235, 237 and 247: Guidelines for taking action

50.1 The powers conferred on the Central Government for ordering investigation of the Companies Act are discretionary, while those conferred by section 237(a) are of the affair of companies by virtue of the provisions of sections 235, 237(b) and 247 obligatory. In exercising the discretionary powers under section 235 and 237(b), the Central Government, while examining each case on its merits, applies certain tests which are calculated to ensure that a substantial and worthwhile basis exists, warranting investigation. Where the allegations are more of a rectitutianary nature arising out of factional fights between two or more predominant groups of shareholders, the Government will not ordinarily lend itself to be a party to such disputes. If remedies to unhealthy situations and general contraventions of law can be found elsewhere, ordering of investigation will be naturally redundant and unnecessary. Allegations relating to criminal breach of trust and the like can be dealt with effectively by the police with facility. In other cases attracting the relevant provisions of company law or any other law in force, the following objectives may generally form the prerequisites for the ordering of an effective investigation—

(i) whether an inspector can bring to light any major contravention of company law or any other law on the basis of which necessary corrective or remedial measures can be applied;

(ii) whether the application of such measures alone will be enough to lend succour to the aggrieved parties, where necessary, or to set right the affairs of companies so as to bring them in conformity with the accepted principles and standards of good and efficient management; and

(iii) whether the allegations bring out clearly or, by implication, a charge of irregular accounting, the truth of which can be established only by the analysis of the books by a qualified Chartered Accountant.

(Reproduced from A Guide For Departmental Officers.)

Section 247: Publication of Inspector's report

50.2 In important cases where the reports of investigation into the affairs of ownership of companies by Inspectors appointed for the purpose are likely to be of interest to the general public such reports will be published. The criterion for selection would be the size, the extent of public interest and participation, the nature of industry engaged in, the extent of consumer and creditor's interests and the relationship, if any, with other companies fulfilling these requirements.

(Company News & Notes, dated 17th, Aug. 64.)
CHAPTER XVI

51. DIRECTORS

Constitution of Board of Directors

Section 254: Compliance with section 303(2) by a company in respect of the subscribers to its memorandum of association who are deemed to be its directors under section 254

51.1 According to the scheme of the Act, the directors of a company can from one angle be divided into two classes, namely:

(a) subscribers of the memorandum who are individuals and are deemed to be directors by operation of law;

(b) individuals who are appointed as directors either by the company in general meeting in accordance with the provisions of sub-section (1) and in some circumstances sub-section (2) of section 255 or by articles or under articles or in accordance with the provisions of sections 255(2) and 266(1) or by the Board of directors under sections 260, 262 or 263.

Sub-section (1) of section 303 requires every company to keep at its registered office a register inter alia of its directors and in that particular context the term director includes not only individuals who have been appointed as directors but also subscribers of the memorandum who are deemed to be directors. The first part of sub-section (2) of section 303 requires every company to send to the Registrar a return in duplicate containing the particulars specified in the register referred to in clause (a) of sub-section (1), but is silent as to whether the said particulars are to be sent in relation to all the directors or only those individuals who have been appointed as directors and not subscribers of the memorandum who are required to be deemed to be directors under certain circumstances due to the operation of section 254 of the Act. The position becomes clear when we look at the latter part of sub-section (2) of section 303 as it (shown) very clearly that the return is to be sent within a period of twenty-eight days from the appointment of the first directors of the company. In other words it is clear from the latter part of sub-section (2) that a company is required to send to the Registrar the particulars of the individuals who have been appointed as directors and not subscribers of the memorandum who are never appointed as directors but by operation of law are required to be deemed to be the directors. In view of this legal position it is felt that section 303(2) of the Act does not require any company to send to the Registrar a return containing the particulars of its subscribers of memorandum even when the said subscribers are required to be deemed to be the directors due to the operation of section 254.

2. The term 'until the directors are duly appointed in accordance with section 255' in section 254 refers to the point of time prior to the appointment of the individuals either by the company in general meeting or by person or persons having right to appoint directors by virtue of powers conferred on them in the articles of association of the company. Thus the subscribers of the memorandum cease to be directors of the company when individuals are appointed as directors either by the company in general meeting or by persons in exercise of the powers in that behalf conferred on them by the articles. The term 'in default of and subject to any regulations in the articles' in section 254 shows that subscribers of the memorandum who are individuals are required to be deemed to be the directors of the company when the articles do not make any provision for some individuals
acting as directors of the company until the appointment of individuals as directors in general meeting or by other persons in accordance with the provisions of section 255. In other words, if the articles of association of the company make any provision for some individuals acting as directors of a company after its incorporation and prior to the appointment of individual as directors in accordance with the provisions of section 255, then section 254 is never attracted.

*Now 30 days.

Section 255: Rotation of Directors in case of private companies

Query

513 Whether under the law it is compulsory for the private companies to have rotational directors.

Answer

In the case of a private company which is not a subsidiary of a public company, it is not compulsory under the law that they must have rotational directors unless the Articles of Association of the company so requires [Section 255(2)].

Section 255: Clarification regarding retirement of directors

Query

514 Whether (i) it was always necessary for all the directors to retire at the first annual general meeting and (ii) if it was not so, under what circumstances that became necessary.

Answer

In the Department's view, reading the sections 254, 255 and 256 together, it would appear that it is not always necessary for all the first directors to retire at the first annual general meeting held after the formation of a company. Except those persons named in the articles as first directors who, under a specific provision in the articles in accordance with section 255(2) need not retire at the first annual general meeting, all other first directors (including the subscribers of the memorandum of association) should retire at the first annual general meeting.

Section 255 to 257: Amendment of Articles of Association of the company in contravention of sections 255, 256 and 257 of the Companies Act, 1956

515 It has been observed that certain companies have amended their Articles of Association making provisions for the appointment of directors on the Board by another public company with a view to make the company as the subsidiary of the latter company within the meaning of section 4(1)(a) of the Companies Act, 1956.
It has been held that the combined effect of sections 256(1), 256(4) and 257 of the Companies Act, 1956 is that:

(i) not less than 2/3rd 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;

(ii) the class of directors referred to above can be appointed only by the members of the company at the General Meeting; and

(iii) one-third of the said class of directors is required to retire at the annual general meeting.

In view of the provisions mentioned above, such purported amendment of the Articles of Association is hit by the provisions of sections 255, 256 and 257 of the Act. Section 257 is a mandatory provision and a person's right cannot be taken away by virtue of any contract to the contrary by the members of the company by passing special resolution or under articles. Such an Article or special resolution is invalid under section 9 of the Companies Act, 1956.

(Circular No. 14 of 71 dated 22-6-71.)

Retirement of Directors

Section 256: Retirement of directors

51.6 The Articles of Association of a company provided inter alia, that "at the first ordinary meeting of the company, and at the ordinary meeting in every year, one-third of the directors (other than the ex-officio directors), for the time being, or if their number is not three or a multiple of three, then, the number nearest to one-third shall retire from office". With reference to the foregoing provision in the articles, a question arose for consideration as to whether persons, whose period of office is liable to determination by retirement of directors by rotation, cease to hold office after the date on or before which the annual general meeting of the company is required to be held, whether or not the meeting is actually held. The issue was decided in the affirmative by the Madras High Court in A. Ayyathulankey Ammal and other Vs. The Indian Trades and Investments Limited and another, (1952 Company Cases, 324), to which a reference is invited. The Department has considered whether the ruling of the Court in the aforesaid case which was given when the Indian Companies Act, 1913, was in force, would hold good even now, having regard to the provisions of section 256(1) read with section 256(2) of the new Companies Act. Though the language used in the latter-mentioned sections is slightly different from that contained in Regulation 78 of Table 'A' of the First Schedule to the Indian Companies Act, 1913, so as to permit of a different interpretation, the Department is of the view that under section 256, it cannot be contended that all the directors due to retire at the general meeting will continue in office till such general meeting is held even if the date of such meeting goes beyond the time limit set under section 166(1) of the Act. If this interpretation is allowed to stand, directors could brave the consequences of not holding the general meeting within the prescribed time and continue in office indefinitely. The risk of not having the re-appointment done in proper time at the general meeting in the case of rotational directors is the main reason for their ensuring regularity of annual general meetings. It is considered that, if the matter were to be litigated, the Courts would, in applying section 256 also, follow the wholesome principle laid down in the above-mentioned case. In any case of infringement of section 166, where the directors due to retire or to be re-appointed actually continue in office beyond the date on which the meeting is due to be
Section 256: Retirement of directors

Query

31.7 If the Articles of a company provide that all the directors of the company must retire at every annual general meeting the company, will it be in conformity with the provisions of section 256? In case all directors are required by the articles to retire at every annual general meeting, will such directors be taken to be directors retiring by rotation?

Answer

It will be in order for all the directors of a company to retire at every annual general meeting if the Articles of the said company provide to that effect and, in such case, each of such director can be regarded as a director retiring by rotation.

Section 256: Retirement of directors

51.8 (a) In the absence of anything to the contrary in the articles of association, the subscribers to the memorandum of association of every company, including a private company which is not a subsidiary of the public company, are deemed to be the directors of the company from the date of its incorporation and they may hold office till directors are elected, in accordance with the provisions of section 255 at the first general meeting held after the incorporation but prior to the holding of the first annual general meeting.

(b) It is open to a private company which is not a subsidiary of any public company to provide in its articles, the manner of appointment and the vacation of office of all its directors. Thus, it is permissible for such a private company to provide in its articles that none of its directors is liable to retirement by rotation. In the absence of anything to the contrary in the articles of association, however, all the first directors of such a private company who have been appointed under the Articles may hold office till the directors are appointed in accordance with the provisions of section 255(2) at the first general meeting held after incorporation but before the holding of the first annual general meeting.

(c) At the first general meeting of a public company or a private company which is a subsidiary of a public company held after the first annual general meeting not less than two-third of the total number of directors who have been appointed under the articles are required to vacate their office. It is, however, open to such a company to provide in its articles the manner of appointment in and the vacation of office of not more than one-third of its total number of directors.

(d) Not less than two-thirds of the total number of directors of a public company or a private company which is a subsidiary of a public company are liable to retirement by rotation and one-third of the directors who are liable to retirement by rotation are required to retire at every annual general meeting including the first annual general meeting. It is open to such a company to provide in its articles that all the directors are liable to retirement by rotation or even that all the directors shall retire at every annual general meeting.

(Circular letter No. 9/150-PR dt. 30-9-38.)

Company News & Notes, dt. July 1, 1963.)
Retirement and Rotation

Section 257: Candidature for directorship of persons other than retiring directors

Query

51.9 According to new sub-section (1A) a notice should be given to all the shareholders regarding the candidature for directorship of a person other than the retiring director 7 days before the meeting of the company in which they are proposed to be elected. Sub-section (2) of the original Act exempts private companies from the operation of sub-section (1). It is not clear whether sub-section (1A) will apply to private companies or not.

Answer

Sub-section (1A) applies only where sub-section (1) applies. As sub-section (2) specifies that sub-section (1) shall not apply to a private company, unless it is a subsidiary of a public company, sub-section (1A) will not also apply in such case.

(Letter No. 1/4517(PR.- dated 9-5-61.)

Section 257: Additional directors are not retiring directors

51.10 In the view of the Department, additional directors appointed under section 260 and directors appointed to fill casual vacancies under section 262 are not 'retiring directors' within the meaning of the 'Explanation' below sub-section (3) of section 266. Accordingly, in their case, the provisions of section 257(1) will be attracted and will have to be complied with.

In view of the clarification given above, the aforesaid directors should comply with the provisions of section 264(1) and (2) also.

(Company News & Notes, dated 1 July, 1963.)

Section 257—Clarification

Query

51.11 In terms of section 257 read with section 266, directors appointed by the articles of a newly registered company not having been appointed by the company in general meeting could not be deemed to be directors retiring by rotation and to such directors the provisions of section 257 would apply.

Answer

In the opinion of the Department, section 257 will be attracted when it is proposed to elect such directors at the annual general meeting.

(Company News & Notes, dated 1 July, 1963.)

Increase in Directors

Section 259: Increase in the number of directors—Government policy

51.12 Besides taking care to ensure that the number of directors of a company was not out of proportion to the size of the unit and the nature of its business, another aspect, viz., whether the proposed increase in the strength of the Board was for shouldering additional responsibilities and duties cast upon the Board and not simply for accommodating financial creditors by offering them directorship, has also to be taken into consideration.

(Extract from the Second Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1958.)
Additional Directors

Section 260: Additional director

Query

31.13 An additional director appointed in pursuance to section 260 by the Board holds office only up to the date of the next general meeting of the company. Do the underlined words suggest that he retires at that meeting and can seek re-election or he should be appointed (not re-appointed) at that next general meeting by complying with the provisions of section 257? In other words is an additional director to retire by rotation? Is he to file a letter of consent again and observe other formalities like contained in section 303?

Answer

An individual appointed as additional director pursuant to section 260 holds office and does not retire by rotation at the next annual general meeting of the company and he is required to comply with the provisions of section 257 for seeking election as director at the said meeting. The provision of section 264 and section 303 are also required to be complied with.

(Letter No. 8/16(1)/61-PR dated 9-5-61.)

Section 260: Additional Directors—Clarification of the first proviso.

31.14 The Department is advised that under section 260 of the Companies Act, 1956 an additional Director appointed by the Board of Directors of a company ceases to hold office as additional director immediately before the commencement of the next annual general meeting of the company as contemplated by Section 260 of the Act, and in any event he cannot continue in office after the expiry of the statutory period laid down in section 166 for holding an annual general meeting of the company.

2. The words "upto" ordinarily convey the same meaning as "until". The word "until" may according to the context be read as inclusive or exclusive of the date named. Where the articles of a company provided that additional directors shall hold office "only until the next following ordinary general meeting of the company", the Court held that at the moment when such meeting began, additional directors were no longer in office and that their office ceased just before the meeting. (See 1956 Ch. 241 at 254). It may thus be inferred that additional directors appointed by the Board cease to hold office just before the commencement of the next annual general meeting of the company. If it were intended that they should hold office until the conclusion of the next annual general meeting of the company, (which generally takes place on the same day on which such meeting is convened and held), different language would have been used by Parliament in section 260. In this connection the language used in section 229(1) regarding the appointment of auditors may be noted by way of contrast.

(Letter No. 8/13(6)/61-PR dated 5-2-1963 and 5-3-1963.)

Section 260: Clarification of the first proviso

Query

31.15 (i) Whether the word "upto" occurring in the section 260 included or excluded the date of the annual general meetings and

(ii) whether the additional directors should continue to be directors until the completion of annual general meeting on a subsequent date, in case the annual general meeting was postponed.
Answer

Under section 250 an additional director appointed by the Board of directors of a company ceases to hold office as additional director immediately before the commencement of the next annual general meeting of the company as contemplated by section 250 and in any event he cannot continue in office after the expiry of the statutory period laid down in section 166 for holding an annual general meeting of the company.

(Company News & Notes dated July 1, 1953.)

Section 260: Applicability of the provision of section 257 to a director appointed under section 260

51.16 In the case of an additional director appointed by the Board under section 250 of the Companies Act, 1956 the provisions of Section 257 thereof will have to be complied with on his election as a director at the next annual general meeting since he cannot be considered to be a director retiring by rotation at that meeting.

(Letter No. 8/3170/BR dt. 27-7-57)

Casual Vacancy

Section 262: Clarification

Query

51.17 X, a director of the company, was appointed at the annual general meeting. Due to some reason, X resigned from the Board and the casual vacancy thus created was filled by the appointment of Y at a meeting of the Board of directors. Necessary return concerning this change was filed with the Registrar. Later on, Y resigned and the directors again invited X to fill the vacancy created by the resignation of Y. The question is: Is the action of the Board in appointing X, in the second instance, quite in accord with the provisions of section 262(l) and particularly considering the fact that the appointment of X consequent upon the resignation of Y, for the purpose of filling the casual vacancy at a Board meeting does not, in effect, satisfy the statutory requirement which states "if the office of any director appointed by the company in general meeting is vacated".

Answer

The Department's view on the point raised is that the appointment of X, by the Board, in the second instance, in the vacancy caused in the Board by the resignation of Y, cannot, strictly speaking, be deemed to be an appointment to a casual vacancy in the office of director appointed by the company in general meeting, within the meaning of section 262(l) inasmuch as the appointment of Y himself was not originally made by the company in general meeting. However, in the interest of the smooth working of a company, if the casual vacancy is in an office which was filled by election at a general meeting, the Department would have no objection to the Board of Directors of the Company filling that casual vacancy as many times as may be necessary.

Query

(a) Whether a person appointed as a director to fill up a casual vacancy would continue in office until the date when retirement of the original director in whose place the former is appointed would fall due in the usual course, irrespective of the date of the next annual general meeting following the date of filling up of the casual vacancy.

(b) If the answer to item (a) above is in the affirmative, whether a person acting against the casual vacancy may be re-appointed by the general meeting at the time
when the director in whose place he was appointed will have retired, without the formalities prescribed under section 257 being observed.

Answer

The Department's reply to the query raised in (a) above is in the affirmative while the reply to that raised in (b) above is in the negative; since the director appointed to a casual vacancy is not himself director within the meaning of section 257(1).

(Company News & Notes, dated July 1, 1960.)

Section 264: Filing of Consent

Every person (whether he is a retiring director or not) proposed as a candidate for the office of director, except a person who has given notice of his candidature to the company under section 257, should file with the company his consent in writing to act as director, if appointed. A person who is reappointed at the general meeting on his retirement by rotation need not, however, file such consent with the Registrar of Companies.

(Section No. 8/16/61-PR dated 9-5-61.)

Section 264: Clarification

Whether a person who had been holding the post of an additional director under section 260 of the Companies Act, 1956, should file a fresh letter of consent under section 264(2) and also a fresh declaration of share-qualification under section 271 with the Registrar, if he were elected as a director of the company at the annual general meeting of the company in which he vacated his post of additional director that he was holding?

While such a person was not required to file, on his election, a fresh declaration of share-qualification with the Registrar under section 271, he had to file a fresh letter of consent with the Registrar under section 264(2), since the exception that had been made in the latter section was only in respect of a director who retired by rotation.

(Letter No. 8/21(29)/61-PR.)

Section 264: Filing of consent in writing by a proposed nominee director with the company—[Section 264(1)]

In view of the fact that neither the Government nor the Managing agent under section 277 would nominate an unwilling person to the post of a director, and no useful purpose would be served by such a person filing his written consent with the company in addition to the consent that would be filed by him with the Registrar pursuant to sub-section (2) of section 264, it is not obligatory for such nominated directors to file written consent with the company under sub-section (1) of the said section.

(Letter No. 8/21(29)/61-PR dated 22-1-62.)

Section 264: Filing of consent by directors nominated by Industrial Finance Corporation on the Boards of loan companies—Applicability of Section 264(2)

Section 23(2) read with section 11A of the I.F.C. Act, 1948 does not affect the operation of the provisions of Section 264(2) of the Companies Act in the case of the nominees of the I.F.C. There is nothing inconsistent between the power of the I.F.C. to nominate persons to act as directors on the Board of loan companies under section 25(2) of the I.F.C. Act and the requirement of Section 264(2) of the Companies Act.
that persons so nominated must file their consents with the Registrar of Companies concerned before they act as such directors. It will be observed that the effect of Section 41A of the I.P.C. Act is that where there is no inconsistency between the two Acts, the provisions of the I.P.C. Act are in addition to and not in derogation of any provision of the Companies Act. Section 264 of the Companies Act applies to every director of a public company or of a private company which is a subsidiary of a public company excluding a director who is re-appointed after retirement by rotation but including a director nominated by Government (Central or State) or by a managing agent under Section 377 of the Act.

Section 264: Clarification of Section 264(2)

Query

51.22 There appears to be a divergence of interpretation of the scope of section 264, sub-section (2) of which reads, "A person other than a director re-appointed after retirement by rotation shall not act as a director of a company unless he has within thirty days of his appointment signed and filed with the Registrar, his consent to act as such director." In the case of a company where all directors retire simultaneously at an annual meeting and all of them are re-elected, the directors need file their consent under section 264(2). But there appears to be a view that en bloc retirement is not the same as retirement by rotation and whenever there is en bloc retirement the directors concerned should file their consent on re-election.

Answer

The Department is of the opinion that under sub-section (2) of section 264, only a director who retires by rotation at an annual general meeting of a company and is re-appointed therein is not required to file with the Registrar his consent to act as a director within the time limit laid down therein. In a case where all the directors retire at an annual meeting and are re-appointed therein, there is no retirement by rotation within the meaning of the Explanation below sub-section (1) of section 236 or sub-section (2) of section 264.

Section 264: Clarification of sub-section (2)

51.23 Section 264(2) of the Companies Act, 1956, so far as it is relevant for the purpose under consideration, provides that a person shall not act as a director of a company unless he has within a specified period filed with the Registrar his consent to act as such director. The prohibition under the section is only in respect of his acting as director without filing his consent within the specified period. The prohibition does not apply to his appointment as such as in the cases falling under section 261 nor does it serve as disqualification as in the cases falling under sections 266 and 274. nor does the office of the director become automatically vacant as in the cases falling under sections 283. Section 283 (vacation of office by director) does not cover the cases of directors acting in contravention of section 264(2) of the Act.

2. The consequence of a director continuing to act as such without filing his consent within the period specified in section 264(2) would be that penalty under section 629A would become attracted to the matter. Such consent may, however, be filed after the expiry of the said period on payment of additional fee as contemplated by section 611(2). It is further open to the Central Government under section 657B to condone the delay in filing the consent within the period specified in section 264(2) and thereby remove the prohibition contained in the latter section.
3. In view of the above, if a person, who is required to file his consent within 30 days of his appointment as director under section 261(2) fails to do so, he does not ipso facto cease to be the director or vacate his office as director.

(Extract from File No. 56/60 CL V.)

32. Managing Directors—Their appointment, Approval

Section 268: Appointment of non-rotational directors

52.1 The Department had objected to any special privilege being conferred on any group of equity shareholders, of appointing non-rotational directors on the Board while retaining their right to elect other directors in the rotational quota, as it gave a double benefit to the group of equity shareholders in question versus the other equity shareholders of the company. It was, however, represented to the Government that the adoption of proportional representation method of electing directors on the Board might cause practical difficulties. The matter was considered further and in view of the need to encourage foreign investors, and also the need for giving representation on the Board to the Financial Corporations which had underwritten, and eventually participated in the equity capital it was decided to permit the appointment of non-rotational directors by foreign collaborators or the Financial Corporations provided they undertook not to seek the election of any other representative of theirs to the Board in the rotational quota.

(Extract from the Seventh Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1965.)

Section 268: Appointment of non-rotational directors by a group of equity shareholders

52.2 Under section 268 any amendment of any provision in the articles or in any agreement between the company and a third party involving the appointment of non-rotational directors on the Board of the company, requires the approval of Central Government.

One of the principles adopted by the Department was that no group of equity shareholders should have the right to nominate non-rotational directors on the Board of a company. If such a right was conferred on any group of equity shareholders, in that case the favoured group would retain its right to vote in electing the remaining directors in general meeting. For obvious reasons, it was not fair that any group of shareholders should have this double benefit. In a few cases, it was noticed that while negotiating for foreign collaboration in companies to be floated in India, the Indian promoters had agreed that the foreign collaborators should have the right to nominate one or more directors on the Board of the Indian company and that such directors should not be liable to retire by rotation. The necessity for conferring such special rights on the foreign collaborators might arise in cases where the foreigners held a minority interest in the equity shares of the company and they considered it necessary that they should have some minimum representation on the Board to protect their interests.

The Department has been averse to this arrangement on the ground that the precedent created by this practice would be difficult to resist, and Indian minorities might, in their turn, claim a similar privilege, and has suggested that in cases where minority interests insisted on some minimum non-rotational representation on the Board of a company, the company might consider adopting the alternative provisions of section 265 according to which the articles of a company may provide for the appointment of not less than two-thirds of the total number of directors of a public company in accordance
with the principle of proportional representation. The adoption of such a system should ensure that each group of equity shareholders of the company had adequate representation on the Board to enable it to protect its interests.

(Excerpts from the Sixth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1962.)

Section 268: Directors—Approval of the Company Law Board u/s 268 of the Companies Act, 1956—Interpretation

52.3 Recently a question arose as to whether the insertion of a new provision in the Articles Association of a company etc. relating to the appointment or re-appointment of a managing or whole-time Director or a director not liable to retire by rotation, as distinct from an amendment of existing provision in this regard in the Articles of Association of the company etc. required the approval of the Company Law Board under section 268 of the Companies Act, 1956. The Board is advised that the approval of Company Law Board is not required under section 268 of the Companies Act, for making a new provision in this regard. The approval of the Company Law Board would be required under section 268 of the Act only when an existing provision in the Articles of Association etc. is amended. Approval of the Company Law Board would however be required under section 269 for the appointment or re-appointment of a person for the first time as a Managing or whole-time director as contemplated by the Section.

(Circular letter No. 1 (126-CIII) dated 3-11-1963.)

Section 269: Clarification regarding Managing Director and Whole-time director

52.4 (A) Whole-time Director: A whole-time director for the purpose of section 269 or 300 is a director rendering his services whole-time to the management of the company and, therefore, he is virtually a managing director though not so designated. A 'director in charge' also stands in the same position as a managing director, even if he does not give his whole time to management of the company.

(B) Technical Director: Where technical personnel are appointed to the Board, it is necessary to consider whether in addition to the technical duties, they are also vested with any power of management. In such cases the approval of the Central Government is necessary under section 269 to their original appointment. In the absence of any data to indicate the dividing line between the remuneration payable to them for rendering technical services and that for managerial services, the entire remuneration payable to them would be deemed to fall within the purview of sections 509 and 310.

(Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1957.)

Section 269: Re-appointment of Managing director

52.5 The reappointment of a managing director which was made before 28th December, 1960 but takes effect after the date requires the approval of the Central Government.

(Letter No. 3/16(1)/51-PR dated 9-3-61.)

Section 269(2): Re-appointment of Managing or Whole-time director

Query

52.6 Section 269(2) requires that in the case of a public company the reappointment of managing or whole-time director for the first time after the commencement of the amendment Act would not have any effect unless approved by the Central Government. The question is: Should a managing director whose term of appointment had
been approved by Central Government for a period of 5 years in 1960, approach the Central Government for fresh approval under this section if he retires in 1961 and being eligible, offers himself for re-appointment and gets re-appointed to the Board. In this case though as a director he had to seek re-appointment after retiring by rotation in view of statutory requirements, there would actually seem to be no cessation of his functions as a managing director.

**Answer**

In such a case a distinction should be drawn between the membership of the Board as a director and the holding of an office as a Managing Director. While the former may be terminated by virtue of section 255, the latter would not suffer any break if the person retires and is then re-elected.

Hence approval of Government would not be necessary where the terms of appointment of a Managing Director had been approved by Government for a period of five years in 1960, if he retires in 1962, and being eligible offers himself for re-appointment and gets re-elected to the Board.

(Letter No. 8(16)(1)/61-P.R. dt. 9-5-61.)

**Section 269: Recommittee of a Managing Director as a director—whether approval is necessary**

52.7 A managing director’s office as managing director does not suffer any break, if he retires as a director under section 255 and is re-elected as a director in the same meeting. Hence, in such a case, the approval of the Government would not be necessary for five years where the term of appointment of managing director has already been approved by Government for that period.

(Ltr. Cir. No. 4 (No. 8(16)(1)/61 P.R. dated 9th May, 1961.)

**Section 269: Appointment of managing director in cases where he is interested in the sole-selling agents**

52.8 Cases came to the notice of the Department in which companies propose to appoint as their managing and whole-time directors, persons who were directly or indirectly interested in the sole-selling agents appointed by the companies concerned. The Central Government views with disfavour this practice which, if allowed to grow unchecked, would have the effect of nullifying the regulatory provisions of the Act in regard to the payment of managerial remuneration to directors. It has accordingly been decided that in future the appointment of managers, managing or whole-time directors, would be approved only subject to the condition that they should not supplement their income, directly or indirectly, by being associated with the sole selling agents of companies managed by them. It has also been decided that the companies should not be allowed to appoint as sole selling agents any company or firm in which the sons or wives of the managing director, etc. have any interest, without obtaining the prior approval of the Central Government. The criteria which would govern the issue of approvals in such cases would be whether the appointment of such selling agents would result in the conferment of indirect benefits to the managing or whole-time directors or the managers as the case may be.

(Extract from the Sixth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1963.)

**Section 269: Branch manager if appointed as a director would be a whole-time director**

52.9 The Department is of the view that when a branch manager who is apparently a whole-time employee, is appointed, as director, he will be in the position of a
'whole-time director' and the appointment would require the approval of the Central Government under section 269.

(Company News & Notes, dated July 1, 1963.)

Section 269: Appointment of Professional persons like Chartered Accountants, Solicitors etc. as directors, Managing Director of Companies

32.10 If an Advocate is validly appointed as Managing Director in accordance with the provisions of the Companies Act, 1956 there will be no bar simply because he is a practising lawyer, although his appointment as such may be in violation of the Bar Councils Act and it appears to be a matter for the Bar Council to take up with the person concerned.

(Letter No. 2/1963-P.R. dt. 31-8-63.)

Section 269: Directors—Whether a whole-time employee is a whole-time director

32.11 In the view of the Company Law Board, a 'whole-time' employee of a company also appointed as a Director of the company is in the position of a 'whole-time' director. The view is equally applicable in the case of an alternate director. Accordingly, the appointment of an employee as an alternate director will be governed by the provisions of sections 314, 269, 309 and 198 of the Companies Act, 1956.

(Letter No. 2/1963-P.R. dated 29-6-1963.)

Section 269

The provisions of section 269 will not apply to a person who has been holding the office of managing director or whole-time director in a private company immediately before its conversion into a public company by virtue of section 43A of the Act, as no fresh appointment is involved. It may, however, be added that these views cannot be extended to sections 198, 256, 309, 310, 311 etc., the restrictions contained in those sections will automatically apply to the company from the date of its conversion or its being deemed to be public company by virtue of section 43A of the Act.

(No. 8/11(12A)/61-P.R. dt. 25th January, 1961.)

Section 269: Clarification

32.12 A managing director is defined in section 2(26) of the Companies Act, 1956 as follows:—

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

It is thus clear that a managing director may be appointed in any one of five ways, namely,

(i) by virtue of an agreement with the company;
(ii) by virtue of a resolution passed by the company in general meeting;
(iii) by virtue of a resolution passed by the Board of directors;
(iv) by virtue of the memorandum of association; and
(v) by virtue of articles of association.

24-25 M of IJ&CA/ND/76
Appointment of managing director under the provisions of articles of association is only one out of the five methods indicated in the Act. If, for instance, a managing director is appointed by a resolution of the Board of directors, there is no need for the existence of any provision in the articles of association for such appointment.

2. Further there is no need to use the designation "managing director" in respect of a person appointed as such, so long as he occupies the position of a managing director by being entrusted with substantial powers of management. There need be therefore no "appointment of managing director" as such.

3. It is presumably for the above reasons that there is no specific provision in the Companies Act for the appointment of managing director. When section 209 speaks of the appointment of a person as a managing director, it contemplates such appointment in any one of the five methods specified above. There is, therefore, no need for a provision in the Act or in the Articles of association for the appointment of managing director as such.

(Extracts from File No. 4[101] Cr. 1[67.]

53. Director's Share Qualification—Number and Vacation of Office

Section 270: Clarification of section 270

Query

Under Section 270 the director is required to take up qualification shares within two months of his appointment. A company does not offer to the public or file a statement in lieu of prospectus with the Registrar within two months of the appointment of a new Director. A director who has joined a new company after incorporation cannot be allotted shares under section 70 because the companies are prohibited from making allotment unless a statement in lieu of prospectus is delivered to the Registrar. The question is whether under such circumstances, the company concerned can allot the shares to a director.

Answer

In the Department’s view a company cannot allot shares even to a director (unless these are the shares subscribed for) without complying with the provisions of section 70. No practical difficulty is, however, likely to arise in such a case because the company will otherwise have some directors from the date of its incorporation and can very well afford either to wait for any addition thereto or file a statement in lieu of prospectus.

(Company News & Notes, dated July 1, 1963.)

54. Restrictions on number of Directors

Section 270: Directorship of more than 20 companies—choice to be made

Query

If a person is a director of 20 public companies and if a private company of which he is a director becomes public under section 48A, will he cease to be director of that company, if he does not resign his directorship in any other public company? Will he not be hit by the provisions of sections 270 and 279?

Answer

If a person is already a director of 20 public companies and if a private company of which he is a director has become a public company under section 48A, then, he will have to give up the directorship of one of these companies.

(File No. 2/2/61-E.R.)
A private company simpliciter cannot circumvent the provisions of section 284 of the Act in the guise of including additional grounds in its articles for the vacation of office by Directors as contemplated in section 283(3). Whenever any such additional ground included in the articles virtually results in the removal of a Director, the power in this behalf can only be exercised by the company in General meeting as contemplated by section 284. Any power given in the articles to the Board of Directors in the matter would not be effective in law in view of section 9 of the Act.

[Letter No. 12/14/283]
CHAPTER XVII

56. BOARD OF DIRECTORS—MEETINGS—POWER.

Meetings of Board

Section 283: Clarification regarding frequency of meetings

56.1 If one meeting of the directors is held on the 15th January, the next meeting can be held any time before 30th April.

Section 284: Clarification

56.2 The word 'month' in this section means calendar month, reckoned according to the English calendar. While it is true that this section, if strictly interpreted, would require that meetings of the Board should be held within a period of two months from the last day of the month in which the previous meeting was held, this Department would have no objection if a meeting is held once every quarter, and if at least four such meetings are held in a year.

Section 285: Meetings of the Board—whether a member of a company can obtain a copy of or inspect the minutes of such meetings

56.3 The Companies Act contains no provision either specifically permitting or prohibiting inspection by or supply of copies to, the shareholders of a company of the minutes of the meetings of the Board. This Department is of the view that unless the articles of association provide to the contrary, a shareholder has no right of inspection or of obtaining copies of the minutes of its Board meetings.

Section 286: Board Meetings—clarification regarding holding of

56.4 The Department would not raise any objection if an adjourned Board meeting is held on a public holiday for the convenience of the directors although it considers that an original meeting should also normally be held only on a working day.

Section 287: Interval between Board Meetings—Clarification regarding

56.5 There is a clear distinction between "every" and "each". In modern usage "every" diverts attention chiefly to the totality, "each" chiefly to the individual's composing it. In view of this distinction, the expression "every three months" occurring in Section 285 should naturally mean three months taken together. Provisions of Section 285 will be fulfilled if the Board of directors of a company meet on the first of January, or the 31st of March, or any date in between. Next three months should naturally comprise April to June. It is open to the Board of directors to meet on any date during three months from April to June. Similarly the Board may at least meet on a particular date during July to September and so on. In section 285 as it stands, there is no scope for making backward calculation.
57. Quorum for meeting

Section 287: Quorum in cases where directors are interested

Query

Interested directors will not be taken into consideration for the "quorum" of the Board meeting as per provisions of section 287. But where at any time the number of interested directors exceed or is equal to 2/3rd of the total strength of the number of remaining directors, i.e., the number of uninterested directors shall be quorum. In a contingency where all the directors are interested (or more than 2/3rd of them) in a contract, can anyone of them sign a contract or for the affixation of common seal of the company? What is the remedy in such a contingency?

Answer

The remedy in such cases seems to increase the strength of the Board by appointing disinterested directors or to co-opt or appoint additional directors if so authorised by the articles who are not interested in the said contract. If this is not found practicable, it would be desirable to place the proposed contract before the general meeting for consent.

(Letter No. 6[19/331-P.R. dh. 9-5-61.)

58. Adjournment of meeting

Section 288: Clarification on holding of Board meetings

Query

58.1 Section 288 of the Companies Act, 1956 states that the adjourned Board meetings should be held on a working day. But the section specifically does not provide for whether original Board Meetings are necessarily to be held during the working day. In view of this the question is whether a meeting of the Board of Directors of the company can be held on a day not being a working day.

Answer

The Department would not raise any objection if an original Board Meeting is held on a public holiday for the convenience of the directors although it considers that an original Board meeting should also normally be held only on a working day.

(Letter No. 3[11/433-P.R. dh. 2-4-63.)

Section 288: Holding of original Board meeting on Public holidays—Clarification regarding

58.2 A point was raised that in terms of section 288 an original Board meeting could not be held on a public holiday except where the articles of a company provided otherwise.

The view of the Company Law Board in the matter is that section 288 does not prohibit a company from holding its original Board meetings on public holidays unless its articles of association provide otherwise. The Company Law Board would not, therefore, object if a company holds the original Board meeting on public holidays.

(Company News & Notes, dated August 1, 1954.)
39. Board’s Powers

Section 292: Board’s Powers to make loans

59.1 The question in issue was whether the opening of a current account by a non-banking company with a banking company amounted to the making of loans within the meaning of clause (e) of sub-section (1) of section 292 of the Companies Act, 1956 which requires that the Board of Directors of a company shall exercise the power of making loans on behalf of the company only by means of a Resolution passed at the meeting of the Board. The second proviso to sub-section (1) which is a deeming provision provides for two types of cases viz. (i) the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise and (ii) the placing of money on deposit by a banking company with another banking company on such conditions as the Board may prescribe. Under the proviso, the former is not deemed to be borrowing of money within the meaning of clause (d), and the latter is not deemed to be the making of loans by a banking company within the meaning of clause (e) of sub-section (1) of section 292.

2. The argument was that since, under the first part of the proviso, the acceptance by a banking company of deposits from the public repayable on demand does not amount to a borrowing of money by the bank, the same deposit of money by the depositors, whether an individual or a non-banking company, with the bank would not amount to the making of loans. The department’s view was that the placing of money on deposit by a non-banking company with a banking company is not governed by the second part of the second proviso. That view has been confirmed by the Legal Department of the Reserve Bank of India. The Legal Department has examined the question in an exhaustive manner and has held that the better view seems to be that the opening of a current account with a bank by a non-banking company as amounting to lending of money by such company which would require a Resolution passed at a meeting of the Board and not by circulation. The case of Ram Rattan Guptas referred to in the Legal Department’s note has been summarised at p. 254, Item 298 of the Supreme Court Notes dated 15-9-1965 (reported in AIR 1966 SCR 495).

***that having regard to the second proviso to section 292(1) [especially the latter part] the opening of a current account by a non-banking company with a banking company by placing moneys on deposit with the banking company amounts to a making of loan by the non-banking company within the meaning of clause (e) of the said sub-section.

“Extracts from File No. 8/56 (292) 65.”

Section 293: Restrictions on Powers of Board

59.2 The question for consideration is whether the Federation of Indian Chambers of Commerce and Industry has to comply with the provisions of section 293 of the Companies Act in connection with its proposal to raise additional resources by issue of debentures. It is stated that the Federation is a company limited by a guarantee to which a licence has been granted under section 25.

2. Section 293 in terms places a limitation on the powers of the Board of Directors of a company to borrow moneys. It states inter alia that the amount to be borrowed should not exceed the aggregate of paid-up capital of the company and its free reserves. The argument that is advanced is that the Federation has no paid-up capital, and no free reserves and so provisions of section 293 would not apply to that company. This argument is not sustainable. If a company has no such capital or free reserves, it
means that the amount of such capital or reserve is arithmetically zero and in consequence the Board of Directors cannot borrow at all. This interpretation is not inconsistent with the scheme of the Act relating to companies granted licence under section 25. There is nothing in section 25 to indicate that the provisions of section 293 would not apply to a company coming within the scope of that section. On the other hand, it is expressly stated in subsection (2) of that section that the company shall be subject to all the obligations of limited companies, imposed by the various provisions of the Act.

3. In view of above, if it is intended that the Federation should not be restricted by the provisions of section 293, the proper course would be to issue an order under section 25 exempting that company or all companies governed by that section from the provisions of section 293 aforesaid.

(Estimates from File No. 382/69-GCLH.)

Section 293: Contribution to charity in shares.

59.3 The provisions of section 293(1) of the Companies Act require the Board of directors of a public company, or of a private company which is subsidiary of a public company, to obtain the consent of the company in general meeting, in case the amount of contribution made by the company to any charitable and other funds in any financial year exceeds the ceiling prescribed in clause (e). In this connection, it has been brought to the notice of this Department that there is a tendency among some companies to make contributions in the form of fully paid-up shares (held by them in other companies) instead of in cash. Such a practice has been particularly noticed in a prominent and well-known group of companies which generally donate in the shape of shares to their own Charity Trusts. Although no objection need be taken to this arrangement so long as the amount represented by the shares donated does not exceed the prescribed ceiling and the statutory requirements are duly complied with in this regard, this Department would like the Registrars to be vigilant in regard to such donations in kind so as to see that the statutory ceilings are not circumvented by intentional undervaluation on the part of companies. It may be mentioned in this connection that the quantification of any donation in kind is necessary for the purpose of disclosure in the profit and loss account. There should, therefore, be no difficulty in examining whether or not the provisions of section 293(1)(c) of the Companies Act have been duly complied with in such cases.

(Gazette Order No. 1/15/69-PR dated 10th March, 1960.)

Section 293: Restrictions on the powers of the Board—creating of mortgages

59.4 If a company mortgages the whole or substantially the whole of its undertaking for obtaining loans or other financial assistance, it need not comply with the provision of section 293(1)(a) of the Act, but if it is a unincorporated mortgage the said section would be attracted. In this view of the matter the question of a conflict between the provisions of section 293(1)(a) and section 292(1)(b) necessitating an amendment of section 293, may not arise.

(Letter No. 317/2/69/PR dated 21-7-1964.)

Section 293: Board's power of borrowing—clarification of subsection (1)(d)

Query

59.5 The second Explanation to section 293 creates a problem in accounting. Temporary loans are defined to exclude short term loans, cash credit arrangements of short term, etc. with a condition that it does not exclude loans raised for the purpose of
financing expenditure of a capital nature. In the day to day business of a modern company the short term cash credit facility or any short term loan is merged with the funds of the company and in the normal course of the purpose these loans have been utilised. To strictly comply with this section the company should deposit in a separate bank account these various kinds of short term loans and to issue cheques only for expenses of revenue nature from the respective accounts. It is presumed that the intention of the section is not of this nature but refers to only short term loans raised for the specific purpose of capital expenditure like cash credit loan to accommodate the purchase of machinery etc. This may please be clarified.

The present procedure in some of the companies regarding the borrowing limit is to specify the limit in terms of the multiple of paid-up capital but according to the amendment it is stated that the total amount upto which money may be borrowed should be specified in the resolution. It is not stated if the existing companies have to pass a new resolution specifying the limit in terms of definite figures, and if so the period within which it has to be complied with.

Answer

Section 293(1)(d) as amended does not prohibit the Board from incurring loans without any limit if these loans are temporary loans in the sense defined in Explanation-II. As regards loans other than temporary loans, if the Board desires to borrow moneys, it can do so only when the amount intended to be borrowed together with the moneys already borrowed does not exceed the aggregate of the paid-up capital of the company and its free reserves or where the limit is exceeded, by obtaining the consent of the company in a general meeting. Thus, if the whole or part of the loan intended to be borrowed is raised for the purpose of financing expenditure of a capital nature, the ceiling specified in section 293(1)(d) will apply. As the loan for financing expenditure of a capital nature is raised only occasionally it is felt that it is not difficult to separate such loans from temporary loans.

(Letter No. 8/16(1)/PR.dl. 95-51)

Section 293: Board's power of borrowing

Query

59.6 According to this section, the Board of Directors must not borrow in excess of the aggregate of paid up capital and free reserves without the consent of the company in general meeting. The amendments made in 1960 state that a limit must be specified by the company in general meeting for the purpose of such borrowing. Prior to the amendments, many companies have passed resolution giving authority to their directors to borrow without any limit whatsoever. Will such resolutions become automatically invalid with effect from 28-12-1950 till such time as these companies cause resolutions to be passed by them in general meeting fixing a limit for the borrowings?

Answer

Though the amendments introduced in section 293 of the Companies Act, 1956 by the Companies (Amendment) Act, 1960, have no retrospective operation, yet, if the terms contained in the resolutions passed before the coming into force of the Amendment Act are in contravention of the amended provisions they cannot be acted upon prospectively. Moneys already borrowed by a company prior to the 28th December, 1960 will not be affected by the amendment made in section 293 by the Companies (Amendment) Act, 1960 which came into force on 28-12-1960 but, after the date, the Board of directors can borrow on behalf of the company only in accordance with the provisions of 25-26 M of I/JACAND/76.
section 293(1)(d) read with explanation I and II thereunder. Resolutions passed at a general meeting of the company prior to the 28th December, 1960, do not give any authority to the Board to borrow money without any limit whatsoever after the 28th December, 1960.

(Letter No. 8/16(1)-PR dt. 9-5-61.)

Section 293: Boards Power of borrowing Clarification of sub-section (1)(d) and (5)

Query

39.7 Whether transactions relating to purchase of machinery on deferred payment basis are covered by the expression "borrow" and "debt" used respectively in sub-section (1)(d) and sub-section (5)?

Answer

In the view of the Department, the term 'borrowings' in section 293(1)(d) does not include debts on account of purchase of machinery on deferred payment.

(Letter No. 8/16(1)-61-PR dt. 9-5-61.)
60.1 Will it be legal for a company to make contribution to political parties even if there is no specific object clause in its Memorandum for the purpose, in view of the insertion of this new section?

Answer

This section does not empower any company to make any contribution to any political party or for any political purpose, to any individual or body, in the absence of provisions to that effect in the ‘objects’ clause of its Memorandum of Association.

(Letter No. 8/16(1)/61-PR dt. 8-6-61.)

Section 293A: Expenditure incurred by Companies on advertisements in souvenirs issued by the political parties

60.2 The question of the applicability of the provisions of Section 293A of the Companies Act, 1956 to the expenditure incurred by companies on advertisement in souvenirs issued by the political parties has been considered by this Department. The Department is of the view that in such cases, the applicability of the provisions of Section 293A of the Act would depend upon the facts of each case as to whether there is a genuine *quid pro quo* in respect of the advertisement or whether it is a donation in the guise of advertisement. In case it is held on the facts of a particular case that the expenditure incurred on such advertisements is a donation in the guise of advertisement, the provisions of Section 293A(2) of the Companies Act, 1956 shall be applicable.

(Letter No. 8/20(293A)/69-CL.V dt. 15-2-70.)

Section 293A: Expenditure incurred by companies on advertisements in souvenirs issued by political parties

60.3 As regards the specific point raised in your letter, it may be stated that Section 293A (1) of the Companies Act, 1956 does not prohibit advertisements in newspapers, periodicals or souvenirs. The law does not make any distinction between advertisements in the newspapers, periodicals or souvenirs, whether published by political parties or anyone else. A political party or its branches may publish any number of souvenirs on any occasion including the election period and there is no prohibition under the Companies Act against giving advertisements by a company to such souvenirs. The question of issuing advertisements to newspapers, journals, souvenirs or other publications, is essentially a matter for the internal management of the company and it is left to the wisdom and judgment of the latter to decide on the number and frequency of advertisement which a company would like to give in the interest of its business. In order to ensure that any such advertisements do not amount to contributions to political parties or for political purposes, it is necessary that the amount paid for each such advertisement should be reasonable and the advertisements are in the interests of the business of the company.

(Letter No. 8/20(293A)/69-CL.V dt. 13-1-71 Circular No. 10/2 dt. 10-5-72.)
Section 293B: Clarification of section 293B as inserted by Companies (Amendment) Act, 1971 with effect from 3-12-1971

60.4 Unlike the previous section 293B, which was inserted by the Companies (Amendment) Act, 1962, and which remained in force only during the period of operation of the proclamation of Emergency, the present provision is a permanent one and enables companies to make contributions to the National Defence Fund and other similar Funds in excess of Rs. 2,500 or 5% of net profit without going through the formalities of resolution of the general body of the company. The section also authorises persons or other authorities exercising the powers of the Board of directors to make the contributions.

Since the new section is to be deemed to have come into force on the 3rd December 1971 (the day on which Emergency was proclaimed), donations made by companies from that date are covered by the measure.

(Company News & Notes, issue of November, 1971.)

Section 293B: Funds approved under section 293B(1)

Notification One

60.5 In pursuance of sub-section (1) of section 293B of the Companies Act, 1956 (1 of 1956), the Central Government hereby approves the Funds mentioned in column (2) of the Schedule annexed hereto and constituted by the Government of the State mentioned in the corresponding entry in column (3) thereof, as Funds to which contributions may be made for the purpose of national defence.

The Schedule

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of the Fund</th>
<th>Name of the State</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Chief Secretary to the Government of Andhra Pradesh, Hyderabad, National Defence Fund.</td>
<td>Andhra Pradesh</td>
</tr>
<tr>
<td>2.</td>
<td>The National Defence Fund, Andhra Pradesh State Peop'les' Committee</td>
<td>Andhra Pradesh</td>
</tr>
<tr>
<td>3.</td>
<td>The Bihar State National Defence and Jawans' Welfare Fund</td>
<td>Bihar</td>
</tr>
<tr>
<td>4.</td>
<td>The Chief Minister's Defence Fund, Kerala State</td>
<td>Kerala</td>
</tr>
<tr>
<td>5.</td>
<td>The National Defence Fund, Madras</td>
<td>Madras</td>
</tr>
<tr>
<td>6.</td>
<td>The Chief Minister's Defence Services Welfare Fund, Rajasthan</td>
<td>Rajasthan</td>
</tr>
<tr>
<td>7.</td>
<td>The Chief Minister's Defence Forces Welfare Fund, Lucknow</td>
<td>Uttar Pradesh</td>
</tr>
<tr>
<td>8.</td>
<td>The Chief Minister's Defence Purposes Fund of Uttar Pradesh, Lucknow</td>
<td>Uttar Pradesh</td>
</tr>
<tr>
<td>9.</td>
<td>The Chief Minister's West Bengal Account National Defence Fund</td>
<td>West Bengal</td>
</tr>
</tbody>
</table>

(Notification No. F.8/39(293B)/62-PR dated the 21st February, 1963.)

Notification Two

In pursuance of sub-section (1) of section 293B of the Companies Act, 1956 (1 of 1956), the Central Government hereby approves the "Gujarat Chief Minister's Sainik Fund" constituted by the Government of the State of Gujarat as a Fund to which contributions may be made for the purposes of national defence.

CHAPTER XIX

61. SOLE SELLING AGENTS

Section 294: Appointment of Sole Selling Agents

61.1 (i) Strictly speaking, the annual general meeting in respect of any financial year ending before 28-12-1960 (Date of commencement of the Companies (Amendment) Act, 1960) which had not been held already, will have to be held within 6 months of the close of the financial year. However, 3 months' extension may be permitted by the Registrars as a rule in such cases on application for extension of time being made to them. No prosecutions be launched provided the annual general meetings are held within a period of 9 months from the close of the financial year.

(ii) Appointment of sole selling agents made before the commencement of the Companies (Amendment) Act, 1960, will be governed by section 294 as it stood before the Amendment Act and as such, the appointments must be placed by the company in general meeting within a period of 6 months from the date of appointment.

(Letter No. 28/16(1)/PR dt. 23-1-61.)

Section 294: Applications for approval of appointment of sole selling agents in certain cases

61.2 It would appear from reports received by the Department that some companies have been resorting to the practice of appointing distributors for the sale of their goods on a principal to principal basis with a view to evading the provisions of section 294. In this connection, the Department has made it clear to all concerned that, whether or not the appointment of distributors would fall within the ambit of section 294 would depend on the distributors' contractual relationship between the parties and on the terms and conditions of the appointment. In appropriate cases, one would have to go behind the words of the relevant agreements in the context of the actual practices followed by the parties concerned in order to discover the true nature of the functions performed by persons described as distributors in the relevant contracts. Where, for instance, a person described as a distributor performs in fact, the functions of a sole selling agent, the appointment would attract section 294 of the Act, notwithstanding his description in the deed of contract. While this is undoubtedly the intention of Parliament when section 294 was amended in 1960, in practice, the judgment in a disputed case, would ultimately depend on whether a court of law would base its finding on a formal and legalistic view of the terms of the contract or on the commercial or mercantile realities underlying the functions which the person concerned would de facto be performing, in the circumstances of a particular case.

(Extract from the Sixth Annual Report on the Working and Administration of the Companies Act, 1956-Year ended March 31, 1962.)

Section 294: Appointments of sole selling agents—Some undesirable practices

61.3 (a) Companies in the same managerial group, having had no past experience of marketing of the goods produced by the companies were appointed as sole selling agents;

(b) Sole selling agents were designated and described as sole distributors in order to evade the provisions of section 294 of the Act;
(c) Overall commissions to sole selling agents were paid, even (where territorial distribution arrangements already existed), for no significant services rendered by the former;

(d) Large uncollected balances were maintained with the sole selling agents resulting in their indirect financing at the expense of the companies;

(e) In several cases, sole selling agency agreements were approved at general meetings consisting largely of promoters and their friends and associates before the public issue of shares, thereby denying an opportunity to the outside shareholders, to consider the terms and conditions of these agreements.

(Fragments from the Sixth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1962.)

Section 294: Appointment as sole selling agents of persons, firms or companies related to or associated with the managing director

61.1 It had been decided that the managing directors/whole-time directors or managers should not be allowed to supplement their income directly or indirectly by associating themselves with the sole selling agents of the companies managed by them.

It has also been decided that the companies should not, except with the approval of the Central Government, be allowed to appoint as sole selling agents, any company or firm in which the sons or wives of the managing directors, etc., had any interest. This principle was extended to the participation of the unmarried daughters of managing directors, etc., in the sole selling agencies.

Further, there are some other cases where the company had, instead of appointing ‘sole selling agents’, appointed ‘selling agents’, ‘distributors’ or ‘stockists’. This device was adopted clearly to circumvent the provisions of section 294 and the managing directors, etc., were interested in such selling organisations, through their close relatives. In these cases also, while approving the proposed appointments of managing directors, etc., a condition was imposed that the remuneration payable to them would be reduced to the extent of the share in the net profits of the ‘selling agents’, ‘distributors’ or ‘stockists’ in the name of the managing director himself or his wife or sons or unmarried daughters if any.

(Fragments from the Seventh Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1963.)

Section 294: Clarification regarding compliance of requirement of sub-section (2) of section 294

61.5 Sub-section (2) of section 294 provides that the Board of directors of a company shall not appoint a sole selling agent for any area except on the condition that the appointment shall cease to be valid if it is not approved by the company in the first general meeting held after the date on which the appointment is made.

The Bombay High Court has, in the case of Aranbee Manufacturing Corporation V. Bright Boils Private Limited (1957) 37 Comp. Cas. 568 (Bombay) held that if any appointment of a sole selling agent is made by a Board of directors without such a condition, namely that the appointment shall cease to be valid if it is not approved by the company in the next general meeting of the company as is mentioned in sub-section (2) of section 294, the same would be contrary to the said provisions and would be void ab initio. The Court has further held that the view that, if the agreement appointing a sole selling agency was silent as regards the condition mentioned in sub-section (2)
of section 294, the said condition should be deemed to have been incorporated in that agreement is not correct. The Department has examined the implications of the aforesaid decision and it has been decided that the sole selling agency agreement which does not incorporate the aforesaid condition prescribed in sub-section (2) of section 294 ibid will be held "ab initio" and will continue to remain so even if it is approved by the company in the first general meeting held after the date on which the appointment is made as an agreement which is invalid from the start cannot be treated as valid if the general meeting approves it. The aforesaid decision of the Bombay High Court may be brought to the notice of all concerned and the need for incorporation in the sole selling agency agreements of the condition prescribed in sub-section (2) of section 294 ibid, may be emphasized to all the companies to avoid any hardship that may arise to them in future.

(Circular No. 12(11)-CL.VI/86 dated 6th November, 1968.)

Section 294: Involvement of managerial personnel in the selling agency arrangements

61.6 Pursuant to the gradual abolition of the managing agency system, it has been observed that there is a growing tendency on the part of managing/whole-time directors to appoint such organisations as selling agents in which they are interested either directly or through their family or both. This is not only a device to supplement their own income by other means but it also amounts to expropriating profits of companies where no selling agents are otherwise required and also for circumventing the provisions of sections 198 and 309 of the Act. With a view to keeping a check on this undesirable trend; the Board has been following the guidelines as under:

(a) where the involvement of the proposed appointee either through himself or through his family members in the selling agency is quite substantial, the Board does not approve the said appointment;

(b) where, however, the interest of the proposed appointee and/or his family members in the selling agency is nominal, then the Board approves the appointment but with certain conditions to safeguard the interest of the company;

(c) where it is found that the appointment of the selling agency company as also the person proposed as managing or whole-time director is essential for the efficient conduct of the business of the company, the Board while fixing his managerial remuneration, takes into account the monetary benefits which the appointee concerned directly or indirectly will be getting from the selling agency.

(Circular No. 12(11)-CL.VI/86 dated 6th November, 1968.)

Section 294AA: Sole selling Agents approval of Central Government

Query

61.7 The existing appointment of Sole selling Agents already approved by members in General Meeting: whether the approval of the members is again required before applying to the Central Government for approval?

Answer

If the authority of a special resolution is already in force, all that is required is only the additional approval of the Central Government.

(Letter No. 0/2(Misc)75-CL VII dt. 6-6-75.)
Clarification under the Companies (Appointment of Sole Agents) Rules, 1975

Suggestion

S.I. 8 S. No. 17 of the form of application for approval of appointment of Sole Agents requires the amount of expenditure incurred by the party to be appointed as sole agent, for the three financial years in marketing the product to be stated. It is not clear whether a company has to take into account expenses incurred by the sole agents in marketing similar products or the total expenses incurred by the sole agency of other companies also.

The terms of agency commission should not be linked with expenditure incurred by the agents but the quality of service and his professional competence.

The foreign agent would not be prepared to disclose expenses incurred by him during the last three years, administrative set up etc. Instead they would decline to take up the agency as the commission earned by him from the Indian company may be only a small fraction of the total income. If these conditions are not waived, it would present difficulties in finding selling agencies in foreign markets.

Secretary Shri Ray's reply

The Department is following quite a liberal policy in this regard. It is not the whole expenses which is taken into account as the company will be dealing in all sorts of goods and might be having its own manufacturing programmes. Only expenses for the product for which the agency has been created should be taken into account.

So far as exports are concerned, subject to the RBI clearance the Dept. has been allowing selling agencies even where the commission is quite high. Unless expenses are given the Dept. would not be in a position to know the quantum of commission paid. The problem in the export market is appreciated and the Department is not taking a rigid view in this regard.

[Reply given by Secretary Shri Ray at Meetag of Punjab, Haryana & Delhi Chamber of Commerce]
CHAPTER XX

62. LOANS TO DIRECTORS

Section 295: Loans to Directors, etc. Applications for approval

62.1 The Central Government has not prescribed any Form in which an application seeking approval of the Government under this section is to be made but every applicant is required to furnish the undermentioned information and documents to the Department in order to enable expeditious disposal of the application:

(i) amount of loan;
(ii) particulars of parties to whom the money is proposed to be lent;
(iii) the nature of business, if any, carried on by the borrower;
(iv) the precise period within which the loan is to be recovered;
(v) the rate of interest proposed to be charged;
(vi) the nature and value of security offered by the borrower;
(vii) the circumstances in which and the objects for which the loan is sought by the borrower;
(viii) the grounds on which it is considered expedient to invest company’s money in this manner rather than utilise the funds in any other way;
(ix) the sources from which the lending will be financed;
(x) whether the transaction in question attracts the provisions of section 570 and if so, whether the lending company has passed the requisite special resolution;
(xi) composition of the Board of directors of both the lending and borrowing companies;
(xii) one copy each of the audited balance-sheet and profit and loss account for the latest three financial years of both the lending and borrowing companies; and
(xiii) any other information having a bearing on the loan transaction.

Where the application relates to giving of guarantee or providing security, the company should also furnish the following additional particulars:

(i) the nature of the relationship between the lender and the borrower; and
(ii) the reasons for giving the proposed guarantee or security and in what way it would be in the interests of the applicant company.

Each application is considered on its merits having regard to the following points:

(a) purpose for which loan is to be granted;
(b) guarantee given or security provided;
financial position of the borrower and the lending company; and

other relevant facts and circumstances of the case, such as:

(i) whether the lending company possesses surplus funds to lend;
(ii) whether the loan is secured or not;
(iii) whether the rate of interest offered on the loan is reasonable;
(iv) whether loan is for a definite period;
(v) whether the general financial position of the lending company is satisfactory;
(vi) whether the individual borrower or the borrowing company or firm, as the case may be, is fully solvent; and
(vii) if the borrower is a company, whether it has a good profit record.

(Excerpt from the Deptt.'s publication entitled "Guide for Filing Forms and Making Applications").

Section 295: Clarification of section 295(2)

62.2 The question whether any loan made, guarantee given or security provided by the exempted companies mentioned in subsection (2) of section 295 and subsection (2) of section 370, as the case may be, would require the approval of the Company Law Board for the continuance of such loan, guarantee or security after the exemption provided has ceased to be operative, has been reconsidered and this Department has now been advised that the provisions of section 295 or 370, as the case may be, would not be applicable to the loans made, guarantee given or securities provided by the exempted companies even though they cease to be so and the compliance of section 295 or 370, as the case may be, would not be required, if such loans, guarantee or securities are continued after the exemption under subsection (2) of section 295 or subsection (2) of section 370 of the Act, as the case may be, ceased to exist.

(Circular No. 13/32/61-V dated 24th February, 1971.)

Instructions prohibiting the Public Limited Companies from exposing themselves to the risk of standing surety on behalf of accused persons.

62.3 Recently a case came to the notice of Government where a director of a public limited company stood surety for an outsider against whom prosecution was launched by Government and a warrant of arrest was issued by a Court in this Country. The matter has since been examined in detail and this Department is of the view that the action of the Company's director in furnishing the company's surety to an outsider i.e., one not connected with the company's administrative structure is ultra vires the company. The directors of companies are hence advised that they should not expose themselves and the companies of which they are directors to the risk of standing sureties in the circumstances described for accused persons. This Department is of the view that by doing so the director may be held personally liable for having acted outside the scope of the company's authority and in a manner prejudicial to the interests of the companies concerned.

(Circular No. 37/75 dated the 17th January, 1975 on File No. 14/5/74-GI, V.)

Section 295(1)(c): Clarification

62.4 A doubt arose whether the provisions of clause (c) of sub-section (1) of section 295 of the Act would affect the lending by the Reinvestment Corporation for Industry Limited to the State Bank of India inasmuch as the managing director, manager, etc.,
of the State Bank of India might be regarded as being accustomed to act in accordance with the directions and instructions of its Chairman who was a director of the Refinance Corporation. It was arguable that the managing director of the State Bank of India could not be regarded as being accustomed to act in accordance with the directions or instructions of the Chairman of the State Bank in the latter's capacity as one of the directors of the Refinance Corporation.

The Ministry of Law, to whom the case was referred, Department has been advised as follows:

"In the present case, the Managing Director or Manager of the State Bank (Borrowing company) is accustomed to act in accordance with the directions of its Chairman and such Chairman happens to be a Director of the Refinance Corporation (lending company). Managing Director or Manager of the borrowing company may thus be said to be accustomed to act in accordance with the directions of a director of the lending company. This would attract the provisions of clause (c) of sub-section (1) of section 299 of the Act with the result that any loan granted by the Refinance Corporation to the State Bank in the circumstances under consideration would require the previous approval of the Central Government as contemplated by the said section. It appears that none of the exceptions mentioned in subsection (2) of the section is applicable in the present case."

(File No. 7233-Cl.-V1613)
CHAPTER XXI
63. INTERESTED DIRECTORS
Board's sanction for certain contracts

Section 297: Implication of proviso to sub-section (1)

Query

63.1 A new proviso has been added to sub-section (1) of section 297, by the Companies (Amendment) Act, 1974, namely:

"provided that in the case of a company having a paid-up share capital of not less than rupees one crore no such contract shall be entered into except with the previous approval of the Central Government".

In view of the fact that this new proviso has been added only to sub-section (1) of section 297, it is opined that it is relevant only in respect of those cases for which approval of the Board of directors is necessary. In other words, those cases which do not require the approval of the Board will not require the approval of the Central Government. Moreover, under subsection (3) of section 297, notwithstanding anything contained in sub-section (1), a director, relative, firm, partner or private company may in circumstances of urgent necessity enter into any contract with the company for the sale, purchase of goods, etc., even if the value of such goods exceeds Rs. 5,000 but in such a case the consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into. In respect of such cases also where Board's approval is obtained after entering into the contract, it is presumed that the approval of the Central Government will not be necessary. For instance, in the case of a company having a paid-up share capital of not less than rupees one crore, where a contract has been entered into under subsection (3) which is later ratified by the Board, approval of the Central Government will not be necessary.

Answer

The presumption that proviso to sub-section (1) of section 297 introduced by the Companies (Amendment) Act, 1974 is relevant only in respect of those cases for which approval of the Board is necessary, is not correct. As far as companies having a paid-up share capital of not less than Rs. 1 crore are concerned, no contract shall be entered into except with the previous approval of the Central Government. The only exception to this requirement is the one provided for in sub-section (2) of this section. The relaxation provided for in sub-section (3) of this section does not apply in the case of companies having a paid-up share capital of not less than Rs. 1 crore as they will be covered by proviso to sub-section (1) and the category of cases envisaged by sub-section (3) are not supposed to arise in their case.

(Letter No. 81/73-CL.V, dt. 29-3-75.)

Section 297: Companies (Amendment) Act, 1974—Clarification regarding

63.2 Section 297(1) provides that consent of the Board of Directors of a company shall be necessary for a contract for the sale, purchase or supply of any goods, materials or services entered into by the company with a director of the company or his relative or
a firm in which such a director or relative is a partner. The proviso to this sub-section requires that in the case of a company having paid-up share capital of not less than Rs. 1 crore, no such contract shall be entered into except with the previous approval of the Central Government. Services of the nature of a legal practitioner are not obtained on the basis of say lowest tender but on account of their professional expertise irrespective of the cost involved. Such services cannot be bracketed with a contract for supply of goods or materials. The Department's view is that these services fall outside the scope of Section 297 of the Act and the scope of the section does not extend to supply of professional services of the nature given by firms of solicitors and advocates, etc.

2. A question has also been raised whether proviso to Section 297(1) applies to a contract of employment of a director as managing or whole-time director. In this connection, it is pointed out that it is a basic principle of Company Law that directors are agents or trustees and they stand in fiduciary position not only to the company but also to members and creditors. This position is not changed merely by entrusting them with additional responsibilities for managing the affairs or rendering of services of a professional nature though they are remunerated for these services in accordance with the Articles of Association of the company subject to the provisions of the Companies Act. 'Supply of service' is not the same as 'rendering of personal service' as a director or managing or whole-time director. Furthermore, there are specific provisions in the Companies Act for regulating such appointments. Therefore, the Department's view is that proviso to Section 297(1) does not apply to the contract of employment of a director as managing or whole-time director.

Section 297: Clarification of section 297

63.3 The provisions of section 297 would not become applicable to contracts entered into by the company with a dealer on a principal to principal basis, unless the contract is in respect of goods which the dealer sells or supplies on an agency basis viz-a-viz the private company or firm manufacturing the goods supplied.

The limit of Rs. 5,000 in sub-section (2) of section 297 applies to the aggregate of transactions over a calendar year as between two parties contracting, one of which is the company, making the purchase or effecting a supply, and the other a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, as the case may be, in respect of contract or contracts for purchase or supply between them.

Section 297: Meaning of the words “for cash” in subsection (2)

Query

63.4 Whether contracts entered into for cash at the prevailing market prices are exempted from the purview of the section without any limit. If so, whether immediate payment by cheque against purchases is allowable. As payments as per Income-tax Act exceeding Rs. 25,000 cannot be made except by cheque.

Answer

A cheque may be treated as the equivalent of a cash payment for the purpose of this provision.

(Letter No. 3(2)(MoR)75-CL.V. dt. 6-6-75.)
Section 297(I): Clarification

63.5 The proviso under sub-section 2 of section 297(1B) limits the value of contracts to Rs. 5,000. It is presumed that this limit is applicable only to contracts for purchase and supply of goods or services in which the Director, relative etc. regularly trade or does business and not for purchase of goods for cash. Government’s approval should not be necessary where contracts are for items in which both the parties regularly trade or do business. Also limit laid down under the proviso should be raised to Rs. 50,000 in any year.

Reply by Shri K. K. Ray (Secretary)

The presumption is correct. The proviso will apply only to contracts involving purchase or supply of goods or material or services in which the Director/relative etc. regularly trade or does business. In regard to raising of the limit from Rs. 5,000 to Rs. 50,000 it would need an amendment of the Act. The suggestion that dispensing with the approval requirement where the contracts are for items in which both the parties regularly trade or do business, is not acceptable as it goes beyond the provisions of the Act.

[Reply by Secretary Shri Ray at a meeting of Punjib, Haryana & Delhi Chamber of Commerce & Industry, Dec. 6, 1975.]

Subject: Approval under proviso to section 297(I) of the Companies Act, 1956—vis-a-vis Section 314(1B) or Section 294AA of the Act—

63.6 I am directed to say that instances have come to notice in which applications were made simultaneously for seeking approval of the Central Government under the proviso to section 297(I) of the Companies Act, 1956 as well as under other provisions viz. Section 269 or Section 294AA or Section 314(1B) of the Act in respect of same contracts/transactions. The need for according approval under both the sections of the Act has been examined in the Department. It is felt that the provisions of section 297 are of general nature and those of sections 269, 294AA and Section 314(1B) are of special nature. In view of this it has been decided in the interest of administrative convenience and also to avoid multiplicity of applications that where facts and circumstances of a case require approval of the Central Government under Section 269 or section 314(1B) or Section 294AA and also under Section 297 approval under Section 269, Section 314(1B) or Section 294AA of the Act would be enough and no separate approval under Section 297 of the Act is necessary.


64. Procedure where directors are interested.

Section 299: Scope of—as compared to section 297—

64.1 There is no ambiguity regarding the scope of section 299. As it refers to the interest of a director “in any way directly or indirectly”, this section is wider in scope than section 297 which refers to certain direct contracts only. In the view of the Central Government, therefore, the provisions of section 299 also extend to contracts with public as well as private companies in which directors are interested. In view of the above, the expression ‘body corporate’ occurring in clause (a) of sub-section 3 of section 299 is in conformity with the definition given to it in subsection (7) of section 2 of the Act and has not been used in any limited sense so as to apply only to private companies.

(Circular No. 8/299/56-PR dated 25th June, 1956.)
Section 299: Interest of a director

64.2 Mere relationship is not enough to establish "interest" of a director. Some pecuniary interest has to be proved.

File No. 42297-CL.II/57

Section 299: Clarification

Query

64.3 Even in the present amended section the difficulty of companies have not been taken into account. Where companies have a number of Directors they may hold shares in a large number of companies and it is rather difficult to make an enquiry into the paid-up capital of the companies to arrive at the percentage. Moreover, instead of 2% a substantial percentage of holding of shares may be prescribed. The Chamber suggests that the increase in percentage may be at 25%. 

Answer

Before the amendment, this section applied to every contract or arrangement where a director was directly or indirectly concerned or interested i.e. even to a contract or arrangement entered into between two companies where a director of one company was holding even less than 1% of the share in the other. But, by the Amendment Act, there has been a good deal of relaxation in this respect. It is felt that a director of a company can very easily comply with the requirements of the statute in this respect by giving a general notice to the Board in the manner specified in section 299(3) and by renewing such notice before the expiry of the financial year. No further amendment in this respect is, therefore, called for.

(Letter No. 810/1/61-PR dated 9-5-61)

Section 299: Shareholding of directors in other companies

Query

64.4 No register has been prescribed to record the shareholdings of a director in other companies nor is a director under obligation to furnish the information of his total shareholdings in other companies in which he is a director. Hence administrative difficulties for companies will arise in complying with the provisions of this section.

Even section 271 has been amended in such a way that the director need not inform the company of his holding of qualification shares in other companies which aggravates the difficulty in complying with section 299(6) from the point of view of companies.

Answer

Section 299(6) should be read with section 299(1) which requires a director of a company to disclose in respect of a contract or arrangement entered into or to be entered into by or on behalf of the company in which he is directly or indirectly concerned or interested. Sub-section (3) of section 299 empowers the director to disclose the interest by a general notice, and sub-section (4) provides penalty when the concerned director fails to comply with the provisions of the section. Thus in the absence of any disclosure on the part of the director, the company itself has no duty in this respect. The directors of the Board are collectively responsible for ensuring that their total shareholding in the other company does not exceed the stipulated percentage.

(Letter No. 816/1/61-PR dated 9-5-61.)
Section 299/300: Holdings of directors in other companies

64.5 The Department is of the view that it is the collective responsibility of the directors of a company to see that the requirements of section 299(6) (or section 300 for that matter) are duly complied with. In practice, an easy course for a director would be to give a general notice under section 299(3) when his own holding in another company exceeds 2 per cent of its paid-up capital and when his holding is less than that, to disclose the extent of the holding at the meeting of the Board of directors in which a contract with such company is considered. It would be the duty of the other directors to disclose all their individual holdings in the said company at the same Board meeting. If, however, a director is absent from that meeting, his holding would, in that event, have to be ascertained.

(Int. Circular No. 4 (No. 816/1/61-PFR dated 19th May, 1961.)

Section 299: Compliance of subsections (1) & (6)

Query

64.6: Sub-section (1) of section 299 referred to disclosure of indirect interest by a director in the contract and subsection (6) limited the quantum of interest i.e. 2 per cent or more by personal interest of any director or by directors together; but it did not provide for the quantum of indirect interest of a director or directors and the compliance of the section had become a difficult job as section 300(1) prevented a director having negligible direct or indirect interest from forming a quorum or voting even if the interest was not covered by section 299(6).

Answer

The Department's view is that as regards direct interest, holding of shares in excess of 2% specified in section 299(6) cannot be considered negligible and as regards indirect interest it cannot be quantified in most cases, e.g., where the interest is created by the intermediary of relatives.

(Company News & Notes, dated July, 1963.)

Section 299: Compliance of subsection(6)

Query

94.7 The limit of 2% holding in the paid-up share capital by one or more directors laid down in the above section should be deleted as it was not possible to ascertain each individual director's holdings in various companies and also because their holdings in various companies are liable to change from day to day and it would not be possible for the company to know at any point of time whether the director's holdings exceed 2% in any company. It is therefore, suggested that a limit should be fixed for an individual director and if he holds more than that limit, he may be regarded as an interested director.

Answer

The Department does not quite appreciate the need for the suggested amendment and feels that it should not be difficult for the concerned directors of a company to ascertain the aggregate of their shareholdings in the other company with which a contract or arrangement is entered into. The point of time with reference to which the fact whether or not such holdings exceed the two per cent limit laid down in the section should be verified, is the date on which the contract is entered into.

(Company News & Notes, dated July 1, 1963.)
Section 299/300: Nature of interest of directors in other companies

64.8 The idea underlying sections 297, 299 and 300 is that a director's partnership in a firm or membership or directorship in a body corporate will be deemed to constitute his interest in such firm or body corporate because he is presumed to share directly in the gain or profit arising from a contract with such firm or body corporate. In the case of an employee, such as the General Manager of such a firm or body corporate, he is supposed to get a fixed remuneration from the employer, which is not likely to be affected by any loss or gain resulting from the contract. Thus, his being an employee of a body is not likely to influence his decision in regard to a contract between that body and the company of which he is a director. Section 299 would not thus require the disclosure by a director of the fact of his being a general manager or other employee of a firm or body corporate with which his company proposes to enter into a contract or arrangement.

Section 299/300: Quorum at Board meetings—Disclosure of interest by Directors

64.9 The solution for the difficulties in getting the required quorum at Board meetings especially where the number of interested directors exceed that of non-interested directors, lies with the companies themselves. They should either increase the strength of the Board of Directors or appoint new members, if so authorised by the articles and try to get more non-interested directors. If this is not found practicable, it might be desirable to place the proposed contract before the general meeting for the consent of the shareholders.

Regarding compliance with the statutory provisions of section 299, it is the collective responsibility of the directors to see that the requirements of section 299(6) or of section 300, for that matter are complied with. In practice, perhaps a simple course for a director would be to give a general notice under section 299(3) when his own holding in another company exceeds 2% of its paid up share capital and, when his own holding is less than 2%, to disclose the extent of holding at the meeting of the Board where a contract with such a company is to be considered. It would be the duty of the other directors to disclose all their individual holding in the said company at the same meeting. If a director is absent from that meeting, his actual holding would of course have to be ascertained.

Section 299: Transfer of shares by directors, but still not registered—whether still constitutes interest

Query

64.10 Where the director has transferred the shares in a company by executing the form of transfer and delivery of the share certificate, but the transferee, for reasons best known to him, has not got the shares registered in his name, the director, even though continuing as registered holder of the shares in the books of the company, cannot be said to have any personal interest in the shares or in any contracts made with any company by virtue of such a shareholding. So, there should be no need for him to give any notice of interest in respect of such contracts.

Generally, in regard to shares held non-beneficially by a director, say on behalf of a Trust, the director has no personal interest. He is not a free agent in regard to these shares and cannot exercise any rights pertaining thereto without the consent from the other trustees. This would be especially the case where the director happens to be
a trustee registered as one of joint holders in respect of any shares and his name does not appear in the first position among the joint holders. Though quite a member of the company, even the formal rights of such a director would have in such cases no personal interest in regard to such share-holding. Thus the director in such cases need not give any notice of concern or interest as the same does not exist.

Answer

The Department is of the view that so long as a director (the transferor) continues as the registered holder of the shares in the register of members of the company he may be deemed *prima facie* to have an interest or concern in the arrangement or contract by virtue of such shareholding. Accordingly, it will be advisable for him to disclose the facts relating to his shareholding in the company at the Board meeting in accordance with section 299(1) adding, if he considers necessary, that his shares having been transferred he is no longer personally interested in the company or the contract.

The Department is of the opinion that since the trustee is the owner of the share, it would be necessary in such cases to disclose to the company his 'interest' arising out of his membership in the companies concerned.

*(Company News & Notes, dated July 1, 1969.)*

Section 299: Notice under subsection (3)

64.11 In the opinion of the Department if a director has given a general notice in terms of sub-section (3) of section 299, he will not be liable for prosecution under sub-section (4) for non-compliance of sub-sections (1) and (2), provided the general notice under sub-section (3) covers the relevant contract in question.

*(Company News & Notes, dated July 1, 1969.)*

Section 299: Whether provisions of section 299 apply to Govt. Directors

64.12 The provisions of section 299 are applicable to directors nominated by Government on the board of any company.

*(Letter No. 8/19(299)/63-Pvt.ct, 20-9-1960.)*

Section 299: Disclosure of interest in contracts etc., by directors

64.13 Regarding the interpretation of the word 'interest' in sub-section (1) of section 299, the principle is that the contract or arrangement hit by the section is the one in which the director has personal interest conflicting with his duties towards the company as its director. Even where the director himself has no personal interest in any contract or arrangement but any of his relative has, the director would be deemed to be "indirectly interested" within the meaning of the section.

Regarding sub-section (6) of section 299, it is the collective responsibility of the directors concerned of a company to see that the requirements in this sub-section is complied with. In the absence of any disclosure on the part of the directors, the company itself has no duty in this respect. The directors are therefore under an obligation to make the necessary disclosures.

*(T.No. 8/38(299)63-GLV.)*
65 Voting by Interested Directors

Section 300: Voting on resolutions relating to appointment of relatives of Directors as Directors at meetings of Board

65.1 The question whether, under the provisions contained in sections 299 and 300 of the Companies Act, 1956, a director can vote on a Board resolution purporting to appoint a relative of such a director as director or additional director of a company has recently been examined by the Company Law Board. Section 299 provides that 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 the meeting of Board of Directors. Section 300 provides that a director shall not 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. Two different views have been expressed on the question at issue. One view is that the appointment of a director is an arrangement entered into by company and the director whose relative is appointed as a director or additional director is interested in such appointments and, as such, is prevented from voting on resolutions purporting to appoint such relative as a director. The other view held in some quarters is that the word “arrangement” used in the section is intended primarily to cover transactions in which a director acquires some right or incurs some liability as a result of it and not supposed to cover anything that is likely to have a bearing on the company’s affairs. Only a restrictive interpretation should, therefore, be placed on the word “interested” used in the section thus excluding a director who has no pecuniary interest. Where, however, there is a pecuniary advantage, it must be regarded as an “interest” within the meaning of the section. The language of the section contemplates a pecuniary interest, direct or indirect, of the director in the contract or arrangement. Accordingly the relationship of the director with the contracting party will not per se make the director concerned or interested in the contract or arrangement.

2. The Company Law Board has carefully considered both the above-mentioned view points. It is of the opinion that whatever may be the strictly legal position in this regard, the matter is essentially one to be viewed from the point of view of the development of sound and healthy company practice. It should, therefore, be held to be a clearly unsound company practice if a director, whose near relative is proposed to be appointed to the Board, were to participate in the discussions at the Board meeting and vote on the proposal for such appointment. Regional Directors and Registrars of Companies are accordingly requested to bring this view of the Company Law Board to the notice of company managements, Chambers of Commerce and Trade Associations, in the course of their discussions with these bodies so as to ensure that such practice does not gain currency.

(Circular Letter No. 2543(800)/1/R. dated 2.7.1963)

Section 300: Appointment on the Board of a relative of a director

65.2 Whatever may be the strictly legal position in this regard, the matter is essentially one to be viewed from the point of view of the development of sound and healthy company practice. It should, therefore, be held to be a clearly unsound company practice if a director, whose near relative is proposed to be appointed to the Board were to participate in the discussions at the Board meeting and vote on the proposal for such appointment.

(Company News & Notes, dated 16th March 1963)
Section 300: Quorum of interested directors

65.4 On the ground that number of interested Directors exceed that of non-interested Directors, the provisions of Section 300 of the Act cannot be disregarded.

2. The difficulties in getting required quorum at Board meetings where the Directors are interested should be solved by the company either by increasing the strength of the Board of Directors or co-opting new members, if so authorised by the Articles. If it is not found practicable to do so, it might be desirable to place the proposed contract before the general meeting for consent of the shareholders.

Section 300: Clarification of section 300(1)

Query

65.4 The articles of association of a public company provided that the directors' fees for attending meetings on the Board will be fixed by the Board. Does the Department consider a resolution of the Board fixing Director's fees as a contract or arrangement, in which the directors are interested within meaning of section 300(1)?

Answer

Having regard to the provisions of section 300(1) of the Companies Act, 1956, any resolution of the Board in regard to the fixation of or increase in the director's fees should be subject to the approval of the company in general meeting, and the provisions of section 300(1) would not be attracted in the case of such a resolution to be considered by the Board, because the final decision in the matter would be that of the company in general meeting.

Section 301: Should the director's meetings be held only at the registered office

65.5 In cases where the Board meetings at which the register of contracts has to be placed in pursuance of section 301(2) cannot be held at the registered office of the company, the Department would deem it to be sufficient compliance with the requirements of section 301(5) of the Act if the company gave adequate notice to its shareholders, either once and for all or from time to time, indicating the precise periods during business hours and the days on which they could expect to have a reasonable opportunity of inspecting the register at the registered office of the company. The periods should be fixed having regard to the provisions of section 163(2) of the Act, and the absence of the register from the registered office should not be longer than what is absolutely necessary.

Section 301: Directors—Interest in contracts or arrangements

65.6 Sub-section (1) of section 301 provides that "every company shall keep one or more registers in which shall be entered separately particulars of all contracts or arrangements to which section 297 or 299 applies". It is therefore, clear from the above wording of the sub-section that it is applicable to all contracts or arrangements to which section 297 or 299 applies. In other words the requirement in section 301 will apply also to any contracts or arrangement in the hands corporate of which general notice has been given by a director pursuant to section 298(3), whether or not they are contracts or arrangements requiring the Board's sanction under section 297 of the Act.
Section 301: Clarification

65.7 Section 301 deals with the maintenance of the Register of Contracts in respect of the contracts to which either section 297 or 299 is applicable. The mere fact that one of these sections is exempted from application in a particular case does not *ipso facto* lead to an exemption of section 301.

The Register of Contracts has to be maintained as required by section 301 if the requirement of section 297 is attracted even though the requirement of section 299 is not applicable.

(Circular No. 4(32299)/98-CL V Dated 3rd January, 1970.)

Section 301: Clarification

65.8 Under the provisions of section 301, it is not only necessary to enter contracts coming within section 297 but also the contracts which come within the provisions of section 299 in the Register to be maintained thereunder. For complying with the requirement of entries in the Register, such contracts have to be brought before the Board and the relevant details entered in the register. No relaxation in these requirements can be given in view of the present wording of sections 299 and 301.

(Circular No. RD/44/96-AR dated 2nd September, 1996.)

Section 301: Clarification

65.9 Section 301 generally applies not only to contracts, etc., referred to in section 297 which must necessarily be submitted to the Board but also to such of the contracts, etc., as come under the purview of section 299. In the case of contracts falling under the latter section, which do not need to be placed before the Board as a result of delegations made by the Board or for any other reason, the details regarding the placing of the matter before the Board need not be shown.

(Circular No. 9099956-PR dated 13th June, 1996.)

66. Resignation of Director

Section 303: Resignation of a director—communication of—

66.1 Although a director is required by section 264 of the Act to file with the Registrar his consent to act as such director, there is no provision in the Act under which the director can communicate his resignation from the directorship to the Registrar. The responsibility for the communication of such resignation has been cast by section 303(2) of the Act on the company. The omission of the company to notify the resignation of the director, therefore, puts such director in an embarrassing position. It has therefore, been decided that where a Registrar receives any communication from any director about his (director's) resignation, the Registrar should enquire whether the resignation of such director is or is not *bona fide* and if he finds that such director has *bona fide* resigned from his directorship of the company, he should not start any prosecution against such director, irrespective of the fact whether such resignation was or was not accepted by the company.

(Circular letter No. 42(4)/CL.I/59 dated the 29th December, 1959.)

Section 303: Return filed by two rival parties.

66.2 When there are two contending parties the Registrar may receive the returns which a representative of one of the factions of the Association send earlier to him. Since the two versions of the two factions are conflicting, the Registrar should not make
any entry on the register in pursuance of Section 303 till the respective claims of the contestants are decided by a Court of competent jurisdiction.

2. In some similar cases, contending parties may file documents with the Registrar at the same or nearly the same time containing contradictory statement of facts. In others, documents may be filed by one party earlier and by the other contending party some time later. It may also be that in some cases the Registrar is aware of the parties' actions in a particular company and knows that two returns will be filed containing contradictory facts. In such cases, the Registrar should exercise every care and should not act in a manner that will give undue advantage to one party over another. If the documents are filed at the same or nearly the same time, the Registrar should merely place them on the company's file and advise the parties concerned to get the dispute settled in a Court of Law and the Court’s decision intimated to him in due course. In such cases, he should not make any entry on the register maintained in pursuance of Section 306 or any other record on the basis of either or both of the contradictory statements. If, however, a return has been received by the Registrar well in time, he should proceed with the formality of recording, registering or filing the return and merely accept the other contradictory return filed with him later. This return must not be recorded, registered or filed in the company's records. In such cases, the Registrar should enquire of the circumstances in which the other return had been submitted and attach the explanation to the return in question in pursuance of Section 231(5) of the Act.

3. While acknowledging receipt of documents presented by the contending parties at the same or nearly the same time and of the documents presented by the other contending party later after those presented by the first party have been recorded, registered or filed earlier, the Registrar should indicate that acceptance of the documents is without prejudice to the rights of the parties concerned.

(Letter No. 29(06)-CL.IV/60 dated 24th October, 1961.)

Section 303: Clarification of sub-section (3).

66.8 In the opinion of this Department where all the directors of a company retire at the annual general meeting and are re-appointed at the same meeting to the same respective offices as before, such re-appointments will not be deemed to constitute a "change" within the meaning of sub-section (2) of section 303 and no return therefore need be filed. This does not, however, extend to additional directors (section 260) or directors appointed to the casual vacancies (section 262) when they are appointed for a full term at the annual general meeting.

(Company News & Notes, dated July 1, 1963.)

Section 303: Whether trusteeship of the Unit Trust of India and membership of the Board of the State of India should be treated as directorship of a body corporate

64.4 In terms of section 2(13) of the Act, 1956, 'director' includes any person occupying the position of director by whatever name called. By virtue, therefore, of the provisions sections 3 and 9 of the Unit Trust of India Act, 1963, any member of the Board of Trustees of the Unit Trust of India may be regarded as a director of a body corporate for the purposes of section 303 of the Companies Act, 1956.

(Letter No. 8(18)/(2)/36-PR dated 1-8-1964.)

The position stated above will hold good also in the case of directors on the Central Board of Directors of the State Bank of India. Members of the local Boards of the State Bank need not, however, be regarded as director of a body corporate for the purpose of section 303 of the Companies Act, 1956.

(Letter No. 8/18/(2)(13)/64-TR dated 26-8-1964.)
Section 305: Changes in particulars—Filing under section 305(2) and 305

66.5 Section 305(2) of the Companies Act requires that returns showing the particulars relating to the directors etc. of a company as well as the changes in those particulars such as assumption or relinquishment of directorships etc. in other companies or bodies corporate, shall be filed by the company with the Registrar of Companies concerned within the time specified in the section. Late filing of the returns entails the payment of an additional fee which may amount to ten times the normal filing fee under section 611(2). Default in complying with the requirements of Section 305(2) also renders the company and every officer concerned thereof liable to the penalty prescribed in sub-section (3) of that section. It has been brought to the notice of this Department that very often when the aforesaid returns are filed with the Registrars after the expiry of the prescribed period, the plea is put forward by the company that the delay was due to failure to intimate the requisite particulars or the changes therein to the company by the concerned director etc., who in turn points out that his failure to comply with section 305 arose from the fact that Government's orders appointing him as director etc. in another Government company or other company or body corporate or discontinuing his directorship etc. in such company or body corporate had either been communicated to him too late or had not been communicated to him at all. In order to avoid such undesirable situations it is suggested that whenever the Board of a Government company is re-organised, each of not only those persons who are freshly appointed as directors etc. but also those who cease to be directors on such re-organisation should be forthwith informed of his appointment or cessation as director etc. and he should be advised to comply with the requirements of Section 305 of the Act. This procedure should also be followed in respect of officers/persons who are on the Board of non-Government companies and other bodies corporate by nomination of the Central Government.

(Letter No.F(20)-CL.IV/6 dated 7-8-6.)

Section 305: Directors deemed to be as such under section 254—Applicability of section 305

66.6 The provision of section 305(1) are applicable only to those individuals who are appointed as directors and not to subscribers to the memorandum of association of a company who are deemed to be directors by virtue of the provision of section 254 of the Act.

(File No. 0/16/254/63-CL. V.)

Register of Director's shareholding

Section 307: Clarification of sub-section (3)

66.7 By virtue of sub-section (3) of section 307 the nature and extent of any interest or right in or over any shares or debentures held by a director has to be indicated in the register of directors' shareholdings, if the concerned directors so require. Accordingly, in the present case, the concerned directors' interest in the shares as joint trustee of a trust can and has to be entered in the register of director's shareholdings, if the director so requires.

Regarding the applicability of Section 158 of the Act it may be pointed out that the said section is not applicable in the present case, as it refers to register of members while section 307(3) refers to register of directors' shareholdings.

(Company News & Notes, dated August 1963.)
CHAPTER XXII

67. MANAGERIAL REMUNERATION

Section 309: Payment of commission to directors

67.1 Prior to the coming into force of the Amendment Act of 1960, directors of companies could be paid remuneration by way of a monthly payment or by way of fees for each meeting attended or partly by the one way and partly by the other. Under the amended Act, a director may receive remuneration only by way of fees for each meeting of the board or committee thereof attended by him, and except to the extent permitted under the proviso to sub-section (2) of section 309, payment of any monthly remuneration to ordinary directors is now virtually prohibited. As a result of this amendment of the law, a large number of companies had to alter the mode of payment of remuneration to the directors. In a large number of cases, the companies proposed to pay to their ordinary directors remuneration by way of one per cent commission on the net profits, in addition to their sitting fees, on the ground that the withholding of monthly salaries to such directors had drastically reduced their previous earnings.

This matter was carefully considered by the Advisory Commission and this Department and it was decided that in order to recompense part time directors who will attend the meeting of the Boards of companies, ordinarily they should be paid only sitting fees and travelling and halting allowances, where admissible and that there was not any good reason for allowing them to draw any additional remuneration by way of commission on the net profits of the company or otherwise. In cases, however, where the directors concerned were rendering specific additional services to the company apart from attendance at Board meeting, as for example, by attending to office work regularly on a part-time basis, additional remuneration by way of commission on net profits might be allowed, subject to the ceilings prescribed in sub-section (4) of section 309 and also subject to a suitable absolute ceilings.

(Extract from the Sixth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1962.)

Section 309: Payment of travelling allowance to the directors

Query

67.2 Whether a director attending the Board meetings of two or three companies on the same day and in the same building was entitled to draw travelling allowance from all the companies or from one of them only?

Answer

Since the travelling allowance should not be a source of profit, the director concerned should claim only as much as would cover his actual expenses and, if he so chooses, he may reimburse himself from each of the companies proportionately so that the total amount drawn by him from all the companies together does not exceed the expenses actually incurred by him. He may, however, draw the sitting fee from each of the companies in full.

(Company News & Notes, dated August 1, 1963.)

Section 309: Payment of remuneration as a percentage of profits to managerial officers

67.3 Government has generally never objected to such payments where there are no Managing Agents or Managing Directors but where such managerial officers function and receive remuneration for services rendered by them, commission to the directors to the extent of 1% permitted by the Act is being allowed only where the directors render some specific services for which some remuneration would appear justified. This is a
fair and equitable principle based on the wholesome rule of correlation of remuneration to services rendered. It is of course open to the company to satisfy the Board in specific cases that such Directors render some services to the company beyond merely attending Board meetings and where the Board is satisfied about such services, necessary sanction would not be withheld.

(Letter No. 2/5/64-PR dated 23-3-1964.)

Section 309: Whether remuneration can be paid in terms of a percentage on profits to those who are neither managing or whole-time director

67.4 Based on the wholesome rule of correlation of remuneration to services rendered, this is allowed only where the directors render some specific services for which some remuneration would be justified. A company must satisfy the Government that in specific cases such directors render some specific service to the company beyond merely attending Board meetings.

(Paragraph No. 2/5/64-PR dated 23-3-64.)

Section 309: Remuneration for services of professional nature

67.5 Exemptions under section 309(1) will be made only in respect of those directors who possess requisite qualifications for practise the profession in respect of which they render special services.

(Extract from the Tenth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1966.)

Section 309: Remuneration for services of professional nature

67.6 The broad approach in expressing opinion under section 309(1) has been to make sure that the directors concerned were actually functioning in a non-managerial professional capacity in relation to the company. Wherever, it was noticed that having regard to the duties and remuneration they were in the position of employees of the company or were otherwise exercising managerial functions and powers the companies' requests for expression of favourable opinion were declined.

(Extract from the Eleventh Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1967.)

Section 309: Payment of guarantee commission to directors

67.7 A Chamber of Commerce has represented to the department that treating of guarantee commission paid by a company to its directors as part of remuneration of the directors is not proper. The Department is advised that when a director guarantees a loan granted by a bank to the company, he thereby renders some service to the company in his individual capacity (and not in his capacity as director). Any commission paid to him for the purpose is the remuneration payable for services rendered by him in any other capacity within the meaning of section 309(1). Such commission is the reward received by him for undertaking liability in respect of guarantee of the loan and is thus remuneration payable for services rendered to the company.

(Circular No. 11/50-67, V dated 16th December, 1969.)

Section 309: Payment of guarantee commission

67.8 "The question whether the commission payable by a company to its director for guaranteeing a loan granted to it by a bank is remuneration for services rendered by the director within the meaning of section 309 of the Companies Act, 1956. The question
depends upon the true construction of section 309 and is not free from difficulty. This is borne out from the differing views expressed by several companies, chambers of commerce, etc. on the subject.

2. Section 309 limits the remuneration of directors. Sub-section (1) of the section deals with three modes of determination of the remuneration payable to the directors and further provides that "the remuneration payable to any such director shall be inclusive of the remuneration payable for services rendered by him in any other capacity." The proviso to the sub-section, which is in the nature of an exception to the main provisions contained in the sub-section, is not relevant in the present case.

3. The main object of section 309 is to prevent the managing and other directors being remunerated in any manner in excess of the remuneration provided by the section itself. The remuneration is to be determined in accordance with the provisions of Sections 198 and 309. The former deals with the overall maximum managerial remuneration and the latter with the remuneration of directors for services rendered by them in their capacity as directors as well as in any other capacity whatsoever.

4. To attract section 309(1) it must be shown that (i) the company pays remuneration to a director in any capacity whatsoever and (ii) such remuneration is paid for services rendered by him to the company. The word 'remuneration' contemplates payment by way of reward to a director who renders some service to the company in any capacity whatsoever. (The inclusive definition of the said expression contained in the Explanatory note to section 198 is not helpful in the matter). Section 309 covers the remuneration payable to a director in his capacity as directors as well as in any other capacity. Such remuneration may be managerial remuneration or any other type of remuneration as contemplated by the Section.

5. When a director guarantees a loan granted by a bank to the company, he thereby renders some service to the company in his individual capacity (and not in his capacity as director). Any commission paid to him for the purpose is the remuneration payable for "services rendered by him in any other capacity" within the meaning of Section 309(1) of the Act. Such commission is the reward received by him for undertaking liability in respect of guarantee of the loan and is thus remuneration payable for services rendered to the company.

6. The commission payable to the director as aforesaid would not obviously form part of the managerial remuneration and would not therefore be subject to the provisions of section 198 of the Act.

7. In view of the above the commission payable to a company to its director for guaranteeing a loan granted to it by a bank is the remuneration payable to the director for services rendered by him to the company within the meaning of section 309, but would not be managerial remuneration within the meaning of section 198 of the Act.

8. Any remuneration received by a director in excess of the limit prescribed by section 309 is refundable to the company under sub-section (5A) of the section. Further the company and the director would be liable to penalty under section 629A of the Act.

Section 309: Payment of guarantee commission

67.9 Guarantee commission is not a sum of remuneration within the meaning of section 309 requiring approval of the Central Government. Payment of such guarantee commission, particularly to managing/whole time directors, etc. will not normally be approved.

(Extract from the Fourteenth Annual Report on the Working and Admini-
section of the Companies Act, 1956—Year ended the March 31, 1976)
Section 309: Remuneration paid to a partnership firm of Sole selling agency in which director is a partner—whether covered by section 309

67.10 The Amending Act of 1965 has made it clear that Section 309 limited the remuneration of director including remuneration payable to him for services rendered by him "in any other capacity". Hence the remuneration paid to a director as a partner of the Sole Selling Agents is for services rendered in "other capacity" and is received by him "directly or indirectly" in excess of the limit prescribed. Hence prior sanction of the Central Government is necessary.

(Excerts from File No. 3(8)-CLXIII/67.)

Section 309: Whether sitting fees, travelling allowances etc. are payable to a Director in respect of a Board meeting which was adjourned for want of quorum

67.11 Section 309(2) of the Companies Act provides that a Director may receive remuneration by way of fee for each meeting of the Board of Directors or for a Committee thereof attended by him. The usual accepted meaning of the word 'attend' in the aforesaid section of the Companies Act is to be present at a meeting of the Board with a view to participating in its proceedings. The emphasis in this regard is on 'attending' the meeting and not on the 'actual holding' of the meeting. If the meeting of the Board could not be held for want of quorum or for any other reason not within the control of the Director concerned, that does not mean that the Director did not attend the meeting.

2. In view of the above, sitting fees, travelling allowances etc. are payable to a Director who was present at the meeting of the Board with a view to participating in its proceedings though no business could be transacted at that meeting for want of quorum.

(Circular No. 1 of 1972 dt. 2-2-1972.)

Section 309: Travelling Allowance and Daily Allowance payable to the working directors of Public Limited Companies

67.12 Whether the condition restricting Travelling and Daily Allowance which may be paid to the Directors of the company for performing journeys on the business of the company, to the limits laid down in the Rule 6D of the Income-tax Rules should be imposed has been considered in consultation with the Company Law Advisory Committee. Having regard to the various practical difficulties faced by the companies in complying with the aforesaid condition, the Central Government have decided that no such condition need be imposed. The companies may, however, be advised to ensure that the payment will be on the basis of actual expenditure and expenditure kept to the minimum.

(Circular No. 575 dt. 1-2-1972.)

Section 309: Clarification

67.13 Under the amended section 198(4), companies can fix a minimum remuneration only with the prior approval of the Central Government. It has, however, been stipulated that in case a certain remuneration has been approved by the Central Government under any other provisions of the Act, e.g., sections 269, 310, 311, etc., it would be open to the company to treat such remuneration as minimum remuneration within the meaning of section 198(4).

Under section 309, as amended, the total remuneration payable to an individual managing whole-time director shall not, without the approval of the Central Government, exceed 5 per cent of the net profits of the company in any year, and where there is more than one director of this category, the total remuneration payable to all of them together
3. Lo discussing the policy issues involved in the administration of sections 309(3) and 198(1) one factor which is of considerable importance in this regard has to be remembered. In the absence of specific ceiling on the remuneration of individual managing
directors except the over-all ceiling of 11 per cent, prescribed under section 198(1), the minimum remuneration payable to individual managing directors had, in almost all cases in the past, been fixed with the ceiling of 11 per cent, in view. Actually, in a very large number of cases the managing directors' remuneration had been fixed on the basis of monthly salary plus a commission of 5 per cent on the profits. A strict application of the ceiling of 5 per cent, now fixed under section 309(3) will, therefore, in a very large number of cases, result in actual reduction in the remuneration payable to the managing directors. A reference to this ceiling is to be considered in the following types of cases:

(1) When an application is made in connection with the first appointment of a managing director or whole-time director, and the proposed remuneration is such that it is likely to exceed 5 per cent, the net profits of the company.

(2) When an application is made in connection with the re-appointment of an existing managing/whole-time director, either on the existing remuneration or on increased remuneration, and the proposed remuneration is such that the ceiling prescribed under section 309(3) is likely to be exceeded.

(3) (a) When an application is made under section 309(3) in respect of an existing managing/whole-time director whose remuneration fixed earlier with the approval of the Central Government is such that it is likely to exceed 5 per cent of the net profits of the company.

(b) When an application is made under section 309(3) in respect of an existing managing/whole-time director whose remuneration, not having been fixed by the Central Government at any stage, is such that it is likely to exceed the ceiling prescribed under section 309(3).

In all the above three categories of cases, the proposed remuneration may assume one of the three following forms:

(a) Fixed monthly salary in addition to perquisites.

(b) Fixed monthly salary plus a commission on net profits in addition to perquisites.

(c) Commission on net profits in addition to perquisites, subject to a minimum remuneration in the case of absence or inadequacy of profits.

(i) In regard to the applications coming under the category mentioned at item (1) in para 3 above, the following policy may be adopted. The remuneration should ordinarily be fixed as a percentage on the net profits of the company not exceeding five, subject to a minimum remuneration which should be determined, having regard to the size and profit-earning capacity of the company. Where, however, the company proposes a remuneration by way of salary plus commission, the same should be approved only subject to section 309(3) but either the entire salary or a part of it should be approved as minimum remuneration. Where the proposal is to pay a monthly salary only, the same should be approved subject to section 309(3) and unless the proposed salary itself can be approved as minimum remuneration, a lower amount should be fixed as minimum remuneration.

(ii) In regard to applications falling under item (2) of para 3 above, the following policy may be adopted. Unless there has been any deterioration in the financial position of the company, the existing remuneration should be protected, except where such remuneration is unduly high, having regard to the financial position of the company. In cases, however, where the existing remuneration consists of a fixed salary component and a
variable commission element depending on the net profits of the company, the remuneration on re-appointment should be so fixed that where the salary plus commission exceeds 5 per cent of the net profits of the company, the total remuneration shall not exceed the highest amount actually drawn during the preceding three financial years.

(iii) In regard to cases falling under item (3)(b) of para 3 above, the same policy may be followed as suggested in sub-para (ii) above.

(iv) In regard to cases coming under item (3)(b) of para 3 above, each case will have to be examined on merits to ensure that the remuneration already being paid is reasonable, having regard to all the facts and circumstances of the case. If such remuneration is regarded as reasonable, it should be protected notwithstanding the fact that the total amount may exceed 5 per cent of the net profits of the company.

In all types of cases referred to in para 3 above, it will, however, have to be ensured that wherever necessary, the ceiling of Rs. 1,20,000 per annum is imposed on the remuneration of an individual managing whole-time director except where the remuneration already drawn exceeded Rs. 1,20,000, in which case, the ceiling should be imposed at the figure representing the highest amount of remuneration drawn during any of the preceding three years.

(Extract from File No. 7(3)-CL.II/61.)

Section 309. Clarification regarding proposal to pay enhanced sitting fees

67.14 While amending their articles of association so as to bring them in conformity with the provisions of section 309 as amended by the Companies (Amendment) Act, 1960, certain companies managed by foreigners, fixed the sitting fees payable to directors at figures which were prima facie unreasonably high.

When they approached the Government for approval of these increase in the sitting fees, the Department in consultation with the Advisory Commission had to reduce the fees in appropriate cases.

(Extract from the Sixth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1962.)

Section 308: Permission for waiving of excess payment of remuneration under section 308(5B)

67.15 During the year under review a perceptible tendency on the part of companies to make payments to their managerial personnel in excess of the remuneration approved by the Board was observed. The concerned companies when asked to explain the unauthorised payments made applications for permission for waiver under section 309(5B). There may be some cases where excess payment could be justified but the corporate sector is expected to observe strictly the terms of statutory approvals in cases where a prima facie case of wilful payment of excess amount was found, the Board did not agree to accord its permission to the waivers.

(Extract from the Thirteenth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1959.)

Section 309: Approval of appointment of managerial personnel

67.16 Application received from companies for appointment of managerial personnel are considered in accordance with guidelines framed. In deciding each case the Government considers the qualifications, experience and connection of the appointee with the company and for sanction of remuneration the Government examines the financial position and working results of the company and whether the company was in a position to declare dividend to its shareholders. While approving such appointments the Government disallows payment of sitting fees.

(Extracts from the Fifteenth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1971.)
63. Increase as Remuneration

Section 310: Increase in the remuneration of managing or whole-time director.

68.1 Where increase in the remuneration of managing or whole-time directors is sought with a view to absorbing into the fixed salaries the element of commission on net profits that they were previously receiving, each case has to be carefully considered on its own merits, having regard to the past performance of the individuals, the size of the unit, the nature and extent of its operations, its working results, and the effect of the proposed increase on the operation of section 128 in regard to the minimum managerial remuneration. Ordinarily the Commission would not advise the approval of any proposals, for absorption of the element of Commission into the basic salary, as in its opinion the salary represents the minimum that a person should get having regard to the resources of the company, and his official rank and position in the company whereas, the commission element provides an incentive to the individual concerned to make every efforts to achieve better working results. This principle is conducive to the progressive development of business of a company. But in cases where the increase applied for was allowed, care was taken to see that the element of commission converted into salary did not exceed the average earning of the individual concerned by way of commission during the immediately preceding five years. The interest of the company continued to be the main guiding factor and each proposal was judged from the point of view of whether or not its acceptance would have sufficient incentive with the person concerned to strive for the better working of the company.


Section 310: Certain payments to retired directors and managers not allowed under the Act.

68.2 Some cases have come to the notice of the Department of Company Law Administration where public limited companies have allowed certain monetary benefits purporting to be for past services rendered, such as gratuity, salary in lieu of leave, etc., to their retired managing or whole-time directors or managers, which apparently they were not entitled to receive according to their service contracts. The Department is of the view that such payments are not in conformity with the scheme of the Companies Act and if any public company or a private company which is the subsidiary of a public company proposes to make such payments, it would be well advised to seek the prior approval of Central Government as if these payments amounted to an increase in the remuneration of the directors under section 310.

(Extrait Press Note, dated the 9th August, 1963.)

Section 310: Increase in remuneration.

68.3 Section 310 operates only when there is an increase in the remuneration of a director. As previously advised this section presupposes that some remuneration is being paid to a director and that there is an increase in such remuneration. The remuneration paid to a director may take any one or more of the forms specified in section 309, e.g. sitting fees for attending Board meetings, monthly, quarterly or annual remuneration, commission, etc. If a director is to be remunerated for the first time on making fixed term payments or payments by way of commission in addition to payments by way of sitting fees, there is no question of an increase in the remuneration of the director as contemplated by Section 310 with the result that the approval of the Central Government under that section is not required in the matter.
It follows that if a director, who is receiving under section 309(2) sitting fees for attending Board Meetings, is to be paid any remuneration over and above the sitting fees, e.g. remuneration under section 309(3) or section 309(4), section 310 would become attracted, even though such remuneration be paid to him for the first time and be within the limits by section 309. In other words even in cases where the intended increase may well be within what is permitted by section 309 (e.g. 5% of the net profits payable to a whole-time director without the approval of the Central Government), it will require approval of the Central Government under section 310, if it is an increase in remuneration of the nature provided in that section.

(Extract from File No. 6. (a) CL/106.)

Section 310: Devaluation and managerial remuneration

68.4 A good number of foreigners are occupying managerial positions in various public companies or their subsidiaries whose appointment as such and remuneration are subject to the approval of the Company Law Board under the provisions of the Companies Act. Consequent on the devaluation of the rupees on 6th June, 1966, the equivalent of their remuneration in the relevant foreign currency became considerably reduced and accordingly proposals for sanction of corresponding increase in their remuneration were received by the Board from various companies employing such expatriates.

After a careful consideration of the whole matter from the foreign exchange, taxation, Company law and other aspects it has been decided as a matter of policy that, as the devaluation could be regarded to have affected mostly the home remittances of these foreign nationals there was a need to compensate them to the extent of such increase in their existing remuneration as would be just sufficient to enable them to maintain these remittances at the pre-devaluation level, such increase in the remuneration is being allowed even if the resultant increased remuneration exceeds the statutory limits imposed by the Companies Act on the managerial remuneration or the current ceiling of Rs. 1.80 lakhs/ Rs. 2.70 lakhs per annum administratively imposed on managerial remuneration.

(Extract from the Eleventh Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1967.)

Section 310: Payment of D.A. at a fixed rate

68.5 For the purposes of Section 108 and Sections 309, 310, 311, 348, 352, 351 and 387 “remuneration” includes inter alia any expenditure incurred by the company in respect of any obligations or services which, but for such expenditure by the company would have been incurred by the Director. Payment of D.A. at the fixed rate of Rs. 150 per day would attract the provisions of section 310 of the Act. Such payment is made because of his position as Director and for the services rendered by him as such. The Director may or may not spend the said amount of Rs. 150 still be shall get the same.

(Extracts from File No. 1(34)(Cl/VIII/65.)

Section 310: Increase of remuneration of foreign technicians acting as managing whole-time directors

68.6 Some companies which had some foreign technicians, whose income was exempt from the payment of income-tax for a limited period, acting as managing/whole-time directors, applied to the Government under section 310 for an increase in their remuneration. While considering such request, the companies concerned were advised to seek the approval in the first instance of the appropriate wing in the Ministry of Industries which had initially approved their contracts as technicians, for purposes of exemption from payment of income-tax, if they wanted the additional remuneration.

29-36 MoF/1j & CA/ND/76
also to be tax-free. The Companies were advised that failing such approval, the additional remuneration could not automatically be deemed to be free of income-tax.

(Extract from the Eighth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1964.)

Section 310: Payment of remuneration to directors without Government approval—Companies asked to comply with the provisions of the Act

88.7 Cases have come to the notice of Government where directors of companies were paid substantial amount of remuneration besides their reasonable expenses for service rendered to the companies concerned, without obtaining the approval of the Central Government in terms of section 310.

In a recent case it was observed that a sum of Rs. 12,000 was paid to a director of the company by way of professional fees. On enquiry by Government, the company stated that the director concerned was a lawyer having a very lucrative practice at the bar, that the aforesaid sum was paid to him in connection with his visits on company's business to a place outside his headquarters and that the payment to him only represented the minimum fees charged by him for going out of his headquarters when the Courts were working. It was also explained by the company that the payment to the director was made for rendering professional services which were not to be regarded as service ordinarily expected to be rendered by a director, though he had not been appointed to a place of profit in terms of section 314.

In this connection, the Central Government would like to make it clear for the information and guidance of companies that strict compliance with the provisions of section 314 would be required in appropriate cases. Where a director is entrusted with work which involves the rendering of services ordinarily expected to be rendered by a director, any payment proposed to be made to him for such work would require the approval of the Central Government under section 310. There is, however, no objection to the company reimbursing its directors any reasonable expenditure actually incurred by them in connection with any business of the company.

Companies should invariably obtain the approval of the Central Government in terms of the relevant sections of the Companies Act before any remuneration is actually paid to directors or before any proposed appointment of managing/whole-time directors, etc. actually takes effect. In the past, cases have come to the notice of Government where companies have sought the approval of Government for payments of remuneration or to appointments with retrospective effect. In future Government will, as a rule, have to regret their inability to validate such payments or appointments unless the companies concerned have established to the satisfaction of Government that the delay in seeking the necessary approval was inescapable.

(Circular No. 6(10)-CL-159 dated the 12th May, 1969.)
CHAPTER XXIII

69. DIRECTOR—ALTERNATE—HOLDING OFFICE OF PROFIT

Section 313: Alternate director

Under section 313(2) of the Companies Act, an alternate director vacates his office if and when the original director returns to the state in which the Board meetings are ordinarily held irrespective of the fact whether the original director attends a Board meeting or not.

(Letter No. 6/16(313)/83-PR dated 5th February, 1983.)

70. Office of Profit.

Section 314: Clarification of Sub-section (1A).

70.1 Query: Section 314 does not make it clear if a special resolution is required to be passed if an employee of a company becomes related to a Director of the company, during the course of his employment—

(a) in case he had been appointed before the Director became a director of the company; and

(b) in case he had been appointed after the Director became a director— which contingency is not provided for under the newly inserted sub-section (1A).

Answer: Only the cases of employee-relatives, already in office, before the relative becomes a director, are covered by sub-section (1A) of the amended section 314 of the Act. As such, where an employee is appointed to his office before the Director becomes a Director but the employee becomes related to the Director afterwards, as well as the cases falling under category (b) in the query, will require special resolutions to be passed under section 314(1) of the Act.

(Letter No. 6/16(1)/61-PR dated 23-1-1961.)

70.2 Section 314: Director—holding of Office of Profit

Query: (i) If a director of a company styles himself as Secretary and Manager and does the work of both Manager and Secretary, will a special resolution be necessary in case his monthly salary is Rs. 500 or more?

Answer: If a director of a company functions as Manager and Secretary and draws remuneration therefore, then, he in fact, is a managing director, and holds office of profit in the capacity of Secretary. Section 314 does not apply if a director holds an office as managing director, and sections 198, 260 and 300 etc. will be attracted.

(Letter No. 6/16(1)/81-PR dated 9-5-61.)

Section 314: Directors holding an office of profit—Sale or purchase of materials by a director or his relative, associate, etc. to or from a company in which he is director—Applicability of Section 314

70.3 The provisions of section 314(1) of the Companies Act do not apply to the sale of purchase of material by a Company to or from its director or his relative, a firm in which such director or relative is a partner, any other partner in such a firm, or a
private company of which the director is a member or director. It would be enough in such cases if the consent of the Board of Directors of the Company is obtained as laid down in section 297(i) of the Act.

Section 314: Appointments of persons, firms or body corporate related to associated with directors, as sole-selling agents

704. In the course scrutiny, of prospectuses issued by public limited companies and while scrutinising applications received from companies for approval to the appointment of managing or whole-time directors by such companies it has been noticed that some of these companies have appointed as sole-selling agents firms or private limited companies in which directors including the managing or whole-time directors of the public companies have considerable financial interest. In the case of companies managed by managing or whole-time directors, the practice of conferring indirect benefit to the directors including managing or whole-time directors by way of a share in the selling agency commission is likely to grow. In the past while approving the appointment/re-appointment of managing and whole-time directors a condition used to be imposed to the effect that they shall not supplement their income from the managed company by way of a share in the selling agency commission or otherwise. This administrative restriction has been found to be inadequate because it could be circumvented by allowing the selling agency rights to persons who are close relatives of the managing or whole-time directors.

The Department has been considering this problem for sometime past and pending a suitable amendment to the Act it has been decided that where selling agency arrangements already exist a condition would be imposed at the time of conveying sanction to the appointment/re-appointment of managing or whole time directors or manager, as the case may be, to the effect he shall not either directly or through his wife and son or sons augment his income from the company by being associated with the selling agents. Where a company seeks approval of Government in such cases before the selling agency arrangement are finalised approval would be conveyed subject to the condition that if the company appoints a selling agent at a future date the managing director, or whole time director or manager, as the case may be, as also his wife, son or sons shall not be allowed to have any direct or indirect interest in the selling agency without the specific approval of the Central Government in this behalf.

If subsequently it comes to the notice of the Department that relatives other than the wife and sons of managing directors of whole-time directors or managers were getting themselves increasingly appointed as sole-selling agents then it would be necessary to extend this restriction to cover other relatives as well within the meaning of the Act.

(Circular No. 12(5)CL-VI/62 dated the 13th February, 1962)

Section 314: Clarifications

Query

70.5 Section 314(1)(b) means that the provisions will not apply for holding office carrying the total monthly remuneration of Rs. 500 or more. Here the words 'monthly remuneration' are the points for clarification. In case of a commission Agent which receives commission which does not exceed Rs. 6000 per year but exceeds Rs. 500 in a particular month. Would this provision apply in such cases also? To be precise, will remuneration of each month would be of material consideration or the annual sum would be of material consideration while seeing that provisions of section 314(1)(b) are
complied with. In some cases the remuneration could not be monthly but it is payable yearly. What would be the criterion in such cases to judge whether the aforesaid provision is contravened or not?

**Answer**

Strictly speaking, the section does not permit such relative or partner etc. to hold an office or place of profit carrying an annual remuneration even if it is less than Rs. 6,000 without the previous consent of the company being obtained by a special resolution. However, this Department may not take any objection to such relative or partner (without a prior special resolution being passed) to hold an office or place of profit carrying a remuneration of less than Rs. 6,000 paid annually, provided the financial liability of the company in respect of remuneration is certain or ascertainable in advance. The Department is unable to take the same view in a case where the remuneration is dependent on any uncertain factor e.g., when the remuneration is based on a percentage of the annual profits or turnover even though it is found that the remuneration drawn has been less than Rs. 6,000 in a year.

(Letter No. 62/24/314/83-PR dated 17th February, 1963)

**Section 314: Clarification**

**Query**

70.6 In a case where general meeting of a company accorded consent by special resolution, the continuance/appointment of relations of directors immediately with the commencement of the Act in 1956 in accordance with the original section 314 and since the original section 314 did not provide for the mention of remuneration, not to speak of time-scale, the consent then obtained from the shareholders were without remuneration. On the expiry of the period of their office as directors the concerned directors have been re-elected. The dates on which the the directors were appointed are subsequent to the appointment of these relations although the original appointment of such directors might be earlier than the appointment of their relatives. Since the re-appointment is subsequent to the date of the appointment of the relatives of the directors, provision of section 314(1) under explanation, as amended, would not apply to these appointments by virtue of the provisions of section 314(1A) or in other words, no further consent by special resolution would be required from the members, if the relation of a director receives higher remuneration which may be reasonable annual increment, subsequent to the special resolution according approval of their appointments.

**Answer**

The Department's views in the matter is that where there is an increase in the remuneration of the relations of a director subsequent to appointment of the director it will all attract the provision in the explanation to sub-section (1) of section 314. In other words, a fresh special resolution will be necessary in the case cited.

(Company News and Notes, dated July 1, 1963)

**Section 314: Clarification**

**Query**

70.7 In case of a commission agent who receives commission which does not exceed Rs. 6,000 per year but exceeds Rs. 500 in a particular month, would this provision apply in such cases also? To be precise will remuneration of each month be of material consideration while seeing that provisions of section 314(1)(b) are complied with.
some cases the remuneration could not be monthly but it is payable yearly. What would be criterion in such cases to judge whether the aforesaid provision is contravened or not?

Answer

The Department's view in the matter is that under clause (h) of sub-section (1) of section 314 of the Companies Act, a relative or partner, etc. of a director of a company may hold an office or place of profit in the company without the prior approval by a special resolution provided the monthly remuneration of the office or place is less than Rs. 500. Strictly speaking therefore, the section does not permit such relative or partner etc. to hold an office or place of profit carrying an annual remuneration even if it is less than Rs. 6,000 without the previous consent of the company being obtained by a special resolution. However, Department may not raise any objection to such relative or partner holding (without a prior special resolution being passed) an office or place of profit carrying a remuneration of less than Rs. 6,000 paid annually, provided the financial liability of the company in respect of the remuneration is certain or ascertainable in advance. The Department is unable to take the same view in a case where the remuneration is dependent on any uncertain factor e.g., where the remuneration is based on a percentage of the annual profits or turnover, even though it is found that the remuneration drawn has been less than Rs. 6,000 in a year.

(Company News and Notes dated July 1, 1963.)

Section 314: Holding of office or place of profit by directors or by their relatives—Question whether an omnibus resolution can be passed.

70.8 No omnibus resolution can be passed by a company under the provision of section 314 of the Companies Act. The special resolution contemplated in the section should be passed in respect of each individual case.

For payment of interest on loans obtained from a director of a company, no special resolution under section 314 is necessary.

(Letter No. 8/8(314)/61, dated the 21st November, 1964.)

Section 314: Appointment of whole-time director does not attract sub-section (1)

70.9 Section 314(1) precludes a director of a company from holding any office or place of profit under the company (excluding certain offices specified therein) without the previous consent of the company accorded by a special resolution. The office so contemplated is an office of profit other than that of a director. Section 2(15) defines "director" as including any person occupying the position of a director by whatever name called. A whole-time director is a director having some special functions to discharge. What is prohibited in the case of a director should a fortiori apply in the case of a whole-time director.

2. As defined by section 314(3) (a) where an office is held by a director, it shall be deemed to be an office of profit under the company if the director obtains from the company anything by way of remuneration over and above the remuneration to which he is entitled as such director. This definition is applicable as well to a whole-time director as to an ordinary director.

3. A whole-time director may be paid remuneration by way of a monthly payment or at a specified percentage of the net profits of the company, subject to limits mentioned in section 309(3). Section 309(3) provides that a director may receive remuneration by way of a fee for each meeting of the Board attended by him. This section merely contains an enabling provision in the matter. It does not mean that a
director can receive remuneration only by way of fees for attending Board meetings and in no other way.

4. A whole-time employment of a director as contemplated in section 299(3) is in his capacity as director and not in any other capacity. When a whole-time director obtains from a company remuneration to which he is entitled as such director and nothing beyond such remuneration, he cannot be said to hold an office of profit under the company as defined by section 314(3) (a) of the Act.

5. In the circumstances, the appointment of a whole time director of a company does not ipso facto attract the provisions of section 314(3) of the Act with the result that such an appointment does not require the consent of the company by a special resolution as contemplated by the said section.

Extracts from File No. 1/88(GL-1/63.)

Section 314(1B): Clarification

Query

70.10 Whether approval of members and Central Government is necessary for an employee drawing salary exceeding Rs. 3,000 per month who is a relative of an existing Director but the appointment of such employee was made before his relative became a Director, i.e. whether Section 314(1A) continues to be exempted under the new provisions as it was exempted previously.

Answer

Yes. The content of subsection (1) from which subsection 1B seems to distract can only be determined by reading subsection (1A) as a part of subsection (1).

(Letter No. 62/3(Misc)/72-GL-V dated the 6th June, 1975.)

Section 314: Clarification regarding subsection (1B)

70.11 Some doubts have been raised regarding the scope of subsection (1B) of Section 314 inserted in the Companies Act, 1956, by Clause 29 of the Companies (Amendment) Act, 1974. These points have been examined and the Department's views thereon are given below.

2. Section 314 of the Companies Act, 1956, applies to public as well as private companies. Sub-section (1) of this section provides that no director of the company and no partner or relative of such director shall hold any office or place of profit, except that of managing director or manager, banker or trustee for the holders of debentures of the company, carrying a total monthly remuneration of Rs. 500 or more, under the company unless a special resolution according the consent of the company is passed at the general meeting of the company held for the first time after the holding of such office or place of profit. The new subsection (1B) says that notwithstanding anything contained in the aforesaid subsection (1), no office or place of profit carrying a monthly remuneration of not less than Rs. 3,000 shall be held except with the prior consent of the company by a special resolution and the approval of the Central Government. The proviso to the subsection provides that in the case of an appointment to such office of profit having been made prior to the coming into force of the Companies (Amendment) Act, 1974, the approval of the company in general meeting and of the Central Government for holding by such person of the office of profit shall be obtained within a period of six months from the commencement of the Companies (Amendment) Act, 1974.

DIRECTOR   ALTERNATE—HOLDING OFFICE OF PROFIT
3. A question has been raised whether a special resolution under Section 314(1B) is necessary for the appointment of managerial persons who may be relatives of directors and whose appointments are already regulated by Section 269 etc. of the Act. This query arises with reference to public companies to which the said Section 269 applies and, strictly, will have to be answered in the affirmative. But in the interests of administrative convenience, it has been decided that the approval of the Central Government once again, under Section 314(1B) will not be necessary in the cases where the Central Government's approval has already been taken under Sections 198, 269, 269, 310 and 311, as the case may be. Irrespective of the question of Central Government's approval, the special resolution required under Section 314(1B) will have to be passed whether by a public company or a private company.

4. Further, consistently with the reference to the special resolution in the main part of sub-section (1B) it is necessary to understand the reference in the proviso of the sub-section to the approval of the company in general meeting as meaning the approval by a special resolution of such meeting. But in a case where the special resolution was passed in terms of sub-section (I), it will not be necessary to have another resolution, ordinary or special once again and only the approval of the Central Government in terms of the proviso to sub-section (1B) will be necessary.

5. Another question raised is whether approval of the general meeting and of the Central Government is necessary for an employee drawing salary exceeding Rs. 3,000 per month who is a relative of an existing Director but the appointment of such employee was made before his relative became a Director, i.e. whether the exemption under section 314(1A) ensures under section 314(1B) as well. It is considered that subsection (I) and subsection (1A) should be read together before applying subsection (1B) and in as much as there is nothing in subsection (1B) to affect the operation of the principle underlying subsection (1A), the exemption under subsection (1A) continues to apply even with reference to a case concurrently falling under subsection (1B).

6. In the case of a private company (not governed by Section 269 etc. of the Companies Act, 1956), a question has arisen whether the appointment of a person as a managing director who is related to a director of the company will attract the provisions of Section 314(1B) where the remuneration payable to such managing director is in excess of the limit envisaged in the sub-section (1B). This question is answered in the affirmative. The circumstances that for the purpose of sub-section (1), which deals with appointments to an office of profit carrying less than a total monthly remuneration of Rs. 500 or more (i.e. upto Rs. 3,000), an exception is made in respect of an appointment of a managing director or manager is not considered relevant because subsection (1B) expressly overrides sub-section (I) and calls for the exercise of a greater vigilance against the likelihood of the abuse of patronage in a case where the remuneration proposed is of the order of Rs. 3,000 per month and more.

7. A question has also been raised whether provisions of section 314(1B) are applicable where a company proposes to appoint a firm of solicitors and advocates, etc. to help the company in its work. It is considered that an advocate or solicitor appears in a Court of Law as an officer of the Court in pleading the cause of justice and hence, such appearance and receiving fees of that account cannot lead to an inference of an office or place of profit in or under the company under Section 314 of the Act. However, if such a solicitor/advocate, etc. is appointed on a regular retainer basis from rendering legal advice other than appearance in Courts, the provisions of Section 314 will be applicable.

8. A question has also been raised whether provisions of Section 314(1B) will be applicable to selling arrangements entered into by the company with a partner or relative of directors or with private companies of which such a partner or relative is a
director or member. It is considered that these arrangements represent contracts which fall under section 297 and so far as selling arrangements are concerned they may also attract Section 294AAA if the conditions for its operation are attracted; but section 314 (1B) is not attracted.

(Circular No. 14/75 dated the 5th June, 1975.)

Section 314(1B)—Clarification regarding—

70.12 I am directed to refer to this Department's Circular No. 14/75 dated the 5th June, 1975, regarding the above subject matter and to say that some doubts had been raised regarding the application of sub-section (1B) of Section 314 to an individual who is a partner or relative of a manager or director of a private company appointed as managing or whole-time director of such company at a monthly remuneration of not less than Rs. 3,000. A number of representations have been received on the subject. The position has since been re-examined and it has now been decided to clarify the ambit of Section 314(1B) as follows:

Subsection (3) of Section 314 refers to what is treated for the purposes of Section 314 an 'office or place of profit'. The said sub-section (3) provides that if the office or place is held by a director it will be treated as holding an office or place of profit if the director obtains from the company anything by way of remuneration over and above the remuneration to which he is entitled as such director. Section 309 of the Companies Act refers to remuneration of directors. Section 309 in terms provides that the remuneration payable to a director of a company, including any managing or whole-time director, shall be determined in accordance with and subject to the provisions of Section 198 and that section, namely, Section 309. It, therefore, follows that the remuneration paid to the managing or whole-time director is remuneration to which he becomes entitled as a director and, therefore, unless the remuneration paid to a director is over and above the remuneration to which he would be entitled to as a managing or whole-time director, his holding of office would not be deemed to be an office or place of profit under the company. In such a case the question of application of the provisions of Section 314(1B) does not arise.

2. I am to request that members of the Chambers of Commerce etc., may be advised accordingly.

(Circular No. 5 of 1976 dated the 11th February, 1976 on File No. 8/12 (314-1B)/75-GL-V.)

Section 314(1B) Remuneration paid to Managing Director/Whole Time Director etc.

70.13 1. Suggestion: In the case of private companies where the working results in low or inadequate profit in a year, the remuneration payable to the Managing/whole time director would be either nil or it may fall below the remuneration received by some of the junior executives of the company. It is also possible that their remuneration may fall below Rs. 3000 per month and may create an anomalous situation as to the requirement of Government's approval in this regard.

Reply: If due to inadequacy of profit the remuneration goes below Rs. 3000 per month, it will be beyond the purview of the provisions of the Act and no approval would be necessary.

2. Suggestion: The term 'remuneration' under section 314(3B) includes perquisites. A clarification may be issued for purposes of applicability of Section 314 that evaluation of perquisites shall be as per Income Tax Rules. Allowing perquisites under section 314 39 -25 M of I & CA/ND/76
as prevailing in each company by placing, if necessary, a ceiling on the total monetary value may also be considered as there are many perquisites which are not listed but are being paid by companies to their employees.

Reply: The evaluation of perquisites shall be according to the Income-tax Rules. Companies may conform to the guidelines which are quite liberal and allow the same type of perquisites as are permitted under the guidelines for Managing Directors of Public Limited companies.

3. Suggestion: Directors working in rural or backward areas should be given some concession in regard to their remuneration.

Reply: Individual cases in this connection will be looked into on merits.

4. Suggestion: It is feared that where approvals are not forthcoming under section 314(1B) the remuneration drawn by the Managing/whole time director has to be refunded to the company. This would be rather unfair as the person concerned has already given his time and work for the company during the period prior to the rejection of the application for approval.

Reply: The Department is alive to the provisions of this Section. It is not the intention to hold up any application for approval. In genuine cases where the approval has not been accorded, no question of refund of the remuneration would arise, if the person concerned had worked in that capacity.

Joint Secretary Shri Chandrika's reply during discussions with Punjab, Haryana & Delhi Chamber of Commerce & Industry, on 6th December 1975.

Section 314: Services of Professional Nature

Query

70.14 Whether a director whose services are being utilised by a company as a solicitor or a chemist or a technician against payment will be deemed to be holding any office or place of profit under section 314(1) and whether the remuneration so paid to such a director will attract the provisions of Section 198?

Answer

The post of a solicitor, chemist or a technician does not belong to any of the exempted categories of officers mentioned in sub-section (1) of section 314. As such, if a director receives any remuneration from the company in respect of any of the above-mentioned offices held by him, Section 314(1) will be deemed to be attracted. As regards the query whether section 198 would apply to such remuneration drawn by a director, the reply would depend on the facts of the particular case. The present view of the Department is that if such a person is a whole-time employee of the company he would be in the position of a whole-time director of the company and accordingly the provisions of section 198 will apply to his remuneration. Further, depending upon the facts of the particular case the remuneration paid to such a director may attract the provisions of section 309/310 and the remuneration payable to him may then attract the provisions of section 198.

[Extract from queries raised by the Bengal National Chamber of Commerce & Industry in a memorandum submitted to the Department of Company Law Administration on 17/6/1969 and the Department's view letter (Company News and Notes, dated July 1, 1969).]
PARTNERSHIP FIRM—HOIdING OFFICE OF PROFIT

Query

70.15 A partnership firm is appointed by a company to an office of profit and at the time of appointment none of the directors is related to any partner of the said firm. Hence, section 314, would not apply to such appointment. But if the firm is reconstituted by appointment of a relative of a director as one of the partners of the firm without the knowledge or consent of either of the director concerned or the company, would section 314 be applicable and will the following consequences follow?

(a) Will the director have to vacate his office?
(b) Will the firm cease to hold office from the date of its reconstitution?
(c) Will the company be considered to have made any default?

Answer

The Department's view is that in a case like the one cited above it is permissible, for the company to regularise the matter by complying with the requirements of section 314 within three months from the date of appointment. In default thereof

(a) The director will have to vacate his office after three months of the reconstitution of the firm;
(b) The firm will cease to hold office after three months from the date of its reconstitution; and
(c) The company will not be considered to have defaulted. Attention in this connection is invited to the provisions of proviso to subsection (1) and of subsection (2) of section 314 of the Act.

(Extract from the queries raised by the Company Law Association of India in memorandum submitted to the Dept. of Co. Law Administration on 31-7-67 and the Department's reply thereto Company News & Notes dated July 1, 1968.)

Section 314: Appointment of director as "Technical adviser" requires special resolution

70.16 A large number of cases continued to come to the notice of the Department where directors had been appointed as "Technical Advisers", sometimes on very high remuneration. It was contended by the companies that since technical advice was given in a capacity other than that of a director, a special resolution under section 314 of the Act was not required for their appointment and the remuneration paid to them was outside the limit laid down for total managerial remuneration.

All such cases were closely examined against the background of the management pattern of the company in the past, the technical qualifications of the persons concerned, their powers and duties, and whether such persons were rendering any managerial services to other concerns also. In most of the cases it was found that in fact the persons concerned were performing managerial services. The companies were, therefore, advised by the Department to get their appointments and remuneration regularised in the manner laid down in the Act. In almost all cases the suggestions of the Department were accepted by the companies concerned.

(Extract from the Seventh Annual Report on the Working and Administration of the Companies Act, 1956, Year ended March 31, 1963.)

Section 314: Appointment of relatives of directors as statutory auditors

70.17 Quite a few cases of appointment of relatives of directors as statutory auditors of the company managed by such directors have come to the notice of the Department,
It is conceded that there is no legal bar to such appointments as long as the provisions of section 314, and those relating to appointment of auditor are complied with, the appointments are to be regarded as legally valid. It is however, felt that it would be in the larger interests of the profession, if the auditors were to avoid any conflict between their duties as statutory auditors of companies and their personal interest in the management of such companies. As a matter of general principle, a Chartered Accountant, who was a near relation of a director of a company or a partner of a firm in which such director is a partner, should refrain from accepting the appointment of auditor of the company. As regards other categories or relatives of directors, a healthy convention should be established by which such persons should not audit or sign the balance-sheets of companies managed by their relatives or associates, even though the firms of which they were partners happened to be the auditors of these companies.

(Excerpt from the Seventh Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1963)

Query

70.18 'A' who is a practising Chartered Accountant is appointed as Auditor of ABC Company a public limited company. As 'A' the auditor happens to be a relative of some of the Directors of ABC Company a special resolution under section 314 of the Companies Act, 1956 is passed.

'A' the auditor apart from rendering services to the Company as auditor also from time to time renders other professional services to the company such as issuing of miscellaneous certificates to the company drafting of new articles and other documents, consultation on Income-tax and Company Law and Sales tax cases etc. Therefore special resolution passed under section 314 of the Act also refer to other professional Service to be rendered by him to the company.

Points on which clarification is sought:

(a) whether a special resolution under section 314 will be required to be passed by the company every year consequent on 'A', the Chartered Accountant to hold office under the company of Auditor and also for rendering other services to the company as referred to above, as the auditor of company has to retire every year and has to be re-appointed to hold office from the conclusion of one Annual General Meeting until the conclusion of the next Annual General Meeting or the resolution once passed will have effect for one year to year?

(b) Whether the appointment of a Chartered Accountant as auditor of the Company and also for rendering other services as referred to above are such contracts which will be at all covered under the provisions of Section 314 of the Companies Act, 1956.

Answer

(a) The answer to the question will depend upon the terms and conditions on which the appointment has been approved by special resolution passed under section 314. Attention is also invited to the Explanation below subsection (1) of Section 314.

(b) The appointment of a chartered accountant as auditor of a company and also for rendering other services is not exempted from the operation of section 314 of the Companies Act, 1956.

(Letter No. 12(54)CL-11/62 dated the 28th September, 1962.)
70.19 Any increase in the remuneration payable to the relative of a director (subsequent to the appointment of the said director) would require the passing of a fresh special resolution every time such increase in remuneration is made except where the appointment of the relative has already been approved on a time scale by a special resolution and the increase in the remuneration is on account of the raise of increment in that scale.

(Letter No. 81/314/63-PR dated the 15th February, 1963.)

[71. Restrictions on Appointment of Managing Directors.]  
Section 316: Clarification

Query

By clause 117, section 315 has been omitted but the words public etc. have been added in sub-section (1), (2) and (3) of section 316 and sub-section (1) has been added to Section 317. However in sub-section (4) of section 316, the words public etc. have not been added. Such an addition might not be perhaps necessary to exclude Private Companies from the requirements of Government permission.

Answer

Section 317 of the Act has no relevance to the provisions of section 316 and the two sections are independent of one another. The position under section 316, as amended, is that its restrictions will apply to all cases except only the case of a person holding managing directorships of companies none of which is a public company or the subsidiary of a public company.

(Letter No. 316(1)/61-PR dated 23-1-1964.)
CHAPTER XXIV

72. NET PROFITS—COMPUTATION

Section 349: Determination of net profits

72.1 Net profits for purposes of determination of the managerial remuneration in respect of any financial year ending before the 28th December 1960 would be governed by sections 349—351 as they stood before the amendment.

Section 349: Computation of net profits for a financial year which falls partly before and partly after 28th December, 1960

72.2 Since the calculation of the net profits for a whole financial year becomes due to be made only after the expiry of the financial year, the net profits in respect of a financial year, consisting partly of a period prior to and partly of a period subsequent to the 28th December, 1960, would normally be computed in accordance with section 349 of the Companies Act, as amended by the amending Act of 1960. In view, however, of the fact that a strict application of this principle may cause some hardship during the transitional period, this Department would have no objection to the computation of net profits for the purpose of managerial remuneration in respect of such financial year in the manner indicated below:

Two funds of net profits for the whole financial year may be computed, one by applying the formulae laid down by the sections 349 and 350 as they stood before the amendment and the other on the basis of the formulae after the amendment. Then a pro rata allocation on a time basis (i.e., on the ratios which the respective periods before and after the 28th December, 1960 bear to the entire financial year) may be made for arriving at the net profits on which the managerial remuneration is to be computed.

Section 349: Managerial Remuneration—Mode of calculation in respect of officers or employees of a company

72.3 What is really sought to be exempted in the case of private companies under section 198 and 300 is to exempt them from the upper limit of remuneration payable to the officers of the company. But while calculating the net profits on which the calculation of the remuneration of such officers may be based, there is no other section in the Act which gives the basis of calculation except section 349. In other words, this section would apply while calculating the net profits in respect of the officers of the private companies as well both of the managerial personnel and, by virtue of section 199, of the other types of officers.

Section 349: Computation of Managing Directors' remuneration without taking into account the unabsorbed depreciation of the previous year

72.4 The question as to whether in computing the net profits of the company for a particular year for the purpose of ascertaining the remuneration of Managing Director, the unabsorbed depreciation for the year is to be taken into account has been considered. It has since been decided that para 3 of Part II of the Schedule VI of the
Companies Act, 1956 itself would show that it has treated provision for depreciation as an item of expenditure which has to be set off separately in the profit and loss account. Furthermore clause 3(iv) of Part II of Schedule VI of the Act makes it clear that this provision is in the nature of the diminution in the value of the fixed assets (or substitute method for providing for renewal of such assets) which is occasioned by the use of such assets for the business of the company. From the interpretation of the expression “provision” as given in clause 7 in Part III of Schedule VI it should further be clear that a provision is not in the nature of retention of profits but is a charge of expense to be set off against the income of the company in respect of diminution in the value of fixed assets, or for any known liability of which the amount cannot be determined with substantial accuracy. It is therefore really not a retained profit but a loss, or in other words an expenditure of the company. Although clause (1) of sub-section (4) of section 349 has substituted the words “excess of expenditure” over income in place of “loss”, it is nevertheless clear from the language of that Section that such excess has to be computed in accordance with the provision of that Section 349 for the purpose of determination of the net profits of the company or in other words after deducting all items of depreciation which must be deducted under clause (k) of Section 349(1), in order to arrive at the profit for any financial year. The provision for depreciation cannot be treated as an item of retained profit, as has been contended by the company.

2. I am to add that the learned Solicitor General of India is in general agreement with the reasonsings advanced by the Department for its opinion in para 1 above and has stated that the basic Section is Section 348. The purpose of Section 349 may be to reach the figure of net profit. In an allied matter the Supreme Court was of the opinion that the net profits must mean divisible profits. It is true that the Supreme Court was not considering Sections 348 and 349. It was considering the meaning of that expression as used in the context of managing agency. Some deductions which should be permissible on general principles have been excluded by Section 349 but the general concept of ‘net profit’ cannot be taken to have been changed by Section 349.

Having regard to the principles underlying the limitation on the quantum of remuneration and the use of the expression of ‘net profit’ in Section 348, he is inclined to accept the interpretation adopted by the Department.

3. The Balance Sheet and Profit and Loss Account of the Companies should henceforth be scrutinised in accordance with the said view of the Department.

(Letter No. 3/34/70-CLIX dated 1-11-1978.)

Section 349: Computation of net profit—Deduction of super profits tax

72.5 Section 349 of the Companies Act, 1956, lays down the manner in which the net profits of a company are to be determined for purposes of computing the remuneration of the managing agents, managing directors, etc. Clause (d) of sub-section (4) of the said section 349 provides that in determining the net profits any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits shall be deducted. In pursuance of this provision the Central Government have decided to notify the super profits tax chargeable under section 4 of the Super Profits Tax Act, 1963 as being in the nature of a tax on excess or abnormal profits. The notification in this regard will be published in the Gazette of India dated June 29, 1968.

In terms of this notification, the companies concerned will be required to deduct the super profits tax chargeable in respect of their financial years ending on or after June 29, 1963, in computing their net profits of the said financial years under section 349 of the Companies Act, 1956.

(CL VI Press Note, dated 26-6-1963.)
Section 349: Notification under section 349(4)(d)—Treatment of surtax*

72.6 In pursuance of clause (d) of sub-section (4) of section 349 of the Companies Act, 1956 (1 of 1956), read with the Government of India, Ministry of Finance, Department of Revenue, Notification No. 178, dated the 1st February, 1964, the Company Law Board hereby notifies the surtax chargeable under section 4 of the Companies (Profits) Surtax Act, 1964, (7 of 1964) as being in the nature of a tax on excess or abnormal profits.

2. This notification shall have effect in respect of any financial year or years of a company ending on or after the date of its publication in the Gazette of India.

(E. 1821)CL-M11 dated 1st Aug., 1964.)

Section 349: Clarification regarding treatment of surtax clause (d) of sub-section (4) of Section 349.

Query: 1

72.7 By notification dated 1st August, 1964, the Government of India notified that, in pursuance of section 349, the surtax chargeable under section 4 of the Companies (Profits) Surtax Act, 1964, was a tax on excess or abnormal profits. Referring to this notification, the question that arises is whether the surtax is in the nature of a tax on excess or abnormal profits.

Answer

While it is true that the Statement of Objects and Reasons attached to the Companies (Profits) Surtax Bill, referred to the tax proposed to be imposed by it as a 'special tax', the Department is of the view that there is nothing in the said Statement of Objects which would suggest that the legislature intended the tax not to be in the nature of a tax on excess or abnormal profits. On the other hand, the nature of the surtax is clear from the charging section of the Companies (Profits) Surtax Act, 1964, namely section 4, as read with definitions of "chargeable profits" and "standard deduction" contained in clauses (5) and (9) of section 2 of the said Act respectively. It seems clear from the said provisions that the super profits tax is in the nature of a tax on excess or abnormal profits and thus fall within the purview of section 349(4)(d) of the Companies Act.

Query 2

The Department has no authority to declare any tax as in the nature of a tax on excess or abnormal profits unless the legislature itself makes it clear that the tax is of that nature. Even at the time when this subsection was framed, the general legal opinion was that such a notification may be ultra vires, as being excessive delegation of legislative powers. That was in 1953, and at that time there was no excess profits tax, and so the matter was not pursued further.

Answer

The Government is unable to agree with the view that any notification issued under section 349(4)(d) would be ultra vires, as being excessive delegation of legislative powers. It is to be presumed that before section 349 was incorporated in the Companies Act, 31-26 M of LJ & CAND/76
Parliament satisfied itself that such a power could be legally conferred. The clause must, therefore, be held to be *inter alia* and valid until a Court of competent jurisdiction comes to a contrary finding.

Query 3

Apparently the effect of the present notification would be that the managerial remuneration would be reduced. A reduction in the managerial remuneration would result in corresponding increase in the assessable income of companies and therefore in the liability to taxes.

Answer

The Department's observation is that the notification under section 219(1)(d) was issued as a direct result of the imposition of the surtax on companies and any reduction of the managerial remuneration caused thereby must be regarded as consequential to the new taxation provision introduced by the Surtax Act. It may not be out of place here to mention that the surtax would also similarly affect the shareholders of a company adversely to the extent its distributable profits are reduced as a result of this tax.

Query 4

The companies will have to make a number of complex calculations in order to calculate managerial remuneration. These complications would arise because of three unknown figures, namely, the managerial remuneration, the normal tax liability and the surtax liability. The following complications would arise in the calculation of net profits and managerial remuneration:

(i) As a result of the interpretation placed by the Department of Company Law Administration on the provisions of section 350 of the Companies Act and the introduction of the modern concept of written down values in the computation of depreciation for the purposes of section 350 of the Act, in most companies depreciation provided for in the accounts differs from the depreciation allowable under Income-tax Rules.

(ii) Also the allowance of development rebate is granted provided a reserve in the extent of 75% of the development rebate to be allowed is created out of the Profit and Loss Account. Therefore, the book figures of profits arrived at after creating the development rebate reserve of 75% as aforesaid would be different from (a) the figure of profits which would be used in the income-tax assessment (this figure being arrived at after deducting 100% of the development rebate instead of 75% ; provided in the books); and (b) the profits which would be used for purposes of managing agent's commission (which profits have to be arrived at without deducting even the 75% development rebate reserve).

(iii) There would also be complications if the company has dividend income from different types of companies. Dividend income is subject to different rates of tax in the hands of the recipient companies varying from 20%, 33% and 50% depending upon the type of company paying the dividend. In such case the calculation would proceed in the following manner (a) for the purpose of income-tax and surtax varying rate of tax would have to be applied depending upon the rate of tax applicable to be appropriate dividend and the other income (b) for the purpose of computing the profit for super profits, tax the figure of dividends would have to be excluded altogether from the profits of the company; but at the same time the income-tax and surtax liability as calculated in above would have to be deducted.
(iv) Similar complications would also arise if there are capital gains included in the computation or if there is income from royalties or if there are profits which are altogether exempt from tax like tax holiday profits, or dividends from companies out of their tax holiday profits, etc. If the company has issued bonus shares during the year resulting in a bonus share tax, the computations would require adjustment in this regard.

(v) There may also be items of expenditure which may not be allowable for tax purposes either wholly, like preliminary expenses, write off of intangible assets, etc., or partly, like entertainment expenditure, salaries if in excess of Rs. 60,000, etc. The company may also have income from property or income from capital gains which may be computed on a notional basis. These would involve considerable adjustments in the figure of profits that would be taken for tax purposes against that appearing in the books.

Answer

The Department's reply to the above points is that while it is recognised that computation of the ‘net profits’ under section 349 as well as the managerial remuneration might involve somewhat complex calculations in certain cases, particularly where the slab system of remuneration is applicable, such cases are likely to be comparatively few in number. Even in those few cases, which would almost invariably involve only the bigger companies, the services of adequately qualified accounts staff should normally be available to make the necessary calculations. Moreover, it will be appreciated that once the method of calculation of the net profits, etc., has been formulated and standardised by the accounts staff after taking into consideration the effects of the notification in question, the method can be followed with comparative ease with minor variations, if necessary, for the following years.

It is also recognised that in order to ascertain the taxable income of a company in accordance with the provisions of the Income-tax Act for the purpose of finding out its tax liability, the residual income, and the surtax payable by it, it would be necessary to make adjustments in the profit figures shown in the published accounts of the company. This, however, cannot be regarded as an extraordinary feature since according to the existing law, the tax liability of the company has to be estimated and provided for in term of paragraph 3(vi) of Schedule VI (Part II) to the Companies Act. The only additional work which the notification in question would entail would be that the adjustments necessitated by the Surtax Act would also have to be taken note of. It is possible that in certain cases the taxable income as computed by the Income-tax authorities for the purpose of assessment might not be quite the same as that computed by the company at the time of calculating the managerial remuneration. In that event the necessary adjustment in the managerial remuneration can be carried out without undue difficulty in the succeeding accounting years.

Section 349: Wealth Tax not an item of deductible expenditure

72.8 Payment of wealth tax cannot be regarded as ‘outgoing’ under the provisions of section 349(4)(g) of the Companies Act, 1956. Only revenue expenditure which can appropriately be deemed to be necessary “for maintenance of the earning capacity of the company, including the upkeep of the fixed assets in a fully efficient state, and the normal total cost involved in selling, including the cost of goods and services of the business to
which it relates" can be regarded as falling within this category. In the circumstances, wealth tax should not be treated as an item of deductible expenditure in the computation of net profit under section 349.

(Circular Letter No. 8/349/PUR dated the 28th November, 1957.)

Section 349: Net Profit—Question whether political contributions constitute 'outgoings' within the meaning of clause (j) of subsection (4)

72.9 Contributions made by a company to a political party or for a political purpose pursuant to section 295A of the Companies Act should be regarded as "outgoings" only as they are made for commercial expediency. The fact that section 295A is not specifically referred to in clause (j) of subsection (4) of section 349 is not material since the language used therein viz. "outgoings" inclusive of............." is only illustrative and does not purport to be exhaustive. The Research Committee of the Institute of Chartered Accountants of India agrees with this view and has published a note in that effect in the March, 1960 issue of its monthly journal "Chartered Accountant".

(Letter No. 823/349/PUR dt. 14-1-1962.)

Section 349: Computation of net Profits—Treatment of the amount written off from the leasehold land

72.10 In the opinion of the Department, the mere fact that there is a provision in clause (k) of subsection (4) of section 349 in respect of depreciation of fixed assets would not enable a company to regard the usually fixed amount amortised in respect of the leasehold land as not being an item of expense or loss incurred for purpose of earning income. The consolidated payment in respect of leasehold land is virtually indistinguishable from an advance payment of rent for a specified period of years by this the purchaser expends a certain sum in advance as a result of which he saves the cost of rent in future years to come. The amount annually amortised in respect of the leasehold land has, therefore, necessarily to be deducted while computing the net profits under section 349 of the Act as follows within the scope of the 'outgoings' in clause (j) of subsection (4) of section 349.

(Company News and Notes, dated 1st September, 1963.)

Section 350: Calculation of Depreciation

72.11 Enquiries have been made regarding the manner in which depreciation has to be computed in accordance with this section. As this problem has arisen in the case of almost all companies, the following procedure may be followed:

In calculating the amount of depreciation to be deducted under section 350 of the Act, as recently amended, in respect of the first financial year, which ends on or after the commencement of the Companies (Amendment) Act, 1960, i.e. 28th December, 1960, the written down value should be worked out by deducting the normal depreciation allowed for income-tax purposes and which was deductible in accordance with the provisions of section 350 as they stood before the recent amendment of this section, in respect of financial years ending on or before 27th December, 1960, from the written down value of the fixed assets (before provision of depreciation) as shown by the books of account of the company at the end of the financial year ending on the date of the commencement of the Companies Act, 1956, i.e. 1st April, 1960, or immediately thereafter. (In determining the written down value for the limited purpose of section 350, extra and multiple shift allowances need not be taken into consideration in respect of financial year which ended on or before 27th December, 1960). After
the notional written down value has been determined as indicated above, depreciation should be calculated by applying the rates specified, in respect of the assets, in the Indian Income-tax Act, 1922, and the rules made under it for normal depreciation and for extra and multiple shift allowances.

In respect of financial years subsequent to the first financial year referred to above, the notional written down value should be first computed in the manner indicated above. From the written down value thus computed the amount of normal depreciation and extra and multiple shift allowances which would be deductible from year to year according to the amended section 350, should thereafter be deducted. In other words, the depreciation for the subsequent financial years should be computed by applying the rates specified in the Income-tax Act and the rules made under it for normal depreciation and for extra and multiple shift allowances to the notional written down value determined in the manner as already indicated.

(No. 101)-GL-V/101, dated the 27th April, 1961.)

Section 350: Note on the provisions of Sections 295 and 350 of the Companies Act, 1956—Depreciation to be provided for in the profit and loss account before declaring dividend and for the purpose of determining the net profits for payment of managerial remuneration

72.12 I. The Companies (Amendment) Act, 1960, has considerably amended the provisions of section 350 regarding deduction of depreciation in determining the net profits for payment of managerial remuneration. As compared to the requirement of that Section as it stood before the amendment (viz.) that of deducting the normal depreciation allowance under the Indian Income-tax Act, 1922 and the rules prescribed thereunder, it is now required that the depreciation under Section 350 should be calculated according to the rates prescribed under the Indian Income-tax Act, 1922 with reference to the written down values as mentioned in that Section. From time to time, queries have been received from members of the investing public, companies and their managements, chartered accountants etc. regarding the method of computation of depreciation in accordance with the provisions of the amended section 350. The matter was carefully examined in consultation with the Advisory Committee of eminent businessmen and professional accountants, lawyers etc. attached to the Department, and a memorandum setting out principles to be followed for the purpose of such calculation was prepared and circulated to the Chambers of Commerce, Professional bodies etc. It would however appear that some company managements continue to experience difficulty in giving effect to the provisions of the Section. The queries raised by them in this connection and the Departmental views in regard to such problems are set out below:

1. Since Section 350 provides that depreciation shall be calculated with reference to the written down value of the assets shown by the books of the company, whether it would be advisable to adopt the basis of notional written down value contemplated in the departmental memorandum?

A close perusal of the wording of Section 350 will make it clear that written down value as shown by the books has to be taken into account for purposes of Section 350 in respect of the first financial year expiring at or immediately after the commencement of the Companies Act, 1956 and that in respect of the first subsequent financial year, the written down value for the purpose of Section 350 will have to be calculated separately by applying the Income-tax rates of depreciation on the written down value mentioned above. The depreciation for the next financial year should be calculated by applying the Income-tax rates to the said written down value reduced by the amount of depreciation calculated for the previous financial year. Similar procedure should be
followed for the subsequent financial years. If it was the intention of the statute that the written down value for the purposes of Section 350, should be the written down value as shown by the books of accounts from year to year, clearly it would have been unnecessary to include any reference to subsequent financial years. The intention could have been fully brought out by merely stipulating that the written down value of the assets as shown by the books of the company should be taken into consideration and omitting the words "at the end of the financial year". It is a well-known principle of interpretation that every word occurring in a section has to be given a definite meaning and in the present case, such meaning could only be that where a company does not adopt the method of calculation of depreciation as laid down in Section 350 for purposes of its books of account, for each subsequent financial year, a separate notional written down value for the purposes of Section 350, in the manner stated at the beginning of this paragraph, should be worked out. This is the basis recommended in the Departmental memorandum.

Quite apart from the legal interpretation of the section set out above, it would be necessary to ensure that—

(a) the method of calculation is in conformity with usually accepted accounting principles;

(b) there is no under-charging of depreciation in future and also that companies are not required to deduct depreciation in excess of the cost of the assets concerned.

The continuous application of the basis of "the written down value shown in the books" may, in certain circumstances, lead to results contrary to the objectives set out above.

It is open to a company under the law to provide in its books for depreciation an amount higher than the minimum amount of depreciation required to be provided, in accordance with Section 350, before declaring dividend. In actual practice, many companies consider the Income-tax rates to be somewhat inadequate, particularly in relation to the higher replacement cost. If a company does provide for depreciation in its profit and loss account at a rate higher than what is contemplated under section 350 (i.e. Income-tax rates of depreciation) there would be an under-provision of depreciation for the purposes of section 350, as would be seen from the illustration given below:

<table>
<thead>
<tr>
<th>Cost:</th>
<th>Provided in the P&amp;L account at the rate of 25% (straight-line method)</th>
<th>Book written down value</th>
<th>Provided at the rate of 20% on the basis of book written down value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st year</td>
<td>Rs. 2,500</td>
<td>Rs. 10,000</td>
<td>Rs. 2,000</td>
</tr>
<tr>
<td>2nd year</td>
<td>Rs. 2,500</td>
<td>Rs. 7,500</td>
<td>Rs. 1,500</td>
</tr>
<tr>
<td>3rd year</td>
<td>Rs. 2,500</td>
<td>Rs. 5,000</td>
<td>Rs. 1,000</td>
</tr>
<tr>
<td>4th year</td>
<td>Rs. 2,500</td>
<td>Rs. 2,500</td>
<td>Rs. 500</td>
</tr>
<tr>
<td>5th year</td>
<td>Rs. 2,500</td>
<td>Rs. 241</td>
<td>Nil</td>
</tr>
<tr>
<td>Total Depreciation provided</td>
<td>Rs. 10,000</td>
<td>Rs. 3,000</td>
<td>Rs. 2,000</td>
</tr>
<tr>
<td>Assets sold in the 5th year for</td>
<td>Rs. 2,600</td>
<td>Rs. 3,000</td>
<td>Rs. 2,000</td>
</tr>
<tr>
<td>Total amount charged</td>
<td>Rs. 8,000</td>
<td>Rs. 3,000</td>
<td>Rs. 2,000</td>
</tr>
</tbody>
</table>
NET PROFITS—Computation

It will thus be seen that if the value basis is followed continuously, depreciation to the extent of Rs. 1,000 would not be provided for, for the purposes of Section 350, in the above circumstances.

Similarly, if a company does not declare dividend it is open to it to provide no depreciation in its profit and loss account to provide for it at rates lower than those prescribed in Section 350. This would distinctly result in the over-charging of depreciation (i.e., more than 100% of the cost of the assets) as will be seen from the following illustration:

<table>
<thead>
<tr>
<th>Cost (Rs.)</th>
<th>Provided at the P&amp;L account at the rate of 10% straightline method</th>
<th>Book written down value</th>
<th>Provided at the rate of 25% w/s 3% on the basis of book written down value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st year</td>
<td>1,000</td>
<td>1,000</td>
<td>1,000</td>
</tr>
<tr>
<td>2nd year</td>
<td>1,000</td>
<td>1,000</td>
<td>9,000</td>
</tr>
<tr>
<td>3rd year</td>
<td>1,000</td>
<td>1,000</td>
<td>7,000</td>
</tr>
<tr>
<td>4th year</td>
<td>1,000</td>
<td>1,000</td>
<td>5,000</td>
</tr>
<tr>
<td>5th year</td>
<td>1,000</td>
<td>1,000</td>
<td>3,000</td>
</tr>
<tr>
<td>6th year</td>
<td>1,000</td>
<td>1,000</td>
<td>1,000</td>
</tr>
<tr>
<td>Book written down after 6th year</td>
<td>6,000</td>
<td>1,000</td>
<td>1,000</td>
</tr>
<tr>
<td>Total depreciation provided</td>
<td>6,000</td>
<td></td>
<td>1,250</td>
</tr>
<tr>
<td>Book written down in 7th year for Loss on sale</td>
<td>1,250</td>
<td></td>
<td>1,250</td>
</tr>
<tr>
<td>Additional charge in the 7th year</td>
<td>2,000</td>
<td></td>
<td>2,000</td>
</tr>
<tr>
<td>Total amount charged</td>
<td>8,000</td>
<td></td>
<td>14,000</td>
</tr>
</tbody>
</table>

It will be seen that the adoption of the book value basis would result in depreciation to the extent of Rs. 4,050 being charged in addition to the cost of the asset for the purposes of Section 350, in the above circumstances.

It will be seen that the Departmental memorandum seeks to achieve a logical compliance with the provisions of section 350, at the same time without causing much difficulty or inconvenience to company managements and professional accountants in the matter of calculation of depreciation. As it is necessary that the procedure followed under Section 350 should not only conform closely to the spirit of the provisions therein, but be in accordance with good company practice, it would be advisable to adopt the notional written down value basis suggested in the Departmental memorandum.

2. The reasons for not deducting extra and multiple shift allowance in respect of financial years ending on or before 27th December, 1960, in calculating the notional written down value in accordance with the Departmental memorandum are not clear.

Under the provisions of Section 350, before its recent amendment, only normal depreciation allowable under the Indian Incometax Act 1922 and the rules made thereunder were required to be deducted for determining the net profits for payment of
managerial remuneration. This Department has been advised that the expression "normal depreciation" would not include extra and multiple shift allowance. Since the Section has no retrospective application requiring the deduction of extra and multiple shift allowance, in respect of periods prior to the commencement of the Companies (Amendment) Act, 1960, i.e. before 27th December, 1960, the application of the rate of depreciation including extra and multiple shift allowance in calculating the notional written down value would only create hardship to the company management (as the amounts of extra and multiple shift allowance for previous years would require to be deducted in the very first financial year after the commencement of Companies (Amendment) Act, 1960) and distort the profitability position of the companies concerned. It would not therefore be appropriate to deduct extra and multiple shift allowance in respect of financial years ending on or before 27th December, 1960 in calculating the notional written down value for the purposes of Section 350.

3. In the case of companies, whose fixed assets have been revalued by writing up the difference to a Capital Reserve Account, whether the written down value should for the purposes of Section 350 be taken as the original cost?

If any asset or assets has or has been revalued prior to the expiry of the financial year ending on 1st April, 1958 or immediately thereafter, the amount added on revaluation would be a part of the book value in computing the notional written down value in accordance with the departmental memorandum on Section 350. Any addition arising out of subsequent revaluation should not be taken into account for the purpose of Section 350, as it has been made clear in the memorandum that the written down value in respect of years subsequent to the financial year ending on or immediately after 1-4-1958 would be the notional written down value referred to in the said memorandum.

4. Whether depreciation should also be deducted under Section 350 in respect of those assets which remained idle during the whole or a part of a financial year.

Since it has been held by accounting authorities that depreciation may also arise during the period when an asset remains idle, by the efflux of time, it would be necessary to deduct depreciation in respect of idle assets in accordance with Section 349(k) read with Section 350 of the Act.

5. It is not clear whether depreciation of a particular year is to be calculated after taking into consideration the additions to assets and the sale or disposal of the asset during that year?

In accordance with accepted accounting procedure the additions to the assets and the sale or disposal of assets during the year have to be taken into consideration before calculating depreciation in accordance with Section 350, in respect of that financial year, but the depreciation to be adjusted in any particular year on the additions and disposals made in that year would only be on a pro-rata basis with reference to the actual date of such additions, disposals.

6. Since plant and machinery which for income-tax purposes is divided into 10 or 12 sub-headings, each of which carries a different rate of depreciation, whether it would be in order to apply the average rates calculated with reference to the total depreciation allowed in respect of that type of fixed assets in relation to the written down values of the various items included under that asset head?

Since Section 350 of the Act refers to the rates specified in the Indian Income-tax Act and the rules framed thereunder, the relevant rates will apply to each kind of asset separately. Calculation of depreciation at the average of the rates would not be in conformity with the requirements of that Section.
7. The rates of depreciation in respect of agricultural assets have not been specified in Section 205—that the procedure to be adopted in this regard may be clarified.

In accordance with sound company practice, if a company desires to deduct depreciation in respect of its agricultural assets for the purposes of Section 205, it may adopt the rates prescribed in the Agricultural Income-tax Act of the State in which it is situated.

11. Section 205 has been amended by the Companies (Amendment) Act, 1960 requiring companies to provide for minimum depreciation in their profit and loss accounts, in accordance with the norms suggested in that Section, before declaring dividends. The views of the Department in regard to the difficulties experienced by the company managements in complying with this Section have been made known to the Chambers of Commerce, professional bodies etc. However, it would appear that some company managements continue to experience difficulties in this regard and the Department’s views in regard to the queries raised by them are set out below for information:

(1) Whether it would be necessary to provide depreciation after the commencement of Companies (Amendment) Act, 1960 in respect of the entire amount of the “original cost” as mentioned in sub-sections (2)(b) and (2)(c) of the above section.

Any depreciation already provided for in the books, that is the profit and loss account of the financial years prior to the commencement of Companies (Amendment) Act, 1960, should be taken into account and only the written down value, after deduction of depreciation actually provided in the books in the earlier years, need be depreciated in accordance with Section 205(2)(c)(c). The reference to “original cost” is only for the purpose of determining the “specified period in accordance with section 205(5)(a) and the quantum of annual instalment of depreciation under the straight line method under section 205(2)(b) or any other method adopted under section 205(2)(c).

(2) Whether it would be necessary to provide depreciation in respect of immovable property which has been acquired as an investment for the purpose of earning supplementary income and not for the use of the company.

Since immovable properties, unless they are acquired for resale, represent fixed assets, it would be obligatory to provide for depreciation on such immovable properties in accordance with the provisions of Section 205 of the Act, read with section 350, which contemplates that depreciation should be provided at the rates specified for the asset comprised in the immovable property in question by the Indian Income-tax Act and the rules framed thereunder. Rates for different classes of buildings and other immovable properties have been prescribed under the Income-tax Rules and the rates prescribed in these rules have to be adopted for the purpose of providing for depreciation under section 205(2), irrespective of the section of the Income-tax Act under which income arising from these becomes assessable to Income-tax.

(3) Whether any company which had adopted the widely used “straight line method” of providing depreciation in the past is required to change it in view of the provisions of the amended Section 205, provided of course that 95% of the original cost of the asset is written off by way of depreciation before the expiry of the specified period.

Section 205(2)(b) seeks to authorise the use of “straight-line method” of depreciation and no company following this method is obliged to change this provided the provisions of that section are complied with. The reference in this section to “original cost” is only for the purpose of determining the quantum of annual instalment of depreciation under the straight line method and the “specified period” in accordance with section 205(5)(a).
(4) Under section 205, it is required that amounts of depreciation should be provided for before any dividend is declared. This may create an anomaly in relation to the provisions of the Income-tax Act.

It is expected that depreciation would be provided every year as it is a charge on the revenue of the company and should not be allowed to fall in arrears.

(5) Whether it would be open to a company to charge depreciation on straight-line method in respect of major fixed assets like plant and machinery, building etc., while adopting the reducing balance method for fixed assets of a lesser value like motor vehicle, equipment, furniture, fittings etc.

It is permissible to adopt different methods for different types of assets provided the same basis is consistently adopted from year to year in accordance with the provisions of section 203(2).

(6) If extra and multiple shift allowance is not claimed by a company for the purpose of income-tax assessment, whether it would be necessary to take into account such allowances in calculating the specified period.

The real criterion would be whether the assets concerned are used for more than one shift and if so, the shift allowance will have to be taken into consideration for the purposes of section 90(5)(a) and Section 256 and it would be immaterial whether such allowances are claimed by the company for the purpose of its tax assessment.

(7) If any asset has already been reduced to 5% or below its original cost, whether any further depreciation would require to be provided in accordance with section 205 before declaring dividend provided the asset is still in commission. If the written down value is slightly over 5% of the original cost, whether depreciation can be provided under section 205 only to the extent it will bring it down to 5% of its original cost?

If the straight-line method is adopted in accordance with section 205(2)(b) depreciation has to be provided till such time the written down value of the asset is reduced to 5% of its original cost. For the purpose of that Section, it would not be statutorily necessary to provide for depreciation in respect of the balance amount of 5% till such time when the asset is sold, discarded, demolished or destroyed.

(8) The calculation of depreciation in accordance with Section 205(2)(b) would be a strenuous task and whether it would be adequate if the method is confined to the major assets like plant, machinery, building etc.

It should not be difficult to determine the specified period as prescribed in section 205(5)(a). It is however, open to a company to choose any of the methods mentioned, namely, the reducing balance method under section 205(2)(a) or the straight-line method under section 205(2)(b) in respect of any of these fixed assets, subject to the stipulation that once a method is adopted, it must be consistently followed in subsequent years.

(9) Whether it would be necessary to provide for depreciation in the books of accounts in respect of assets which are not in use for the whole or part of any financial year.

Since according to accepted accounting principle, depreciation also arises out of efflux of time, it would be necessary for the purposes of Section 205 to provide for depreciation even in respect of assets which are not in use during any financial year, if it proposes to declare to pay dividend for that year.
(10) The amendment of section 205 requiring the provision of minimum quantum of depreciation before declaration of dividend would make it difficult for new undertakings to declare dividends even after a number of years after commencing production, as the new company will necessarily take a long time to clear the backlog of arrears of depreciation before it could declare dividend.

From the cases examined in this Department, it would appear that these misgivings have arisen mainly due to the fact that the alternative method of providing for depreciation according to the straightline method under section 205(2)(b) of the Act has not been appreciated properly in many cases. The advantage of the straightline method is that it evens out the so-called burden of depreciation on a company and thereby enables it to bear it more easily than what the reducing balance method would ordinarily permit. It is for the management of the companies under such expert guidance, as they may need, to decide for themselves which of these two methods of charging depreciation or any other method duly approved by the Central Government, would serve the basic objects of the provisions of section 205. There is no reason why, if the company's profitability is not below the average obtaining in the particular business or industry it should not be able to declare adequate dividends after a reasonable period after the commencement of production.

Extracts from circular letter No. 10(1)-CL VI dated 27-8-61.

Sections 350, 205: Clarification regarding Memorandum.

72.13 I am directed to invite your attention to para II(2) of the note forwarded with this Department's Circular letter No. 10(1)-CL VI/61, dated the 27th September, 1961 [given above] on the above subject. A case has recently been brought to the notice of this Department in which a company declared and paid dividends in respect of its financial year ended 31st March, 1961 without providing for depreciation on its immovable properties (which were stated to be substantial source of income) as required by section 205 on the grounds that (a) that its immovable properties were held as capital investments (though shown in the balance sheet under the head "fixed assets") and were not used for the purpose of any business carried on by the company; and (b) that for purposes of calculating the total income of the company, no allowance by way of depreciation on the said properties was admissible under the Income-tax Act and the rules made thereunder.

The Central Government, however, took the view that the contention of the company in the case mentioned above, is not tenable in law. The provisions in subsections (1) and (2) of section 205 are mandatory in nature and must be strictly complied with by every company before declaring or paying any dividend. For purposes of determining the amount of depreciation to be provided under section 205 read with section 350, it is immaterial as to whether depreciation in respect of any asset is actually admissible under the Income-tax Act and the rules made thereunder. The only provision of the Income-tax Act that is relevant for the above purpose, is the provision specifying the rates of percentage as contained in the Income-tax Rules for the purposes of determining depreciation on various assets as referred to therein. Provisions of the Income-tax Act relating to the admissibility of depreciation allowance for the purpose of calculating the total income of the assessee are not relevant for the purpose of section 205 read with section 350. In support of this view, attention is also invited to the provisions of section 205(2)(d) which apply to cases where no rate of depreciation is allowed by the Income-tax Law.

In this connection, I am to point out that if a company has calculated its distributable profits without providing for depreciation in the manner required by section 205, and if the profit and loss account of the company does not provide for depreciation
Section 350: Clarifications regarding Explanatory Note

72.14 Section 350 defines the amount of depreciation to be deducted in pursuance of section 349(6)(k) from profits for determining the net profits on which managing agency commission is to be calculated. While mentioning the written down value it is stated that the amount of depreciation is to be calculated on the basis of the 'written down value of the assets' as shown by the books of the company at the end of the financial year expiring at the commencement of this Act or immediately thereafter at the income-tax rates. It is clarified that the 'commencement of this Act' refers to the Companies Act, 1960.

It should be further clarified that in cases of some companies where some block assets have been revalued by writing up the difference in a separate capital reserve account, the written down book value for the purpose of this section will be taken as the original cost and not the book value as enhanced by writing up. It is but fair and equitable since any depreciation on the amount of such revaluation and when written off is chargeable to the capital reserve account to which the amount written up is credited at the time of revaluation of block assets and is not a charge on the working profits of the company. This would have been clearer if the phrase used was 'written down purchase price of the assets' instead of 'written down value of the assets'.

Answer

As regards the first paragraph of the query, the matter has been clarified in the Department's Circular No. 10(1)CL.VI/61 dated the 27th April, 1961 (given above) and the Memorandum enclosed with it.

As regards the second para of the query, this Department is advised that for the purpose in view the book value would be the enhanced amount resulting from the writing up of the assets. Such book value would be relevant only in the first financial year after the commencement of the Companies Act.

(Circular No. CLAS/24 dated the 27th June, 1961—Indian Chamber of Commerce, Calcutta.)

Query

72.15 It appears to be the view of the Company Law Administration that in arriving at the amount of depreciation for deduction from gross profits to reach net profits, the correct value to be considered of machinery, plant, furniture, etc. is the value placed on the assets in 1956. Sometimes, such value differs from the original cost owing to revaluation made by the owners previously, but may be corrected thereafter to the original cost because the owners find it desirable to do so. It is stated that such revaluing of values for purposes of depreciation is not permitted to be considered for fixing the quantum of depreciation. Is this presumption correct and if so, why is the procedure objected to?

Answer

The Department's view is that if any asset or assets has or have been revalued prior to the expiry of the financial year ending on 31st March, 1956, the amount added on revaluation would be a part of the book value in computing the
notional written down value in accordance with the departmental memorandum on section 350. Any addition arising out of subsequent revaluation should not be taken into account for the purpose of section 350, as it has been clear in the Memorandum that the written down value in respect of years subsequent to the financial year ending on or immediately after 1st April, 1956 would be the notional written down value referred to in the said Memorandum.

(Company News and Notes, dated July 1, 1961.)

Query

72.16 In paragraph 2 of the Memorandum it is stated that in calculating the amount of depreciation to be deducted...... in respect of the first financial year ending on or after the 28th December, 1960, the written down value should be worked out by deducting the normal depreciation allowed for income-tax purposes ...... in respect of financial years ending on or before the 27th December, 1960, from the written down value of the fixed asset (before provisions of depreciation) as shown by the books of accounts of the company at the end of the financial year ending on the date of the commencement of the Companies Act, 1956, i.e. 1st April, 1956, or immediately thereafter. Reference is also made to a notional written down value for the limited purposes of section 350.

The Chambers, after carefully studying the proposal for calculating the depreciation, are of the considered opinion that it is contrary to the provisions of section 350 of the Act as amended. Your Memorandum ignores the express wording of the new section 350 which states that depreciation shall be calculated "with reference to the written down value of the assets as shown by the books of the company at the end of the financial year expiring at the commencement of the Act or immediately thereafter and at the end of each subsequent financial year". The suggestions in your Memorandum could only result in the depreciation calculation being based on a notional figure whereas the Act clearly stipulates that the calculation shall be based on the book written down value at the end of the financial year concerned.

Taking as an example a company whose financial year is the calendar year, the first financial year to which the Companies Act, 1956, applied was its year ended 31st December, 1956, i.e. "the financial year expiring at the commencement of this Act or immediately thereafter". Its financial year ended 31st December, 1960, is, therefore, a "subsequent financial year". Consequently, in accordance with the provisions of the new section 350, depreciation for that financial year must be and can only be calculated with reference to the written down value of the assets as shown by the books of the company at 31st December, 1960.

For the reasons stated above the Chambers are of the opinion that the notional calculation implicit in the Memorandum sent with your letter is not in conformity with the provisions of section 350 of the Act and that depreciation must be calculated with reference to the written down value of the assets as shown by the books of the company at the end of each financial year.

Answer

The Government of India is unable to accept the view contained in your letter that, for the purpose of section 350, depreciation must be calculated with reference to the written down value of the assets as shown by books of the company at the end of each financial year. After giving due consideration to the points raised by you, Government still feel that while the written down value of the assets as shown by the books of the company at the end of the financial year expiring at the commencement of the Companies Act, or immediately thereafter will have to be adopted as the basis for calculating
depreciation in respect of subsequent financial years the written down value for the purpose of section 350 should be calculated by applying from year to year the rates of depreciation specified for the asset by the Indian Income-tax Act, 1922, and the rules made thereafter. Such written down value for the subsequent years would necessarily be a notional written down value, as stated in this Department's Memorandum referred to by you.

In the opinion of the Government, the written down value of an asset as shown in the books of the company at the end of any subsequent year after 1950 could not properly be taken as the basis for calculating depreciation for the next year in as much as, in such a case, if the depreciation provided for in the profit and loss account of the company in any financial year is higher than what is contemplated under section 350 of the Companies Act, there would be an under-provision for depreciation in the following years. Such practice, it will be conceded, would be clearly opposed to sound financial and accounting practice.

( Clarification given by the Department of Company Law Administration vide letter No. 10/1) CLX/61, dated 31st May, 1964 in reply to the query raised by the Associated Chamber of Commerce.)
CHAPTER XXV

73. INTER-CORPORATE LOANS AND INVESTMENTS

1. Loans.

Section 370: Guiding principles for considering applications under sections 370 and 372.

73.1 In considering the applications received under these sections the following guiding principles have been formulated by the Department:

(I) Although industrial and trading companies are not investment corporations and it is not their primary business to give financial accommodation to, or make investments in the shares and debentures of other companies, they should be allowed to make trade investments in other companies, viz., investments which are likely to create conditions conducive to the interest of the investing company, as well as to other companies' more economic working and betterment of production. An example in point would be an investment by a sugar company in a company which produces sugarcane with a view to supply sugarcane to the sugar company.

(2) A company should be allowed to make the investment only if it has adequate resources for making the investments and if the depletion of the working capital which would result from the blocking up of the funds of the company in the form of investments would not adversely affect the company's own working.

(3) A company that has resorted to borrowing for its own requirements or intends to finance its investment by borrowing should not be permitted to do so, except in the case of trade investments if the terms of borrowing are commensurate with the return expected both directly in terms of dividend and indirectly through creation of conditions conducive to the interests of the investing company.

(4) Inter-company investments should not be permitted where there is a reasonable suspicion that they are promoted by a desire to gain control over the management of companies or are for speculative or for other malafide purposes. Where, however, the proposed investment would make the company a subsidiary of the investing company, the investment should be permitted subject to the existence of a reasonable functional relationship between the proposed subsidiary and its holding company or between it and the other subsidiaries of the holding company; and

(5) Whether having regard to the considerations set out below the proposed investment may be regarded as sound:

(i) The company in which the investment is proposed to be made should be in a sound financial position and, in particular, the depreciation provision made should be adequate;

(ii) The financial structure of the company in which the investment is proposed to be made after taking into account the proposed investment, should be a balanced one as otherwise idle capital or heavy interest charges would act as an economic drag on the working of the company;
(iii) The company in which investment is proposed should have earned profits and declared dividends in the past or should at least clearly be capable of making profits and declaring dividends within a reasonable period of time;

(iv) The purchase price should be reasonable and neither too high nor too low, taking into account the net worth, prevailing market prices and future expectations of profitability;

(v) The proposed investment should provide an expected return on capital at least equal to the return on gilt-edged securities, and

(vi) Except in the case of trade investments, the shares or debentures proposed to be acquired should preferably be readily marketable.

(Extract from the Fifth Annual Report on the Working and Administration of the Companies Act, 1956 — Year ended March 31, 1962.)

Section 370: Inter-company loans or guarantees—Government approval necessary after April 1, 67.

78.9 Inter-company loans or the giving of guarantees and providing of securities in connection with a loan between one company and another, beyond a specified limit, would be subject to approval of the Central Government from 1-4-1967 according to a notification issued by the Government of India. Further, any loan, guarantees or security which could not have been made, given or provided before 1-4-65, had the new provisions of law been in force, and which is outstanding on that date, would have to be called back by the company concerned within a period of six months from the said date unless the period is extended by the Central Government. The Government has prescribed a suitable form of application for this purpose under the Companies (Central Government’s) General Rules and Forms, 1966.*

It may be recalled that section 370 was amended in 1965 by section 43 of the Companies (Amendment) Act, 1965. The object of this amendment, which was in pursuance of the recommendation of the Vivian Bose Commission of Inquiry, was to place inter-company loans, etc., on the same footing as inter-company investments for purposes of the regulatory provisions of the Companies Act. The amendments made by the Act of 1965 in section 370 were not, however, brought into force immediately as it was considered necessary to widen the scope of the exemptions under the amended section so as to remove practical difficulties that might be experienced by the business community in the working of the amended section. Further amendments to section 370 were, therefore, sponsored by Government and these were embodied in section 3 of the Companies (Amendment) Act, 1966, which was enacted during the last session of Parliament. This amendment Act received the President’s assent on 31-12-1965. Government have, accordingly, issued a notification bringing into force the provisions of both section 46 of the Amendment Act 1965 and the Amendment Act 1966, from the same date viz., 1-4-67. Government trusts that with the period of notice of nearly three months that has been given, it should be possible for companies to familiarise themselves fully with the amended provisions of section 370 and take all necessary steps for duly complying with the amended statutory requirements, from the appointed date.

(Source: Press Note, dated 18th January 1967.)


Section 370: Applicability of the provisions of sections 370 and 295—Clarification regarding.

78.9 I am directed to refer to this Department’s Circular Letter No. 13/93/CL.VI/67 dated the 19th November, 1968 and to say that question whether any loan made,
guarantee given or security provided by the exempted companies mentioned in sub-section (2) of section 370 would require the approval of the Company Law Board for the continuance of such loan, guarantee or security after the exemption provided has ceased to be operative, has been reconsidered and the Department has now been advised that the provisions of section 370 would not be applicable to the loans made, guarantees given or securities provided by the exempted companies even though they cease to be so and the compliance of section 370 would not be required, if such loans, guarantees, or securities are continued after the exemption under sub-section (2) of section 370 ceases to exist.

(Circular No. 13/96/CL VI/67, dated 24th February, 1971.)

Section 370: The Section applies in respect of a guarantee given by a company in respect of a loan given by a Bank to an individual.

73.4 The question is whether the provisions of sections 370 (1) would be applicable to the guarantee given by a company to the banks for loans given by the banks to cultivators of sugarcane. It is presumed that the banks in question are bodies corporate.

2. If so, the answer to the question is in the affirmative and the section would be applicable.

3. It may be that in so far as loans are concerned, it applies only to loans made to a body corporate. But the section, as it is worded, would apply to any guarantee given to a body corporate even though the loan in respect of which the said guarantee may have been given is to a natural person.

(Extracts from File No. 13(37)-CL. VI/68.)

Section 370: Resolution under Section 370 of the Companies Act, 1956—Instructions regarding.

73.5 The meanwhile Department of Company Law Administration had issued instructions, vide its letter No. 8/152/56-FR dated 20th/25th July, 1956, regarding the passing of special resolutions under the various sections of Companies Act, 1956. The said letter inter alia provided that in case of resolutions to be passed under Section 370 (as it stood then) an analysis containing the following details should be given:

(i) the purposes for which the loans coming under the purview of this section were granted i.e. whether for development or current expenditure, working capital, or in lieu of bank finance or for reinvestment in or purchase of shares;

(ii) the rate of interest charged on such loans and period of loans;

(iii) the maximum amount of the loan granted by a single company and the proportion it bears to the paid up capital of that company;

(iv) the relationship between the lending company and the body corporate to which the loan is granted;

(v) whether in the past also the lending company has been accustomed to lend to the borrowing company;

(vi) any other remarks called for as a result of the analysis.
2. As section 370 of the Act has been extensively amended by Companies (Amendment) Act, 1965 and has come into force w.e.f. 1-4-1967 in its amended form, the position with regard to the passing of special resolution has been reviewed by the Department particularly in view of the Explanations below sub-section (1) of said section. It has now been decided that—

(a) in case the loan is proposed to be given upto 20% or 30%, as the case may be, of the subscribed capital and free reserves of the lending company, it is not necessary for the lending company to set out the material terms of each individual loan in the special resolution to be passed under section 370 of the Act;

(b) in cases, where it is proposed to make loans in excess of the limit of 20% or 30% at the case may be, for which approval of the Central Government is also required to be obtained, it would be necessary for the lending company either to disclose the material terms of each individual loan, i.e. name of the borrowing company, amount of loan proposed to be given, nature and value of the security offered, rate of interest proposed to be charged etc. or to specify a certain limit in clear terms up to which the loans in excess of the limits prescribed in sub-section (1) of section 370 of the Act can be made, in the special resolution to be passed by the lending company. The full details of the loan will, of course have to be given in the application to be made to Central Government/Company Law Board for obtaining approval under Section 370(1) ibid.

(Letter No. 13(105)-CL-V/67 dt. 12-11-68.)

Note : See Form 34A companies (C. Good) General Rules and Forms for particulars to be furnished.

Section 370: Loans by Subsidiaries to the holding companies

78.6 The guiding principles, for considering the applications under section 370 were considered adequate except in cases where a subsidiary company proposes to advance loans to its holding company. It has now been decided that where a subsidiary company is wholly owned the borrowing company the advancing of loan by it should be allowed if the loan otherwise deserves approval or merit. In cases, however, of partly-owned subsidiaries, the present policy of discouraging upstream loans, should continue, as advancing of loans by partly-owned subsidiaries may be against the interest of minority shareholders.

(Restract from the Thirteenth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1969.)

Section 370: Applicability of the provisions of sections 370 and 295—Clarification regarding.

78.7 The question whether any loan made, guarantee given or security provided by the exempted companies mentioned in subsection (2) of section 370 would require the approval of the Company Law Board for the continuance of such loans, guarantees or security after the exemption provided has ceased to be operative, has been reconsidered companies even though they cease to be so and the compliance of section 370 would not be applicable to the loans made, guarantees given or securities provided by the exempted companies even though they cease to be so and the compliance of section 370 would not be required, if such loans, guarantees, or securities are continued after the exemption under subsection (2) of section 370 ceases to exist.

(Circular No. 12/83/CL-V/67 dated 24th February, 1971.)
Subject: Application of Section 370(1B)(iii) to Government Companies

73.8 A question has been raised whether Government Companies will be deemed as falling under the same management within the meaning of Section 370(1B)(iii) of the Companies Act, 1956, as the President of India or the Governor of a State, as the case may be, holds the majority of shares and exercises or controls the voting rights.

The matter has been considered in the Department and the Department is of the view that the President or the Governor holds shares in companies by virtue of the constitutional provisions which permit Union or the State acquiring, holding and disposing of properties and also to carry on business by the Union or the State. Since the President or the Governor does not hold the shares and exercises or controls voting rights as "Individual" in Government Companies, the provisions of subsection (1B)(iii) of Section 370 of the Companies Act, 1956 will not be attracted. In the aforesaid premises, the Government Companies will not be deemed to be under the same management within the meaning of Section 370 of the Companies Act, 1956.

(Circular No. 976 dated the 19th May, 1976.)

Subject: Contravention of Section 370 of the Companies Act, 1956.

73.9 In the case of an erstwhile banking company whose banking business was nationalised, it was found that the company had utilised the compensation received in advancing substantial funds to other companies of the same group, on the authority of a special resolution passed subsequent to the nationalization. The question whether these advances were in excess of the limits prescribed in Section 370 of the Companies Act, 1956 was examined. It was stated that the company had been established primarily to carry on the business of banking in all its branches. Opinion of counsel was also produced to support the stand that restriction of Section 370 will not apply to a company established with the object of financing industrial enterprises. It was argued that the company was established with the object inter alia of financing industrial enterprises and that it could make loans in furtherance of that object or for any other purpose without falling within the said restrictions.

On a careful examination of the case, it has been decided that the company was set up not with the primary object of financing industries but to set up and carry on the business of banking. Even though the power to finance industries was incidental to the main business of banking, the company will not be covered by the exemptions under section 370(1) of the Companies Act, 1956.

This is being brought to the notice of all officers so as to ensure that all such companies comply with the provisions of section 370 in respect of their money lending and financing transactions taken up and carried on after nationalisation of their banking business.

(Circular No. 14/76 dated 25th June, 1976.)

Section 370: Loans given by exempted Cos—when can be taken into account for the purpose of ceiling.

73.10 The loans given by any company during the period when it was an exempted company by virtue of sub-section (2) of section 370 of the Companies Act, 1956 have to be taken into account while computing 30 per cent ceiling prescribed under section 370 ibid.

(Circular No. 18/73 dated 17-7-73.)
Section 372: Display of investments as Stock-in-trade in accounts

23.11 A company which was carrying on manufacturing business was also authorised by the objects clause of its memorandum of association to do investment business. Under section 49 all investments of a company are required to be held in its own name. This requirement is, however, not applicable to companies whose principal business consists of the buying and selling of shares or securities. In this case, though the company was carrying on manufacturing business and this was its principal business, the company had shown its investments as stock-in-trade, as if it were an investment company permitted to do so under section 19(4).

The Department, in this case, felt that the provisions of section 372 were contravened.

(Extract from the Fourth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1966.)

Section 372: Investments made prior to the amendment of the Section

23.12 The amendments to Section 372 do not have retrospective effect. Any investments made before the 28th December, 1960 in accordance with section 372 as it stood before the amendment, will not require to be disposed of even if they are in excess of the limits prescribed in the amended Section 372. Section 373 prescribes periods of time which have already expired and obviously therefore this Section should be read with Section 372 as it stood before the amendment.

(Letter No. 8/16(1)/61-PR dated 25-9-61.)

Section 372: Clarification of section 372—Guiding principles for considering applications thereunder.

23.13 Section 372 of the Companies Act, as amended by the Companies (Amendment) Act, 1960, seeks to regulate investments by a company in other bodies corporate, whether in the same group or outside the same group as the investing company, beyond certain prescribed limits. The provisions of this section are, however, not applicable to a private company which is not a subsidiary of a public company.

The amended section 372 provides that the Board of directors of a company shall be entitled to invest in any shares or debentures of another body corporate up to 10% of the subscribed capital of the latter, provided,

(i) The aggregate of such investments made in all other bodies corporate shall not exceed 30% of the subscribed capital of the investing company; and

(ii) the aggregate of such investments made in all other bodies corporate in the same group as the investing company shall not exceed 20% of the subscribed capital of the investing company.

In computing, at any time, the percentages specified above, the aggregate of all the investments made by investing company in other body or bodies corporate, whether before or after the commencement of the Amendment Act, up to that time, is required to be taken into account.

The limit of 30% is not, however, applicable to an investment company, i.e. a company whose whole or substantially the whole business is the acquisition of shares, stock, debentures or other securities. The prescribed limits are not also applicable
to investments in 'rights' shares offered in terms of clause (a) of sub-section (1) of section 81 of the Act, provided that when, at any time, the investing company intends to make any investments in shares other than 'rights' shares, then in computing, at that time, any of the aforesaid percentage limits, the existing investments, if any, made in 'rights' shares up to that time are required to be included in the aggregate of the investments of the company. The restrictions imposed by the section on investments in companies outside the same group do not, however, apply to investments in debentures of companies outside the same group as the investing company.

The following clarifications are given for the information and guidance of all concerned:

(1) Previous approval of the company in general meeting and of the Central Government is required to be obtained before a company invests in the shares of another body corporate in excess of the limits prescribed in the section. As the Central Government will not accord ex-post facto approval to any investment attracting section 372(4), any such investment made without the prior approval of Government would attract the penal provisions of section 374.

(2) If a company proposes to make investments in the shares of another company which will have the effect of making the latter company its subsidiary after such investment, the Central Government's prior approval will be required in terms of section 372(4). Only such investments as are made by a holding company in its subsidiary after it became a holding company are saved by the provisions of clause (d) of sub-section (14) of section 372.

(3) In calculating the aggregate of the investments made in all other bodies corporate, for the purpose of computing the percentages specified in sub-section (2) and the provisos thereto, the investments made by a company in its subsidiary or subsidiaries must also be taken into account.

(4) For purposes of calculating the prescribed limit of 20% or 30% of the subscribed capital of the investing company, the actual cost of the investments (and not the nominal value of the shares to be purchased or subscribed) is to be taken into account; the limit of 10% of the subscribed capital of the 'investee' company is, however, to be computed on the basis of the full normal value of the shares of that company proposed to be purchased or subscribed.

(5) In view of the specific provisions contained in sub-section (5) of section 372, the power of the Board of directors to invest the funds of a company in the shares of another body corporate in pursuance of sub-section (2) of the said section cannot be delegated to any committee or director, the managing director, the manager or any other person specified in the first proviso to section 292(1).

(6) As the provisions of the amended section have no retrospective effect, the investments made by a company prior to 28th December, 1960, in accordance with the provisions of the Act obtaining at that time, would not require the approval of the Central Government under section 372 of the Act even if the percentage limits prescribed in section 372(2) had been exceeded. Nor would a company be required to dispose of any of the said investments so as to conform to the said percentage limits. Such investments will, however, have to be taken into account for purposes of computing the aggregate of the investments as provided in sub-section (3) of section 372.

(7) When a private company is converted into a public company or becomes a public company by virtue of the provisions of section 43A, the investments made by it
prior to the date of its becoming a public company would not be hit by the provisions of either section 372(4) or section 373, and it would not, therefore, be necessary for that company to dispose of any of the said investments so as to bring them down to the percentage limits prescribed in section 372(2). Such investments will, however, have to be taken into account for purposes of computing the aggregate of the investments as provided in section 372(3).

(9) As companies dealing in shares, stocks debentures and other securities have not been exempted from the operation of section 372, investments which are held by such companies as part of stock in trade will be hit by the restrictive provisions of section 372. The limit of 30% applies to all investments by a company in the share of any other body corporate, irrespective of whether such shares are held for short or long periods or as long-term investment or for sale or purchase. Investment companies, however, will not be subject to the 30% limit in view of the provisions of sub-section (1B) of the said section.

(10) A company seeking Government's approval under section 372(4) must specify in its application the name or names of the company or companies whose shares/debentures are proposed to be purchased or subscribed. In other words, this Department would not entertain applications for 'blanket' approval of investments in such companies as the Board of the investing company may decide from time to time, without specifying either their names or the particulars of the proposed investments.

All the applications for Government's approval under section 372(4) are required to be made in Form 34B prescribed by the Companies (Central Government's) General Rules & Forms (Amendment) Rules, 1961 accompanied by the treasury challan in token of payment of the appropriate fee prescribed by the Companies (Fees on Applications) Rules, 1962. In considering the applications received under this section, the following guiding principles have been formulated by the Department:

(a) Although industrial and trading companies are not investment corporations and it is not their primary business to give financial accommodation to, or make investments in, the shares and debentures of other companies, they may be allowed to make trade investments in other companies, viz., investments which are likely to create conditions conducive to the interest of the investing company, as well as to the other companies' more economic working and betterment of production. An example in point would be an investment by a sugar company in a company which produces sugar cane with a view to supplying the sugarcane to the sugar company.

(b) A company may be allowed to make the investments only if it has adequate liquid resources for making the investments and if the depletion of the working capital which would result from the blocking of the funds of the company in the form of investments would not adversely affect the company's own working.

(c) A company that has resorted to borrowing for its own requirements or intends to finance its investment by borrowing, should not be permitted to make the investments, except in the case of trade-investments if the terms of borrowing are commensurate with the return expected both directly in terms of dividend and indirectly through creation of conditions conducive to the interest of the investing company.

(d) Inter-company investments should not be permitted where there is a reasonable suspicion that they are prompted by a desire to gain control over the management of companies or are for speculative or for other mala fide purposes. Where, however, the proposed investment would make the other
company a subsidiary of the investing company, the investment may be permitted provided that there is a reasonable functional relationship between the proposed subsidiary and its holding company or between it and the other subsidiaries of the holding company; and

(e) Whether having regard to the considerations set out below, the proposed investment may be regarded as sound:

(i) the company in which the investment is proposed to be made should be in a sound financial position, and, in particular the depreciation provisions made should be adequate;

(ii) the financial structure of the company in which the investment is proposed to be made, after taking into account the proposed investment, should be a balanced one as otherwise idle capital or heavy interest charges would act as an economic drag in the working of the company;

(iii) the company in which investment is proposed should have earned profits and declared dividends in the past or should at least clearly be capable of making profits and declaring dividends within a reasonable period of time;

(iv) the purchase price should be reasonable and neither too high nor too low, taking into account the net worth, prevailing market prices and future expectations of profitability;

(v) the proposed investment should provide an expected return on capital at least equal to the return on gilts and debentures; and

(vi) except in the case of trade investments, the shares or debentures proposed to be acquired should preferably be readily marketable.

It should, however, be made clear that the above principles are only illustrative and not exhaustive and that each application is considered and disposed of by a Government on its own merits and in the light of the facts and circumstances of each case.

(Circular No. 49(50)-CL. IV/61 dated 12th February, 1962.)

Section 372: Intercorporate Investments by a share-trading company.

73.14 The limit of 30 per cent prescribed by section 372 of the Act with regard to investment by companies applies to all investments by a company in the shares of any other company, irrespective of whether such shares are held for short or long periods or as long-term investments or for sale or purchase. Investment Companies, however, will not be subject to the 30 per cent limit in view of the provisions of sub-section 13 of section 372 of the Act.

The question as to whether a particular share trading company which deploys its funds for short-term transaction in buying and selling shares is an investment company or not is one of fact which has to be determined in relation to the actual business transacted by it. The Department is inclined to the opinion that a company should be treated as an investment company if the whole or substantially the whole of its business relates to shares, securities, stock and debentures, etc. A share trading company may take advantage of these provisions of section 372 if it can be classed as an investment company. This view of the Government, however, need not be taken as an authoritative interpretation of law.

(Y. No. 85/CL. VII/61 dated 23-2-1961)
Section 372: Calculation for the purpose of ceiling limits of permissible investments.

73.15 In calculating the limits of 26 per cent and 30 per cent laid down in sub-section (2) of section 372 of the Companies Act, 1956 the cost of the investment (i.e. the cost price to the investing company of the shares purchased) should be taken into consideration. However, in calculating the limit of 10 per cent of the subscribed capital of the other body corporate, the nominal value of the shares of such body corporate should be taken into account.

F. No. 8/2/CL. VI/61

Section 372: Applicability of Section 372.

Query 1

73.16 Referring to the provision of the section, in terms of which a company cannot invest in the shares of any other body corporate more than 10\% of the subscribed capital of such body corporate, a query was raised as to whether this restriction applied to a company which dealt in shares and it was contended that the intention behind this restriction was that a person might not exercise more than 10\% of the total voting rights, but in cases of "Badla business", where purchases and sales were simultaneously made on blank transfers with a view to getting higher interest, the question of exercising any right did not arise.

Answer

The Department is of the view that there is no exemption in the case of company, which deals in shares. If, however, the company is an investment company the first proviso to sub-section (2) of section 372 may not apply vide sub-section (13) thereof.

Query 2

Whether in the case of a company dealing in shares i.e. purchasing them on one hand and selling them on the other, such purchases at frequent intervals during the course of the business were covered by section 372.

Answer

Yes.

Query 3

Whether a company having over-draft facilities which were not fully utilised could invest in other companies from the surplus of the over-draft facilities if it had power only to invest the surplus funds.

Answer

The so-called surplus of the over-draft facility cannot be called a surplus of the company's funds to be utilised for investment in another company.

(Company News and Notes, dated 1st July, 1963.)

Section 372: Investment by a holding company in its subsidiary company

73.17 The exemption under sub-section (14)(d) of section 372 will be available if and only if, on the date the investment is made, the company in which the investment is made is already a subsidiary of the investing company.

Letter No. 8/16(1)/61 PR. dt. 25-2-61.)
Section 372: Clarification under section 372 of the Companies Act, 1956

Query

73.18 One of the main business of a share dealing company is to acquire shares etc. but equally main business is also to sell the same. From all equitable proposition, a share dealing company should be free to invest more than 30% as its main object is to deal in shares etc. Therefore it is necessary that the position be clarified in this respect.

Answer

Attention is invited to the provisions of sub-section (4) of section 49 and also sub-section (13) of section 372 read with the proviso to sub-section (10) of the section. Whether for purposes of section 372 a particular share trading company which deploys its funds for short-term transactions in buying and selling shares is an investment company or not, is a question of fact which has to be determined in relating to the actual business transacted by it. If the whole or substantially the whole of the business of a company relates to dealing in shares, stock, debentures, or other securities, it may be treated as an investment company for purposes of section 372.

(Letter No. II/2/CL. VI/61 dated 4th Oct. 1961.)

Section 372: Inter-company investment—Relaxation of statutory limits in cases involving foreign collaboration.

73.19 Government have accorded approval, in many cases, to intercorporate investment in excess of the limits laid down in section 372. In according such approval, each case is considered on its merits keeping in view the broad guiding principles laid down by the Department for dealing with application for inter-company investments. In such matters, Government usually adopt a flexible attitude rather than a rigid one. As regards the suggestion that Indian participants in a joint venture should be allowed to hold shares in a new company to match the holdings of a foreign collaborator, the main consideration is that the fruits of foreign collaboration should not be confined to a few persons and the ordinary investors should not be prevented from participating in the shares capital of such a joint venture. As the share of various participants in a new venture is usually considered and determined by Government before approving the arrangements for foreign collaboration, the point should more appropriately be agitated/urged at the time of entering into any arrangement with the foreign collaborator.

(Secretary's reply to Indian Merchants' Chamber, Bombay F. No. 2/35/63-PR.)

Section 372: Some instances of intercorporate investments

73.20 While considering applications under section 372, it was noticed that the main reason urged by a few companies in support of their proposed investments in other companies was that they would be acting as sole selling agents of the investee companies and as such the proposed investments would be conducive to the business of both the companies.

Government, however, considered that investment by a sole selling agency was unbalanced, and that in such cases, it would be better that the investee company should either be a wholly owned subsidiary company of the investing company or the investing company should sever its connection as selling agent of the investee company.

(Extract from the Seventh Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1965.)
Section 372: Investments in excess of statutory limits—Effect

73.21 As section 372 contemplates the previous approval of the Central Government to investments in excess of the prescribed limits, Government have no power to regularise the investments already made by a company in excess of the prescribed limits. The policy of the Department in such cases has been to advise the company concerned to dispose of the excess investments within a specified period. In this connection, a question arose as to whether, in a case where the company failed to dispose of its excess investments, the name of the investing company should continue to remain on the register of members of the other company in which investment had been made or whether rectification of the register of members of the other company was necessary under section 155. The Department is of the view that action under section 155 was necessary in all such cases as the investment in question was void and ineffective. All the Registrars of Companies have been instructed to draw the attention of the companies concerned to the legal position set out above.

A question recently arose whether the provisions of section 372 of the Act would be applicable to the subscription to the memorandum of association of a new company by an existing company through its nominees. Government is of the view that where subscribers to the memorandum of association of a new company are an existing public company or its nominees, such subscription amounts to the latter company subscribing for shares in the former attracting thereby section 372 of the Act.


Section 372: “Investment Company”—Clarification regarding definition

Query

73.22 According to one set of legal opinion, an investment company only means such a company as acquires and holds shares and securities with an intent to earn income only from them by holding them. On the other hand, another school of legal opinion holds that an investment company means any company, which acquires shares and security for earning income by holding them as well as by dealing in such shares. In other words, even the share-dealing company will be an “investment company”.

Answer

In the Department’s opinion whether a company is or is not an investment company and the business which it should or should not transact to fall within the provision of the definition of an “investment company” within the meaning of section 372(10) is actually a question of fact. The words used in the section are “whose principal business is the acquisition of shares.........”. These words imply that the company concerned is expected to hold the shares, etc., acquired by it for a reasonable time.

(Company News and Notes, dated July 1, 1963.)

Section 372: Inter-company investments—(Section 370)

73.23 The exemption in sub-section (1) of section 372 relates to the making of investments by the companies mentioned therein. It does not apply to the calculation of percentage limits specified in sub-section (2). Thus, while a holding company could make further investments in a subsidiary without Government’s approval by virtue of the exemption under this sub-section, its investments in that subsidiary would count for calculation of the 30% limit specified in sub-section (2), if it wanted to make any investment in the shares of another company.

(Letter No. 29/64-PR dated 23-3-64.)
Section 372: Inter-Company investment—Clarification

73.24 The provisions of section 372 will apply in the case of investment proposed to be made in the shares of a new company.

(Letter No. 2/1184-P.R dated 29-6-64.)

Section 372: Inter-company investment—purchase of units of the Unit Trust of India by a company.

73.25 The Board has been advised that the units issued by the Trust of India under section 21 of the Unit Trust of India Act, 1963 are not shares as understood in Company Law and hence the investments made by a company in the purchase of units issued by the Unit Trust does not attract the provisions of section 372 of the Companies Act, 1956.

(Circular letter No. 8(15)-CL VI/84—Also see Company News and Notes, dated 6-1-65.)

Section 372: Approval under sub-section (4) should be prior approval

73.26 (1) The question now, raised by the Department of Company Affairs is whether the approval of the Central Government required under section 372(4) of the Companies Act, 1956 should be the prior approval of the Government.

(2) The Act requires the approval or sanction of the Central Government in respect of various matters. The question as to whether such approval or sanction should be the previous approval or sanction or whether it can be the subsequent approval or sanction will depend on the context in which the expression “approval” or “sanction” is used in the provisions of the Act under consideration.

(3) Section 372(4), so far as it is relevant for the purpose under consideration, provides that the investing company shall not make any investment in the shares of any other body corporate beyond a specified limit, unless such investment is approved by the Central Government. It appears that if the investment beyond the specified limit is to be valid and effective in law, it must have the prior approval of the Central Government. The expression “unless” usually indicates that what follows it is intended to serve as a condition precedent to what precedes it. In view thereof as well as having regard to the context in which the word “approval” is used in the said section, it may well be urged that the approval of the Central Government contemplated by the section is the prior approval.

(4) In view of the above the approval of the Central Government regarding the investment proposed to be made by the investing company beyond a specified limit, as contemplated by section 372(4), is the prior approval of the Central Government.

(Since: Legal Advice)

Section 372: Inter-corporate investments beyond statutory limits made without prior approval—validity

73.27 On a plain reading of the said sub-section (4) it is clear that there are two conditions precedent to be fulfilled before the investing company can make any investment in the shares of any body corporate in excess of the percentage specified in sub-section (2) and the proviso thereto.
(2) The two conditions precedent are:

(i) investment has to be sanctioned by resolution of the investing company in general meeting; and

(ii) it has to be approved by the Central Government.

The words "shall not make any investment" are clear enough to show the intention of the legislators that it is a mandatory bar and that bar can be removed only on fulfilment of the two conditions precedent mentioned above. Accordingly in our opinion, the Central Government's prior approval is necessary in terms of section 372(4); otherwise such investment shall be ultra vires.

(3) Regarding the two judgments cited by the company in its letter dated 9th April, 1969 at page 28/c we have to observe that the language of the Sections interpreted in those two cases are different from that of section 372(4). Section 372(4) opens with the words "Investing company shall not make any investment." The legislators thereby intended to put a general bar on such investments taxable on fulfilment of special conditions mentioned therein. With great respect, we may add that the word "approval" does not always mean approval of a past act already done, but may also mean approval of future act to be done.

(4) Having regard to the scheme of section 372 of the Act which stipulates that save as otherwise provided, a company shall not be entitled to subscribe for or purchase the shares of any body corporate beyond the limits specified and the investing company shall not make any such investment unless the investment is sanctioned by a resolution of the investing company in general meeting and unless further it is approved by the Central Government, and having regard to the provisions of section 23 of the Indian Contract Act, 1872, any investment is unlawful and void if it is forbidden by law or is of such nature that if permitted, would defeat the provisions of any law.

(5) Since section 374 merely provides for the imposition of fine in case of the investing company making a default in complying with the provisions of section 372 excluding subsections(6) and (7), the question whether or not the penalty imposed by section 374 is tantamount to the prohibition of the act for which the penalty has been imposed in the Statute has also been considered by us.

(6) Where the penalty is imposed with the object of protecting the public, the act must be taken to be prohibited and no action can be maintained by the offending party on a contract which is in contravention of the Statute. Since the penalty imposed by section 374 for contravention of the provisions of section 372 with a view to protecting the public, any agreement to subscribe for or purchase of shares in contravention of section 372 is void and ineffective in law. As such a transaction which is forbidden in public interest could not be made lawful by paying a penalty for it.

(7) In view of the ruling in Trevor Vs. Whitworth (1887) 12A 409, "a company cannot employ its funds for the purpose of any transaction which do not come within the objects specified in the memorandum" (in this case such transitions do not come within the Act), it is ultra vires the powers of the company. It is ultra vires of a company to act beyond the scope of its memorandum. Any attempted repatriation will be invalid and cannot be validated even if assented by all the members of the company.

(8) Also as held by the Supreme Court in Dr. Lakshminaraswami Mudaliar Vs. Life Insurance Corporation (1968) 1 Comp. L.J. 248 (S.C.) an act beyond the objects mentioned in the memorandum is ultra vires and void and cannot be rectified.

(Excerpts from File No. 3/60/CL V/67)
Section 372: Clarification—whether the types of investments mentioned in sub-section (14) have to be omitted for computing the ceiling in sub-section (2)

73.28 Reference is made to the clarification contained in Clause (iii) of para 15 of the circular letter No. 48(50)-CL-IV/67 dated the 9th January, 1967 of the erstwhile Department of Company Law Administration, Ministry of Commerce and Industry which reads as under—

"(iii) In calculating the aggregate of the investments made in all other bodies corporate, for the purpose of computing the percentages specified in subsection (2) and the provisos thereto, the investments made by a company in its subsidiary or subsidiaries must also be taken into account."

2. In a recent case a company made investments in the shares of another company without obtaining the approval under section 372 even though by making that investment, total investments made in the shares of all other companies exceeded 30% of its subscribed capital. It was, however, urged by the company that if investments made in the shares of its subsidiary companies and the companies managed by it were excluded, the particular investment made in the shares of the other company would be within the permissible limit of 30% of its subscribed capital and therefore approval under section 372(4) was not required for making that investment. Since a doubt regarding the legality of the above interpretation of section 372 was raised, the Company Law Board has reconsidered the matter in consultation with the Ministry of Law and it has been advised that the investments enumerated under sub-section (14) are to be excluded from calculation in considering the limits prescribed in subsection (2) and the proviso thereto. As sub-section (14) of section 372 of the Companies Act, 1956 provides that this Section shall not apply to certain Companies and to certain types of investments mentioned in sub-clause (a) to (e) of that sub-section, it virtually means that the limits placed by the Section on the power of an investing company to invest in the shares of any other body corporate are exclusive of the investments made by a holding company in its subsidiary or by a Managing agent or Secretaries and Treasurers in a company managed by him or them vide sub-clause (d) and (e).

(No. 4(38)-CL VI/66 dated 10-3-67.)

Section 372: Applicability of the provisions of Section 372(4)

73.29 I am directed to refer to this Department’s circular letter No. 7(11)-CL-VI/66, dated the 1st May, 1967 and to say that on reconsideration of the question whether continuation of investment after cessation of exemption would require compliance of this Section, the Company Law Board has been advised that the intercorporate investments made by the exempted companies mentioned in Sub-section (14) of Section 372, and are outstanding after the cessation of exemption under section 372(14), would not come within the restrictions contained in section 372 and the compliance of the said section would not therefore, be required in this regard.

(Extract from communication No. 18/98-CL VI/67 dated the 24th February, 1971.)

Section 372: Acquisition of shares by virtue of schemes of reorganisation and arrangement—No need of approval under sub-section (4).

73.30 Sometimes companies acquire shares of other companies by virtue of schemes of reorganisation and arrangement under section 391 of the Companies Act, 1956. Since this Department is a statutory party to such schemes in view of section 391A of the Act, it has been decided that approval of this Department under section 372 will not be necessary to investments made in such cases. It has also been decided that since in such cases, notices are received by the Regional Directors under section...
394A of the Act, they may scrutinise such schemes and bring to the notice of the Courts the requirements of Section 372 of the Companies Act so that the Court, may keep this aspect also in view while passing orders on such schemes under section 391/394 of the Companies Act.

Section 372: Intercorporate investments—Consideration for grant of approval.

73.31 In considering applications for intercorporate investments received under section 372 of the Companies Act, 1956, sufficiency of liquid resources of the investing company, financial position of the investee company and the extent to which the investments are likely to create conditions conducive to the interests of the concerned companies as well as to their economic working and the betterment of production are taken into consideration. Inter-company investments are not permitted where there is a reasonable suspicion that they are prompted by speculative or mala fide purposes.

(Answer given by Deputy Minister in Lok Sabha—on 7-3-78—Unstarred question No. 9276.)

74. Qualified Secretaries

Section 383A: Certain companies to have Secretaries

74.1 Replacing the present proprietary management in some of the companies with peculiar genealogical moorings by genuine professional management has been the policy of the Government from the very inception of the Companies Act of 1956. At one time it was thought that the system of management by Secretaries and Treasurers for which provision had been made in the Companies Act, would provide necessary replacement for management by the old managing agency houses, which were mostly organised on hereditary lines. But as you all know, this hope of the Government has been belied as it degenerated into another form of managing agency. Now that statutory recognition is being given to the profession of Company Secretaries under the provisions envisaged in the Companies (Amendment) Bill, 1972 I am hopeful that you will be able to fill the gap.

(Speech by Shri H. R. Godbole, Minister for Law, Justice and Company Affairs to the Institute of Company Secretaries of India 25th November, 1972.)

Some Clarifications under the Companies (Secretaries Qualifications) Rules, 1975

Suggestion:

74.2 1. Raising of share capital of a company beyond Rs. 25 lakhs should not debar the person who had been the Secretary of the company from continuing as such, after the capital rise.

2. In view of the qualifications prescribed under Rule 2(b), companies as well as Secretaries may have to face practical difficulties. The provision should, therefore, be relaxed so as to facilitate mobility of Secretaries. A person who has worked for at least three years as a Secretary of a company should be allowed to take up secretaryship of some other company in case he wishes to change the job. To enable companies to recruit a new Secretary where the existing Secretary has left the company, at least six months time should be given.

Section 25 companies should be exempt from the provisions of these rules.
Secretary Shri Ray's reply

In cases where the capital of a company has been raised beyond Rs. 25 lakhs, the person who has been the Secretary of the company would be allowed to continue. The Department was persuading the Institute of Company Secretaries to be liberal in regard to accommodating persons having requisite experience of working as Secretaries to act as Secretaries of some other companies. The Institute in fact has been admitting such persons as Associate members if they satisfy the stipulated conditions and the Deptt. has asked the Institute to be more flexible in cases of persons already working as Secretaries.

A reasonable period of up to six months would be allowed for recruiting a new Secretary and administrative instructions would be issued in this regard.

Regarding exemption of Section 95 companies from the provisions of the above rules, the Department is examining the matter sympathetically.

(Source: Reply given by Shri Ray at a meeting of Punjab, Haryana & Delhi Chamber of Commerce.)
CHAPTER XXVI

75. AMALGAMATION OF COMPANIES

Section 394: Amalgamation of Companies—The transferor and the transferee companies should move the High Court for direction.

75.1 The matter has been examined in the light of the reported cases cited below:


which indicate that where in a case of amalgamation, there is identity of interests between the transferor company and the transferee company, approval of the shareholders to the scheme should be accorded by the shareholders of both the companies. Though sub-clauses (i) and (iii) of clause (b) of Section 394(i) refer to a transferee company, it has been held that both the transferor and the transferee company should make an application under section 394 of the Act. In Company Petition No. 61 of 1971, the Bank of India Limited versus Ahmedabad Manufacturing. Weaving and Calico Company Limited, the matter was argued at length and Mr. Justice Vinadalal held that:

"In my opinion, having regard to the fact that the said sections make no distinction between a transferor company and transferee company, the test for determining whether the provisions of those sections are attracted or not must be the same both in the case of the transferor company as well as in the case of transferee company, viz., whether as between the company and its members or creditors the proposed arrangement or compromise affects the right of those members or creditors or any class of them".

In view of the position indicated above where two companies involved in scheme of amalgamation are incorporated in two different States, each company should move the respective High Court for directions in the manner laid down under Rules 82, 83 and 84 of the Companies (Court) Rules, 1959. Where both the companies are situated in the same State and only one company moves the Court under section 391, the Company may be advised to make the other company a party to the petition, as in the scheme of amalgamation there is an identity of interest between the transferor company and the transferee company as observed by the Madras High Court in the matter of W.A. Beadell and Company Vs. Meteor Industries Limited. Companies cases 1968 p. 197.

(Circular No. 14 of 73 dated 5-6-73.)

Section 394: Amalgamation of Companies under section 391/394—Expedious disposal of cases

75.2 The matter has been further examined in the light of the difficulties explained to this Department and it has now been decided that a copy of the application made to the Central Government by an undertaking seeking its registration under 31-26 M of IJ & CAN/76
Section 29 of the M.R.T.P. Act shall be forwarded to the concerned Regional Director by this Department/M.H Branch to enable him to examine the cases from the M.R.T.P. angle in greater detail and forward his comments as quickly as possible to this Department. I am to add that after receipt of a copy of the application, the Regional Directors will no doubt be in a better position to decide the line of action expeditiously.

(Circular No. 16/73 vide on File No. 24/6/72/GL. III)

Section 394A: Delegation of powers to the Regional Directors, Company Law Board

75.3 Section 391 read with section 10 of the Companies Act, 1956 requires that a proposed compromise or arrangement:

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

requires, inter alia, sanction of the High Court concerned. Further under the provisions of section 394 of the Act, if in the case of an application to the Court under section 391, it is shown that the compromising or arrangement has been proposed for the purposes of a scheme for reconstruction of any Company or Companies, or the amalgamation of any two or more Companies, or that under the Scheme the whole or any part of the undertaking, property or liabilities of any Company concerned in the scheme is to be transferred to another Company, the High Court could make an order in regard to any of the matters specified therein. Section 394A of the Act requires that a High Court shall give notice of every application made to it under section 391 or 394 to the Central Government and shall take into consideration the representations, if any, made to it by the Government before passing any order under any of these sections. This power, which was hitherto being exercised by the Company Law Board, has been delegated to the Regional Directors, Company Law Board. vide notification No. G.S.R. 416 dated the 22nd February, 1969.


Amalgamation of companies under Section 391/394 of the Companies Act, 1956—Compliance of the provisions of 2nd proviso to Section 394(I) of the Act

75.4 I am directed to invite a reference to this Board’s letter No. 2/29/68-CL.V dated 19th February, 1969 wherein while delegating power under Section 394A of the Companies Act, 1956, detailed instructions were given to all Regional Directors for dealing with cases coming under Section 391 and 394 of the said Act and to say that it was expected that the Regional Directors would bring to the notice of the High Courts the provisions contained in 2nd proviso to Section 394(I) of the Companies Act, 1956, which cast a duty on the part of the High Courts to obtain a report from the Official Liquidator about the affairs of the transferor company before passing an order of dissolution of the said company. It has, however, been observed that in some cases the Court did not issue notices to the Official Liquidator for furnishing his report as required under the aforesaid provisions of the Act. You are, therefore, requested to point out invariably to the Court in all cases of notices under Section 394A of the Act pertaining to amalgamation of companies about the aforesaid requirements of the 2nd proviso to Section 394(I) of the Act.

(Suggestion for amendment of Section 394 of the Companies Act, 1956)

75.5 I am directed to say that it has been reported by the Official Liquidator attached to the Bombay High Court that there has been a practice followed by the
Bombay High Court whereunder the court sanctioned the scheme of amalgamation under Section 394 of the Companies Act, 1956 without passing any order for dissolution of the transferor company without winding up. It has been stated that in such cases the Official Liquidator submitted an adverse report to the Court under the second proviso to Section 391(1) of the Act stating that the affairs of the transferor company were conducted in a manner prejudicial to the interest of its members or to public interest. Subsequently on the transferor company moving separately for dissolution it was pointed out by the Official Liquidators to the Court that he had submitted his report in the meantime which went against it, but the Court however, took the view that since the amalgamation had already been sanctioned by it, nothing could be done even if the Official Liquidator's report was adverse and ordered for dissolution of the transferor company without winding up.

2. I am to add that on a reading of Section 394 and its proviso will indicate that the practice followed by the Bombay High Court in some cases in sanctioning the scheme of amalgamation without simultaneously making any order for the dissolution of the transferor company without winding up is permissible but it should not be allowed to encroach the administration of the provisions of the law.

3. The Company Law Advisory Committee before whom the matter was placed has advised that the Regional Directors Company Law Board should make the best use of the opportunity that they get under Section 394 to make a representation to the Court in order to ensure that no wrong order is passed by it.

(Special No. 39/76 dated the 6th January, 1976 on File No. 515/72-CL. III.)
CHAPTER XXVII

76. CENTRAL GOVERNMENT'S POWER TO PREVENT OPPRESSION

Section 400: Notice to Government in respect of applications under sections 397 and 398

76.1 Sections 397 to 408 confer certain powers on the Court and the Central Government to deal with oppression of the minority or with mismanagement of the affairs of a company in a manner prejudicial to the interests of the company and its members.

The provisions of these sections are intended to avoid recourse to the extreme step of winding up a company and at the same time protect the minority shareholders from acts of oppression and mismanagement. Under these sections the oppressed members of the company may, subject to the conditions laid down in section 399, move the Court for the protection of their rights and interests. The Court thus approached by the parties is required, in turn, to give notice under section 400 of every such application to the Central Government to make representation to it if any, for its consideration before it passed the final order in the case.

A study of the applications made to the Courts in respect of which notices were received by the Department revealed the commoner types of mismanagement and oppression against which Courts were moved. These were as follows:—

(a) fraudulent transactions;
(b) grossly inefficient management in disregard of the best interests of companies;
(c) misappropriation of the funds of the company;
(d) illegality in the conduct of board meetings and general meetings;
(e) absence of proper legal authority on the part of directors to carry on the management of companies.

While making these allegations, the parties sought the following general types of reliefs from the Courts:

(i) a direction by the Court for the proper conduct of the affairs of the company;
(ii) removal of the existing directors or some of them, the managing agents etc., from the management of the company;
(iii) declaration that the removal of the petitioner/s from the management of the company was invalid, and that his/her appointments or rights were to remain unaffected;
(iv) appointment of an Administrator or Receiver during the interim period till final judgement of the Court;
(v) revision of the company's accounts and recovery of funds alleged to have been misappropriated by the existing management; and
(vi) an order that the affairs of the company should be investigated.
The cases in respect of which notices under section 408 are served on the Central Government fall broadly under the following categories:

(a) Cases which involve larger interests of society, complicated issues of social and economic policy apart from simple adjudication of legal rights between the contending parties; and

(b) Cases which relate to small-sized public or private companies not involving public interest to any great extent or cases which do not involve any complicated technical points but which arise generally as a result of lights between two groups of directors or shareholders.

2. As a rule, it is only in the first category of cases that the Central Government consider it necessary to make representations to the Courts under section 408 of the Act, placing before them material and information available in the records in the Department relevant to the allegations contained in the petition filed with the Courts. The papers received at the headquarters are forwarded to the Regional Directors or Registrars concerned, who have to make every endeavour to collect the material facts available in the papers and documents in their record and it is on the basis of this data that the requisite representation is prepared. While preparing the representation, a purely objective and neutral attitude is adopted and the representation should not contain any tendentious statements. The representation should not give an impression that the Department is a party to the proceedings or is in any way interested in any one of the contending groups or in maintaining any of them in power. Whenever the circumstances of the case so require, the Central Government may also explain their views on important questions relating to corporate investments, company management, etc., for the general guidance of the Courts.

3. In the second category of cases mentioned in paragraph 1 above, no representations are generally made. By and large, such cases arise out of faction fights in which Government would not like to get involved. In a large number of cases of this category, the aggrieved parties at first approach the Government but when they find that they cannot get satisfaction from the Government, they approach the Court for obtaining redress to their grievances.

(Approval of Government Directors)

Section 408: Government policy in respect of application made under section 408

76.2 The powers conferred under section 408 are extraordinary and since the provisions of the section require the Central Government virtually to step in and to interfere in the day-to-day management of the company, through its nominated directors, during the last four years, Government have exercised these powers only where they were satisfied that the affairs of the company had been grossly mismanaged or where the minority shareholders had been unduly oppressed and where they felt that quick intervention was needed, such as could not be ensured under the necessarily protracted proceedings of a court of law. Government have also taken good care to see that this section is not invoked lightly by disgruntled shareholders merely because they cannot have their own way, through their representatives on the board of the company, since 'oppression' to a minority within the meaning of the law means something very different from mere disregard of the wishes of minority and 'prejudice' to the interests of the company has similarly to be judged by the minimum standard of good management required of all companies.

(Extract from the Fourth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1969)
Section 408: Government's policy in respect of application under section 408

76.3 1. Most of these applications appeared to have been made as a result of friction or disagreement between two groups of shareholders each trying to accuse the other of mismanagement of the affairs of the company or to create hindrances in the way of its better management. Instead of going to a Court of Law to settle their disputes arising out of mutual differences, some shareholders are inclined to use the provisions of section 408 as a swift, cheap and summary alternative remedy and seem to think that it is the duty of the Central Government to exercise their powers to appoint directors on the Board of a company as a matter of course whenever they are dissatisfied with its working under the existing management. It is necessary that the business community as well as the investing public should realise that the powers under this section can be invoked by the Central Government only in those genuine cases where minority shareholders can show prima facie with documentary and such other evidence as the Central Government may call for, that there has been mismanagement or oppression; and that for the proper management of the company, it is essential that the Central Government should appoint one or two directors on the Board of the company as may be necessary in the interests of the company as a whole.

2. In the best of circumstances the remedies provided in these two sections can be invoked only in those cases where mismanagement and oppression, in the appropriate sense of these words, have been established, and the complaints have shown that the appointment of independent directors on the Board of a company can be reasonably expected to improve its management through the support which the complainants themselves or the group of shareholders whom they represent are prepared to give to the independent directors in managing the affairs of the company purely in the interests of the company and not in the interest of any particular group or section.

(Extract from the Ninth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1958.)

Power of Government to prevent change in the Board of Directors

Section 409: Government's policy in respect of applications under section 409

76.4 This is another important provision in the Act which gives wide powers to the Central Government to issue orders so as to prevent any change in the Board of directors of a company as a result of a change in the ownership of shares where such a change is likely to affect prejudicially the affairs of the company. Swift action under this section has in many cases proved salutary, inasmuch as it has prevented abrupt changes in the management of companies irrespective of the voting strength commanded by the different groups of shareholders, and has prevented the control and management of well-run companies from passing into the hands of unscrupulous, and ambitious financiers whose object has often been to traffic in the shares of well-managed companies for their own personal gain.

If Government are convinced that the persons who have newly acquired a substantial block of shares in a company (and who would, therefore, seek adequate representation on the Board of the company) are persons competent to manage the company efficiently, Government would not ordinarily invoke their powers under this section. This section provides for only an interim remedy to ensure the maintenance of the status quo on the Board of a company, pending examination into the bona fide of the newcomers in the field whose antecedents and past performance are unknown, and therefore may in some cases prima facie need scrutiny.

(Extract from the Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March, 31, 1958.)
Section 409: Government’s policies

76.5 1. The mere fact that the management in power has been a good one does not by itself warrant freezing of the Board of directors on an application by it, if the Commission is convinced that the new shareholders are in a position to provide equally competent management. Moreover, even if an order is issued under this section, it cannot provide at best only an interim remedy, since the majority shareholders cannot always be baulked of their right to elect a Board of their own choosing and prevented from having a say in the management in proportion to the voting rights they control.

2. Where the existing management was not good and there was nothing specific against the incoming persons, no order under section 409 need be issued but the matter might be left to the decision of the shareholders of company.

3. Where both the existing management and the incoming management were reputedly good, there was no need for interference by Government under section 409.

4. Where there was nothing unfavourable against the existing management nor against the incoming persons in the records before the Commission, interim protection might be given to the existing management by issuing an interim order and further enquiries instituted immediately thereafter to enable a final decision to be taken.

5. Where the existing management was good and nothing was known about the incoming persons, an interim order as under (4) above might issue and further enquiries instituted immediately thereafter.

6. Even if any interim order was issued under section 409(1) of the Act, the Commission would advise Government to confirm that order only if the Commission was satisfied that the existing management proved positively that the incoming persons would not be able to manage the company.

7. Where, in respect of a company in which action under section 409 has been prayed for by the applicant, the Court was also seized of the matter and has issued injunctions against any change in the Board of the Company, the Commission would not advise any action under section 409.

(Extract from the Report of the Advisory Commission for the year ended 31st March, 1939.)

Section 409: Government’s policy in respect of applications under section 409

76.5 This section gives wide powers to the Central Government to issue order so as to prevent any change in the Board of a company as result of a change in the ownership of shares where such a change is likely to affect prejudicially the affairs of the company. Swift action under this section has, in many cases, proved salutary inasmuch as it has prevented abrupt changes in the management of companies, irrespective of the voting strength commanded by the different groups of shareholders, and has prevented the control and management of well-run companies from passing into the hands of unscrupulous and ambitious financiers whose object has often been to traffic in the shares of well-managed companies for their own personal gain. Nevertheless, if Government are convinced that the persons who have newly acquired a substantial block of shares in a company (and who, therefore, seek adequate representation on the Board of the company) are persons competent to manage the company efficiently, Government would not ordinarily invoke their powers under this section. This section provides for only an interim remedy to ensure the maintenance of the status quo on the Board of a company, pending examination into the bona fides of the newcomers in the field whose antecedents and past performance are unknown and, therefore, may need scrutiny.

(Second Annual Report.)
The powers under this section can be invoked by the Central Government only in those genuine cases where minority shareholders can show prima facie, with documentary and such other evidence as the Central Government may call for, that there has been mismanagement or oppression; and that for the proper management of the company, it is essential that the Central Government should appoint one or two directors on the Board of the company as may be necessary in the interests of the company as a whole.

The following criteria are generally followed in considering applications under section 408 and 409:

(a) Where the existing management was not good and there was nothing specific against the incoming person, an order under section 409 need not be issued but that the matter might be left to the decision of the shareholders of the company;

(b) Where both the existing as also the incoming management were reputedly good, there was no need for interference by Government under section 409;

(c) Where there was nothing unfavourable against the existing management or against the incoming persons in the records before the Commission, interim protection might be given to the existing management by issuing an interim order and further enquiries instituted immediately thereafter to enable a final decision to be taken;

(d) Where the existing management was good and nothing was known about the incoming persons, an interim order as under (c) above might issue and further enquiries instituted thereafter;

(e) Even if any interim order was issued under section 409(1) of the Act the Commission would advise Government to confirm that order only if the Commission was satisfied that the existing management proved positively that the incoming persons would not be able to manage the company;

(f) Where, in respect of a company in which action under section 409 has been prayed for by the applicant, the Court was also seized of the matter and has issued injunctions against any change in the Board of the company, the Commission would not advise any action under section 409.

(Extract from Appendix I of the second Annual Report for the period ended March 31, 1956.)
CHAPTER XXVIII

77. SECURITY DEPOSIT AND PROVIDENT FUND.

Section 417: Investment of employees' securities in National Defence Certificates—Clarification regarding

77.1 The deposit of the moneys in the National Defence Bonds would not be in strict accordance with sub-section (1) of section 417 of the Companies Act, 1956. But as long as the moneys and the accrued therefrom are utilised only for the purposes agreed to in the contracts of service as provided in section 417(2), it is felt that no objection need be taken to the investment of the moneys in question in National Defence Bonds, which would be as safe as investment in a Post Office Saving Bank account mentioned in section 417(1)(a). It would, however, be for the company to ensure that necessary ready cash is kept available for meeting the legitimate payments (refunds etc.) out of the security money as and when required.

(Letter No. 8/7(417)/65-PI, dt. 25-1-1963)

Section 418: Device for by-passing regulations for investment of provident fund money

77.2 A company set up a "Staff mutual benefit fund" and collected contribution from its employees. It made its own contributions to this fund, but did not fulfil the requirements of section 418 in regard to the manner in which these funds were to be kept. On going through the rules of this fund, it appeared to be in the nature of a mutual benefit fund, the moneys of which did not belong to the company nor could it be deemed that they were in the nature of deposits with the company, as neither the management of the fund vested in a committee of management nor its action could in any way be controlled by the company. It was, therefore, felt that the provisions of section 418 would not apply to this case and that the contributions made to the fund by the company would have to be treated as a bonus and debited to the establishment account in the books of the company. The constitution of such a "Staff mutual benefit fund", instead of a regular Provident Fund for its employees, appeared to be a device adopted by the company to by-pass the provisions of investment of provident fund money, as laid down in section 418 of the Act.

(Extract from the Fourth Annual Report on the Working and Advancement of the Companies Act, 1956—Year ended March 31, 1961)

Section 418: Employees' Provident Fund Contribution—Clarification

77.3 It would be in order for Trustees of a Provident Fund constituted by a company to deposit the fund moneys in fixed deposit with a scheduled bank under section 418(1)(a)(iii).

(Letter No. 8/20(418)/65-CL, V dated 7-3-63.)

Sub-section (2) of section 418 only imposes a restriction on the right of an employee of a company to receive interest at any rate exceeding that specified therein. It does not prohibit an employee from receiving and the trustees of a provident fund from paying voluntarily interest at a higher rate if they can afford to do so.

(Letter No. 8/20(418)/65-CL, V dated 28-9-63.)
Section 418: Employees Provident Fund monies—clarification

77.1 Where the provisions of the Employees Provident Fund Act, 1952 are applicable to the Provident Fund constituted by a company, the provisions of section 418 of the Companies Act need not be complied with by the company.

(E. No. 8(56) (413) 63-PR.)

77.5 Amounts collected from the employees of a company as their contributions to a Provident Fund constituted by the company are in the nature of trust monies in the hands of the company and should be paid to the trustees of the fund without any avoidable delay. An employee’s contribution should therefore, be deposited within fifteen days from the date on which it is collected from the employee concerned instead of within 15 days from the date on which the total amount of contribution is collected from all the employers.

(Letter No. 8(32)(436)64-PR, dated 27-3-1961.)
CHAPTER XXIX

78. WINDING UP OF COMPANIES

Sections 433 and 439: Winding up petitions

78.1 It is noticed by the Department that in certain cases sanction is accorded by Regional Directors under section 439(5)/433(e) of the Companies Act, 1956 to file petitions for compulsory winding up of Companies on the basis that their liabilities exceeded assets by a wide margin as per the last copy of their annual accounts on the record of the Registrar of Companies and that the Companies were notionally unable to pay their debts. During the course of hearing of the same in these cases the management took the stand that there were no complaints from the creditors about the payment of their dues and the Companies were in a position to meet the liabilities. It is seen that the Punjab and Haryana High Court has passed orders in some cases on this basis dismissing such petitions moved by the Registrar of Companies. In order to put such petitions on a more sound footing, it is suggested that in future before approving the presentation of petitions under section 439(5) of the Companies Act, 1956, the Regional Director may specifically ask the management of the Companies concerned to clarify whether there were any complaints from creditors about non-payment of the debts due to them and whether they were, in a position to meet their current liabilities, and if so how.

(Circular No. 7/3 dated 9-5-78)

Section 441: Commencement of winding up—date

78.2 In the case of a winding up by the court, the winding up starts from the date of presentation of the petition for winding up. This means if and when order is made for winding up, it relates back to the date of the presentation of the petition. If no order for winding up is made and the winding up petition is dismissed, the date of presentation of the winding up petition has no relevance. As such winding up order is made, the company will have to comply with the requirements of the Companies Act as are required of a company not wound up.

In sub-section (2) of section 441 of the Companies Act, the words “shall be deemed to commence” instead of “shall commence” indicate that although the winding up of a company does not in fact commence at the time of the presentation of the petition, it nevertheless shall be taken to commence from that stage if and when the winding up order is made (see AIR, 1960, Pub. 176). Winding up is a process which begins after the court passes the order for winding up. Till such order is passed, there cannot be any winding up in fact.

(U. O. No. 2/122/71/Ad(i) dt. 31-3-71 and U. O. No. 37/69-Ch. III)

Section 444: Order of winding up—Notice of

78.3 Notice of winding up order—copy should be sent to the Registrars by the Liquidators.

(U. O. No. 7/53/56/III dated 21st July, 1939)

Section 445: Copy of winding up order to be filed with Registrar

78.4 The Registrar should file with himself a certified copy of the winding up order of the Court when he himself is a petitioner under section 439.

(Files No. 19/60-CL III)
Section 451: Payment of fee under Section 451(2) read with Rule 291 of the Companies (Court) Rules, 1959

78.2 The question about the procedure to be followed in the matter of crediting of fees to Central Government in terms of Rule 291 of the Companies (Court) Rules, 1959, has been examined in detail and it is hereby clarified that the aforesaid rule has to be read with rule 286 which prescribes the forms of the registers to be maintained by the Official Liquidator for the internal use of his office including the register for the realisations and disbursements made by him in the course of a year to the creditors and contributories. The amounts which have to be credited to the Central Government need obviously be credited at the earliest practicable date after the realisations or the disbursements so that the accounts as reported upon by the auditor and submitted to the Court by the Official Liquidator may reflect the realisations and disbursements as well as the fees paid thereon to the Central Government. The disbursements in the context of Rule 291 obviously exclude the fees to be credited to the Central Government unlike in the context of the half yearly accounts submitted to the Court under section 462 of the Act which is governed by paragraph 1 of the General Instructions at the top of the form prescribed under that section. In the context of such 'disbursements' should be entered all payments for costs and charges which would include the fees credited to Government (vide Rule 338 of the Companies (Court) Rules, 1959, read with Section 476 of the Act). It may be noticed that Form 144 prescribed under the Rules is the form to be used under rule 299 of the said rules for the purpose of the statements of accounts to be submitted under section 462 of the Companies Act, 1956. In accordance with general instructions indicated at the top of the Form, the statement of accounts in Form No. 144 is required to be submitted for every half year duly audited. Thus it is clear that after the fees are credited to the Central Government, the credit given will be subject to the audit and will be shown in the audited accounts and simultaneously an entry will be made in the relevant register maintained by the Official Liquidator under rule 286 i.e. Form No. 142 Q. The time at which the entry in the said register is to be made is clearly indicated in instruction No. 3 under the said Form 142 Q which is to be maintained for a whole year with details for each half year comprised therein separately.

The legal position being as stated, it is indeed not necessary to consider the point that if the commission is credited on a half yearly basis, there may be some cases in which the amount realised in half year may not exceed Rs. 10,000 and may thus attract the larger percentage of the amount to be credited to Central Government as fees in terms of rule 291 whereas if a whole year is taken into account, the further realisation which may be made in the course of the next half year may also be taken into account and the total being less than Rs. 50,000 a lesser percentage of the total amount would only have been liable to be credited to the Central Government. Thus there is a difference in the amounts which may be saddled upon the liquidation proceedings by way of fees to the Central Government regarded as a cost or expense in the winding up. It is of course true that there is a difference as pointed out, but it is important to remember that what may appear to be a loss to the creditors and contributories whom the Official Liquidator represents is gain to the Central Government whose interest also the Official Liquidator has to protect being an officer of the Government. The gain accruing to the Government is not by any means an unwarranted gain and cannot be denied to the Government on any reasoning of the statutory provisions without doing violence to its plain tenor and effect.

In the light of the position stated above, the practice adopted by the Official Liquidator, Jodhpur, is correct and the question of any excess to be adjusted as supposed, does not arise.

(Circular No. 17 of 1974 dated 2-1-75 on file No. 20/1/59-CL, III)
Section 484: Supply of certified copies of statement of affairs and other documents

786 A question has been raised by Official Liquidator, Allahabad, whether any court fee stamp is required to be affixed by applicants for certified copies or extracts in the applications submitted under Rule 136 and Rule 350 of the Companies (Court) Rules, 1959 and whether copy of the statement of Affairs etc. would be required to be furnished to the applicant on non-judicial paper. The matter has been examined in this Board and having regard to sub-rule (10) of Rule 2 of the aforesaid Rules defining "prescribed charges" and "prescribed fees" as "Charges or fees prescribed by these Rules and when they are not so prescribed by the Rules of the Court in respect of analogous matters in its other proceedings" each Official Liquidator has to follow the Rules as framed by the High Court to which he is attached in issuing certified copies of extracts of the documents in his custody.

(Circular No. 77/73 dated the 24th November, 1975 on File No. 1/9/75-CL IH.)

Section 481-497: Registrar of Companies—Entries to be made on dissolution of Companies

78.7 A suggestion has been made to this Department that the dissolution of a company, whether under section 481 or under section 497 and 509 of the Act, should not be notified in the Official Gazette for the information of the public at large and the interested parties in particular. The Government of India have considered the suggestion and have come to the conclusion that in view of the fact that under sub-section (2) of section 497 and sub-section (2) of section 509 of the Act the last general meeting of the company in which the final accounts relating to winding up are to be laid is required to be called by advertisement published in the official gazette and also in some newspaper, no further notification is either required under the Act or necessary for information of the interested parties.

2. When, however, a company has been dissolved according to the due process of law, except when such dissolution is under section 560, on the expiry of five years from the date of dissolution of the company, the name of the company should be struck off the Register after noting against its name that it has been dissolved. This practice may be uniformly followed in all offices so that the Registrars of Companies do not remain unnecessarily burdened with the names of fully dissolved companies.

(Circular letter No. 2/30/57, dated the 4th July, 1957.)

Section 488: Declaration of solvency

78.8 The question of effect of non-filing of declaration of solvency on voluntary winding up had cropped up in several cases. After due consideration of the matter, it has been decided that—

(a) where a resolution for members' voluntary winding up has been passed but the provisions of section 488 of the 1956 Act (section 207 of the 1913 Act) have not been complied with, the winding up shall NOT be a members' voluntary winding up. (Vide Vaitia Vs. Jardha Rubber Works. A.I.R. 1950 East Punjab 188 and Bhargava Vs. Rameshwar A.I.R. 1952 M.P. p. 5);

(b) in such a case, the provisions contained in section 190 to 208 of the 1956 Act (Section 208A to 208E of the 1913 Act) which relate to members' voluntary winding up cannot apply, and if, in spite of non-filing of a declaration of solvency, a liquidator is appointed and/or winding up proceedings are continued under any of the sections 496 to 498 of the Companies Act, 1956 (sections 298A to 298E of the 1913 Act), such appointment
of liquidator or actions taken under any of those sections would be bad in law;

(ii) (a) in the circumstances mentioned above, i.e. where a declaration of solvency has not been filed, the winding up should be made in the manner and in accordance with the provisions contained in section 500 to 509 of the Companies Act, 1956 (section 290A to 290H of the 1913 Act);

(b) if, in a case indicated above, the procedure laid down in sections 500 to 509 of the Companies Act, 1956 (sections 290A to 290H of the 1913 Act) is not followed, it would amount to non-compliance with the provisions of law applicable in the matter, and consequently, the proceedings relating to the voluntary winding up taken by the company shall be void ab initio (M. Lakshmanan Vs. Registrar of Companies, Trivandrum, unreported case, decided by the Kerala High Court). The Court may, if moved by the company or its shareholders instead of treating the winding up proceedings as invalid, direct the company to convene the creditors' meeting. (Linwood Aia Insurance Company Ltd. v. 1956 (2 Cal.) 32.)

(c) default in complying with the requirements of section 500 of the Companies Act, 1956 (section 290A of the 1913 Act) will, however, continue to be punishable under sub-section (6) of the section mentioned above, notwithstanding the fact that the proceedings of the winding up had become void ab initio.

(ii) If a company which had passed a resolution for its voluntary winding up fails to file a declaration of solvency and also to convene the creditors' meeting on the ground of absence of creditors, the resolution for its voluntary winding up should be treated as void ab initio (because the company should not have had any difficulty in filing the declaration of solvency if it had no creditors) and the company should be asked to pass a fresh resolution for its winding up after complying with the requirements of section 488 of the Companies Act, 1956/307 of the 1913 Act. In such a case, the company should not be treated to be in liquidation unless a fresh resolution for winding up has been passed after complying with the requirements of section 488 of the 1956 Act/307 of the 1913 Act.

(File No. 42 (195.)-CL.II/59 dated the 15th November, 1959.)

Section 488: Declaration of Insolvency

78.9 A doubt has been raised whether the instructions contained in this Department's Circular letter No. 42(195)-CL.II/59, dated the 15th November, 1959, will also apply to cases where the declaration of solvency has been filed but the provisions of section 488(2) of the Act, have not been complied with.

After a careful consideration of the matter, it has been decided that since such a declaration of solvency has no effect, such cases should also be dealt with in the manner indicated in this Department's Circular letter No. 42(195)-CL.II/59, dated the 15th November, 1959.

(File No. 42 (195)-CL.II/59 dated 22nd February, 1961.)

Section 488: Declaration of solvency—Checking up of

78.10 It has been noticed that on the filing with the Registrar of a resolution for the voluntary winding up of a company, the same is not immediately checked up with a
view to finding out whether such resolution had been passed after complying with the requirements of the law or not. This practice is apt to give rise to complications in future, because, if the liquidation is allowed to proceed and if, on scrutiny of the resolution for voluntary winding up, it is subsequently found that the resolution had been void, it may be difficult to restore the status quo ante.

In the circumstances, Registrars are requested to (i) check up resolutions for voluntary winding up, as soon as they are filed with them, and (ii) give necessary advice to the company as to what steps should be taken by it to regularise the matter, in case the resolution is found to be defective and/or void.

(File No. 12 (226)-CL. III dated the 21st June, 1956.)

Section 490: Appointment of Firm of Chartered Accountants as Liquidator in winding up

78.11 There is no restriction in the Companies Act, 1956 on the appointment of a firm of Chartered Accountants as Liquidators of a company in winding up.

(Letter No. 11/69-CL. III dated 2-1-1975.)

Section 493/501: Notice of appointment of liquidator.

78.12 Names of the companies in liquidation should be intimated to the Income-tax authorities immediately after receipt of notices under section 493/501 of the Act to enable them to take timely action.

(T. No. 15/38/59-CL. III dated 22nd November, 1960.)

Fees on application to the Central Government under Section 496(1)(a) and Section 551 of the Companies Act, 1956 under Companies (Fees on application) Rules, 1961.

78.13 I am directed to say that the Regional Director, Madras, has raised a point whether Voluntary Liquidations are required to pay any fees on applications to the Regional Directors under Section 496(1)(a) of the Companies Act, 1956 as per provisions of the Companies (Fees on Applications) Rules, 1961. The comments of other Regional Directors were called for in the matter in the light of practice obtaining in their offices. Taking into account the views of all Regional Directors in the matter, it has been decided that since Rule 2 of the aforesaid Rules require the payment of fees by companies and not by Liquidators, no fee is required to be paid by any Liquidator on applications made to the Regional Director under Section 496(1)(a) and 551 of the Companies Act, 1956. Past cases, if any, decided otherwise may not, however, be reopened.

(Circular No.30/75 dated the 3rd February, 1975 on File No.3/16/75-CL. Y No.3/15/75-CL. III.)

Scrubity of accounts under Section 497/569 of the Companies Act, 1956

78.14 The Official Liquidator, Allahabad, had pointed out that during the scrutiny of accounts under Section 497/569 of the Companies Act, 1956, of companies in liquidation, cases came up where the voluntary liquidator is not in a position to furnish the Income-Tax or Sales Tax clearance certificates.

The matter has been examined by this Department and it has been decided that in the cases as mentioned above, if there are no other objections to be settled, the Official Liquidators may obtain an affidavit of the Voluntary Liquidator stating that the company in voluntary liquidation does not owe any tax to Income-Tax or Sales-tax Department. If any Official Liquidator has doubt in the matter before submission of report under Section 37—26 M of Lab & CA/ND/75
Problems and difficulties arising out of administration of section 497/509 of the Companies Act, 1956—Instructions Regarding

7815 I am directed to say that in the context of certain queries raised by the Regional Directors, Company Law Board, Madras, on the aforesaid matter it has been decided as follows:

(i) In cases where any voluntary Liquidator expresses inability to produce books of account etc. for scrutiny of Official Liquidator on the plea that they have been lost/destroyed in flood, fire or accident, Official Liquidator may get the matter verified to the extent possible and submit a report to the court on the affairs of the company after scrutiny of the papers made available to him and the records available with the Registrar of Companies concerned on the affairs of the company and taking into considerations complaint, if any, received by him with regard to the conduct of the liquidation of the company.

(ii) While it may be apparently superfluous for the Official Liquidator in being required to submit a report to the Court under the provisions of section 497(3) and 509(6) of the Companies Act, 1956 in cases where he was acting as Voluntary Liquidator under section 515 of the Act, a factual report may be submitted to the Court about the conclusion of winding up to meet the legal requirements, involved taking into account all relevant factors involved.

(iii) There is no objection to the transporting of books of accounts, etc., of the voluntary liquidator to the office of the Official Liquidator, incurring expenditure therefor, from the general grants allowed to Official Liquidator concerned in cases in which the Official Liquidator is satisfied that voluntary liquidator has no funds to produce the books for scrutiny of Official Liquidator and wherein such a course is considered to be more economical and convenient than having the books of accounts etc. scrutinized by the Accounts Officer/Inspecting Officer attached to the Regional Office as laid down in para 2(iii) of this Board's circular letter of even number dated the 1st December, 1969:

(iv) There is no incongruity in the provisions of section 497(6A) and 509(6A) of the Companies Act, 1956 requiring the court to direct the Official Liquidator for making a further investigation into the affairs of a company after which he makes a report to the court that the affairs thereof have been conducted in a manner prejudicial to the interest of its members or to public interest since such a report made is only a prima facie finding and not a detailed investigation.

Proposals for resorting to the provisions of Section 440 of the Companies Act, 1956 instead of Section 515 of the Companies Act, 1956, in regard to Companies in Voluntary Liquidation

7836 I am directed to say that in a reference made to this Board, the Regional Director, Company Law Board, Madras, has pointed out that having regard to the various administrative problems arising out of the appointment of Official Liquidators as Liquidators of some Companies in Voluntary Liquidation under Section 515 of the
Companies Act, 1956, it may be more advantageous to resort to the provisions of Section 440(1) of the Act instead of Section 515. The views of other Regional Directors were called for in the matter. The Regional Director, Calcutta has pointed out that under Section 440(2), the Court is barred from making a winding up order on a petition under subsection (1) of Section 440, unless it is satisfied that the Voluntary winding up or winding up subject to supervision of the Court cannot be continued with due regard to the interests of creditors or contributories or both, and hence the application of the Registrars of Companies in this regard unsupported by Creditors and or contributories, is not likely to be allowed by Court. This Board feels that there is much force in the views of Regional Director, Calcutta in this regard. Hence, these cannot be any hard and fast rule in the matter and resort to Section 440 or 515 may be made according to the merits of each case. Such cases may please be referred to this Board before initiating action under either of the two sections.

(Circular No. 3175 of File No. 34773-Cl. III)

Section 555: Dividends—Deduction of tax at source—Deductions from unpaid dividends and undistributed assets paid into the Companies Liquidation Account—Instructions regarding

78.17 The word "contributory" occurring in section 555(1) would include a fully-paid shareholder. The term "dividend" referred to in the above section has not the same connotation as ordinary dividend understood in company law. However, money falling within the meaning of section 555(1)(b) would be dividend within the extended meaning contained in section 222(6) of the Income-tax Act, 1961, if the conditions mentioned in that sub-section are satisfied.

The Board is advised that before the liquidator, who is the principal officer of the company within the meaning of section 9(35) of the Income-tax Act, 1961, pays into the liquidation account any money falling within the meaning of section 555(1)(b) of the Companies Act, he has to deduct tax from such moneys and pay the same to the credit of the Central Government as required by sections 194 and 200 of the Income-tax Act, 1961. On his failure to do so section 201 of that Act may be invoked against him.


Section 555: Departmental instructions as regards applications to Central Government under subsection (7)(b) of section 555

78.18 (1) Section 555(7) enables parties to prefer a claim for payment of dividends and undistributed assets from the Companies Liquidation Account either to the Court or to the Central Government. The alternative provision to approach the Government for securing money out of the Companies Liquidation Account was a new privilege accorded under the Companies Act. Since the present Companies Act came into force, payment orders have been issued by the Department to over 1,700 parties for amounts totalling over Rs. 7 lakhs.

(2) The procedure for making applications under section 555(7)(b) claiming payment out of the Companies Liquidation Account is briefly as follows:—

"For claims upto Rs. 1,000/- the parties have to apply to the Regional Director of Company Law Administration of the region in which the particular company in liquidation is registered; and for claims exceeding Rs. 1,000/- the parties have to apply to the headquarters of the Department of Company Law Administration".*

*Regional Directors are now empowered to function all claims without limit.
(3) There is no pro forma prescribed for making an application under this section. The party has to submit an application for the payment of the amount claimed by him, but the application shall be accompanied by original share certificates, succession certificate and/or any other documentary evidence relating to the claim. Where the amount of claim exceeds Rs. 250/-, the requisite amount of fee as laid down in Notification No. G.S.R. 548, dated the 11th April, 1961 published in the Gazette of India, Part II, section 3, sub-section (6), dated the 22nd April, 1961 shall be paid into a Government Treasury and the relevant treasury receipt/chaqan in respect thereof shall be furnished along with the application. The fee as given in Annexure shall be credited to the head “XXI Miscellaneous Departments—Miscellaneous—Registration of Joint Stock Companies.”

(4) On receipt of the application by the Regional Director or at the headquarters of the Department, as the case may be, the Registrar of Companies concerned is asked (a) to certify whether the amount claimed is due to him; and (b) to get a similar certificate from the liquidator concerned, if the company had not been finally wound up and that no application, by the claimant under section 551(7)(a) was pending in the Court. On receipt of the certificate from the Registrar of Companies that the money claimed by the party is due to him, the Regional Director of the Department asks party to send an Indemnity bond as per pro forma given at the end of this note duly completed along with a certificate of solvency of the surety given by a Gazetted Officer, Revenue Officer or a member of a local body, such as a Municipality, Port Trust, or an M.P., J.P., or a Notary Public. If the Indemnity Bond and the solvency certificate are in order, the Regional Director or the Department of Company Law Administration issues payment order in the Registrar with a copy thereof endorsed to the party, with the request to forward an advance stamped receipt duly attested by a witness to the Registrar of Companies concerned to enable him to make the payment. On receipt of an advance stamped receipt, a cheque is issued by the Registrar and delivered to the party.

PROFORMA OF INDEMNITY BOND

THIS DEED OF INDEMNITY made this ... day of ... between ... son of ... residing at ...

[Please see Note (ii)]

hereinafter referred to as the principal party (which expression shall unless excluded by or repugnant to the context include his heirs, executors, administrators, legal representatives and assigns) of the first part ...

[Please see Note (ii)]

... hereinafter referred to as the surety (which expression shall unless excluded by or repugnant to the context include his heirs, executors, administrators, legal representatives and assigns) of the second party and the President of India hereinafter referred to as the “Government” (which expression shall unless excluded by or repugnant to the context include its successors and assigns) of the third party:

Whereas ... Limited went into Liquidation;

[Please see Note (iii)]

AND WHEREAS the Official Liquidator of the said company paid and deposited in the Companies Liquidation Account in the public account of Government of India the balance of the moneys in his hands or under his control representing unclaimed dividends payable to the creditors and/or undistributed assets refundable to contributors, which remained unclaimed and/or undistributed for over six months after the same became payable:
AND WHEREAS the principal party claims to be solely entitled to a sum of Rs. .......... out of the said moneys paid into the said Companies Liquidation Account with regard to the said company under the provisions of the Companies Act as creditor/contributory [Please see Note (iv)].

AND WHEREAS the principal party could not file his claim to the liquidator for the said sum on account of ................ [Please see Note (v)]

AND WHEREAS the principal party or any other person on his behalf has not made an application in any Court for any order for payment of the said sum of Rs. .......... and no such application is pending in any Court of Law in the Union of India;

AND WHEREAS the principal party has requested the Government to make payment of the said sum of money claimed by him out of the said Companies Liquidation Account with regard to the said company;

AND WHEREAS the Government has agreed to pay the said sum so claimed by the principal party on his executing an indemnity in the manner following:

Now this deed witnesseth that in pursuance of the said agreement and in consideration of the payment by the Government to the principal party of the sum of Rs. .........., the principal party and the surety hereby jointly and severally undertake and bind themselves to pay to the Government on demand and without demand the said sum being found to be not payable to the principal party (and the decision of the Government in this behalf shall be final and binding on the parties) and the principal party and the surety hereby further undertake that they will at all times indemnify and keep the Government indemnified and harmless from all liabilities with regard to the payment made to principal party as aforesaid and against all actions, claims and demands, costs, damages and expenses which may be levied, brought or made against the Government by any person by reason of the payment being made by the Government of the said sum as aforesaid.

In Witness whereof the parties hereto have set their respective hands the day and the year first above written.

Signed, sealed and delivered by the principal Party who is personally known to me and signed in my presence.

A B C
Signature of the Principal Party.

X Y Z
Signature of Witness
His occupation and address
.................................
.................................
The surety is personally known to me and signed in my presence:

B Z X
Signature of Surety

D E F
Signature of Witness
His Occupation and address
.................................

Acceptor:
Sd./....................
For and on behalf of the
President of India.
Section 551: Information as to pending liquidation—Delaying filing of statement by liquidators

78.19 The scope of Rule 227 of the Companies (Court) Rules, 1959, vis-a-vis section 637B of the Companies Act was examined in consultation with the Ministry of Law. The scope of the rule making power of the Supreme Court under Section 643 of the Companies Act and of the Central Government under section 637B should not be held to overlap. The rule would not intend to create a situation where there may be possibilities of a conflict of jurisdiction. Section 637B of the Companies Act should therefore be construed as not including within itself what falls within Rule 227 made by the Supreme Court under section 643. The Board have been advised that the Central Government have no power to condone delay in filing the statement of account under section 551 of the Companies Act and that the matter entirely rests with the Court in terms of Rule 227 of the Companies (Court) Rules, 1959.

2. The failure on the part of the liquidator to file a statement under section 551 is punishable. It is the duty of the liquidator to bring the matter to the notice of the Court in any event. In a proper case, the Court might grant an extension. If there is no good cause for the grant of extension the Court may also refuse the prayer of the liquidator. It does not follow that once the liquidator has committed a default for which he has no excuse he should be perpetual in default. It should therefore be open to the Registrar to accept a belated statement under section 611 (2) of the Companies Act on payment of additional fee but this would not wipe out the default or excuse the liquidator from the consequences of the default.

5. It would not be out of place to mention here that exemption granted in Schedule X to the Companies Act, 1956, from payment of filing fee for documents required to be filed/registered/recorded under section 497, 309 and 551 by the liquidator with
the Registrar was withdrawn by notification No. G.S.R. 260(E) dated the 21st April, 1972 published in the Gazette of India Extra-Ordinary Part II, Section 3, sub-section(i).

1. Cases of delayed filing of the said statements should henceforward be dealt with as per the instructions contained in this letter. 

(Circular No. 8 of 1973 dated 22-5-73, F. No. 1/682-CL. III.)

Section 551: Delayed filing of statements by Liquidators pursuant to section 551 of the Companies Act, 1956

78.20 In the light of the last sentence of para 3 of Circular No. 8 of 1973 the Registrar of Companies should take the delayed statements on record on payment of the prescribed fee and the additional fee levied by him for delay in filing the statement. Thenceforth he should take a decision on the need to advise Liquidator to apply to the Court for condonation of delay or not on merits of each case. In cases where the delay was for a very short period or for reasons beyond the control of the Liquidator, no such advice to obtain condonation need be given to the Liquidator or any prosecution need be launched against him.

(Circular No. 24/73 dt. 7-8-75.)

Section 555: Companies Liquidation Account—Payments from

78.21 Payments out of the Companies Liquidation Account should be made to the claimants resident in India by crossed cheques without referring to the Reserve Bank of India, irrespective of the fact whether he is an Indian or a foreign national. Remittances to claimants outside India should be made through a bank authorised to deal in foreign exchange after obtaining from the parties necessary exchange control permits from the Reserve Bank. Payment can also be made in those cases, where exchange control certificate has been obtained from the Bank by the party authorising him to open a non-resident account or for the amount being credited to the non-resident account in the name of somebody else.

(F. No. 6/359-CL. III dated 20th July, 1959.)

Section 555: Payments from Companies—Liquidation Account

78.22 Endorsements should be made by the Registrars on the original documents produced by the parties at the time of making payment out of the Companies Liquidation Account.

(F. No. 6/389/88-CL. III dated 10th November, 1989.)

Section 555: Default committed by a Liquidator under section 555 of the Companies Act, 1956

78.23 The process as to how the payment of the dues from a delinquent Liquidator of a company in liquidation can be enforced has been considered. It has been held that any moneys due from a Liquidator in terms of provisions in sub-section (1) and (2) and also as interest and penalty in terms of sub-section (9) of Section 555 of the Companies Act are to be treated as assets of the company concerned in liquidation. If the said moneys are not paid by the Liquidator into the Companies Liquidation Account as required in terms of sub-section (1) and (2) of Section 555 of the Act he may be prosecuted under Section 620A of the Act for the defaults. This prosecution may, however, sometimes result in imposition of some penalty only by the Court and the recovery of the original dues from the Liquidator may not still be achieved.

2. In the above context, the following alternative process has been considered more effective. The Registrar of Companies concerned should initiate action for
default under Section 553(3) read with Section 556(1) of the Act and pray to the Court for an order on the Liquidator to file the statement under Section 555(3) rendering account of the monies with him. The ROCs are continuing to be 'officers' appointed by the Central Government in this behalf in terms of provisions—Section 555(3) of the Act on the basis of the Notification No. 2(49)(FCL)38(b) dated 5-4-1948 which is continuing to be in force on the strength of provisions in Section 643 of the Companies Act, 1956. In order to comply with the 'Order' issued by the Court under Section 556(1) of the Act referred to above, the Liquidator will be required to make payment of all the monies due from him into the Companies Liquidation Account so as to submit the statement to the Registrar of Companies in the Form No. 159 prescribed in Companies (Court) Rules, 1959. This will indirectly result in the recovery of the monies due from the Liquidator.

3. It is also to be noted that there is no scope for any appeal to the Court against the decision of the Registrar of Companies levying penalties under Section 555(9) of the Act. This should be considered sufficiently frightening to the Liquidator, if explained properly. It may be mentioned here that the provisions in Section 555(9) are not new in the Companies Act, 1956. Similar provisions were there in 1913 Act in Section 24(1B)(7). The rate of interest was 20% in 1913 Act but the Registrar of Companies had no power therein to levy any additional penalty. In 1956 Act the rate of interest has been reduced to 12% but an unrestricted power has been given to Registrar of Companies to levy additional penalty which is not justifiable. This is sufficiently deterrent and should be suitably explained to the delinquent Liquidator when necessary.

(Circular No. 23 of 72 dated 26-7-72.)

Section 555: Payment of dividend/return of share capital to parties—cheques issued but not encashed within the period prescribed under section 355—Procedure to be followed

The advice was sought as to the procedure to be followed in the matter of cases wherein cheques had been issued towards payment of dividend/return of share capital but not encashed within the period of six months of the date of declaration of such dividend/return of share capital. It has been reported that soon after the declaration of dividend/return of share capital, the Official Liquidator opens an account with the State Bank of India under Rule 29 of the Companies (Court) Rules, 1959 and thereafter deposits the total amount of dividend/return of share capital payable, in the said account and cheques are issued to the parties as and when claims are made. At the end of the period of six months from the date of declaration of dividend etc., the Official Liquidator ascertains the balance at credit from the Dividend Paid Register maintained in Form No. 142P of the Companies (Court) Rules, 1959 and remits the said balance amount into the Companies Liquidation Account with the Reserve Bank of India in terms of section 555 of the Companies Act, 1956 and simultaneously files a return with the Registrar of Companies. It is seen that at the end of the period of six months from the date of declaration of dividend return of share capital, some cheques issued by the Official Liquidator remain which are not encashed by the parties before the date of transfer of funds into the Companies Liquidation Account with the Reserve Bank of India and therefore the balance is shown in the account with the State Bank of India and that as per Dividend Paid Register do not tally. The question arises as to how the amounts of such cheques can be withdrawn from the State Bank of India account and paid into the Companies Liquidation Account in the Reserve Bank of India and as to the period within which the withdrawal of the balance amount for transfer of the same to the Companies Liquidation account is to be made.
2. The Department has examined this point and it is of the view that in such circumstances the Official Liquidator should keep a watch over the encashment of such cheques. He should wait for the expiry of the permissible period of encashment and obtain a statement of accounts from the State Bank regarding the amount lying with it in the concerned dividend account and at the earliest practicable date, withdraw the balance and deposit it into the Companies Liquidation Account with the Reserve Bank of India. The Official Liquidator after withdrawing the amount remaining unclaimed in the State Bank of India account should make necessary entries in the Dividend paid Register to the effect that certain cheques (No., date and account, etc. to be indicated) were not encashed by the parties and hence the amount involved in the said cheques is also deposited in the Companies Liquidation Account with the Reserve Bank of India. He should also file a supplementary statement with the Registrar of Companies concerned giving relevant details relating to such cheques. The withdrawal of amounts from the State Bank of India account and their remittance into the Companies Liquidation Account should be done within a period of 10 days from the expiry of the period of encashment of such cheques issued.

Deposit of funds available with Official Liquidators.

78.25 A nationalised bank had addressed this Department suggesting that the Official Liquidators attached to High Courts may be directed to deposit the funds at their disposal in Nationalised Banks, since some Official Liquidators are reported to have told some Branch Managers of Nationalised Banks concerned that they are under obligation to deposit the money in State Bank of India only.

In this connection I am directed to draw your attention to Rule 260 of Companies (Court) Rules, 1956, according to which all money for the time being standing to the credit of Official Liquidator as is not immediately required for the purpose of winding up shall be invested in Government Securities or interest bearing deposits in the State Bank of India, or with the prior approval of the Court, in interest bearing deposits in any other scheduled bank, in his name as the Official Liquidator of the company to which the funds belong. You are requested to obtain Court's approval for depositing the surplus funds which are not immediately required by you of companies under your charge, under the aforesaid rules, in the nationalised banks also whenever found convenient by you.

79. Defunct Companies.

Section 560: Policy followed with regard to winding out defunct companies

79.1 The policy which is followed with regard to winding out the defunct companies is that where it appears from the latest available balance sheet of a defunct company that it has adequate realisable assets, steps are taken to take the company into compulsory liquidation. But where the latest available balance sheet shows that the company has no assets or has such assets as would not be sufficient to meet the costs of liquidation, steps are taken to strike their names off the register under section 560. The striking off the name of a company does not materially affect the creditors or the company, because such creditors may

(i) enforce their claims against every director, secretaries and treasurers, manager or any other officer of the company and against every member of the company as if the name of the company had not been struck off; or

(Circular No. 13/76 dated the 16th June, 1976.)
(ii) apply to the court for the winding up of the company whose name has been struck off; or

(iii) apply to the Court, at any time within 20 years from the date of publication of the notice intimating that the name of the company has been struck off, for the restoration of the name of the company to the register of companies and on such application being made, the Court may order the name of the company to be restored to the register.

(Extract from the Fourth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended 31st March, 1956.)

Section 560—Defunct Companies

79.2 Copy of the notice under section 560(3) should be sent to the Incometax authorities also.

(Pl. No. 63050-CI. III dated 10th November, 1959.)
CHAPTER XXX

30. FOREIGN COMPANIES

80.1 Section 592 of the Companies Act, 1956 relating to documents etc. to be delivered to Registrar by foreign companies carrying on business in India, provides in sub-section (1) clause (d) that the foreign companies establishing a place of business within India after the commencement of the Act shall, within a month of the establishment of the place of business, deliver to the Registrar for registration, the names and addresses 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. This provision is made to ensure service of notices etc. in India required to be served on the foreign company which establishes a place of business in India. The expression "person" is not defined in the Companies Act, 1956 but Section 3, Item 42 of the General Clauses Act, 1897 defines "person" to include any company or association or body of individuals, whether incorporated or not. It would thus appear that for purposes of Section 592(1)(d) of the Companies Act, 1956, the expression "Person" would include a company. In this connection, it may be noted that those controlling the management of a company (normally the Directors or Managing Director) are treated as company's "brains" and wherever the brain functions, there resides the company. In these circumstances, it would appear that a foreign company could in law and within the meaning of section 592(1)(d) of the Companies Act, 1956 authorize an Indian company to accept service of documents etc. on its behalf and that the Directors of the Indian company can accept service of process etc. on behalf of the foreign company since the Indian company would be a "person" as defined in the General Clauses Act. In short, the expression "person" in Section 592(1)(d) of the Companies Act would include a 'company' as well. The query stated to have been made in that behalf by the Estimates Committee is, therefore, answered accordingly, and the application of the expression "person" under section 592(1)(d) could not be restricted to individuals or human beings.

(Taken from File No. 7/17/64-PR.)

Section 593: Foreign Companies—Returns to be filed.

80.2 Returns filed by foreign companies—Registrars are to call from the Indian representative of the foreign company an attested copy of the letter from the registered office of the foreign company to the Indian representative intimating the changes required to be intimated the Registrar, with a view to finding out the delay, if any, on the part of the Indian representative.

(F. No. 46/(1)/Ct. 11/61.)

81. Foreign Companies—Govt's Policy.

Section 594: Central Government's general policy as to foreign companies.

81.1 Power has been given to the Central Government under the proviso to Section 594(1) to exempt any foreign company or class of companies, by a notification in the Gazette, from the statutory requirements referred to above, in such manner as may be specified in the notification. In exercise of the said power, the following exemptions, modifications have already been granted by the Central Government to all foreign companies.
In exercise of the powers conferred by the proviso to sub-section (1) of Section 594 of the Companies Act, 1956 (hereinafter referred to as the Act) the Central Government has directed that the requirements of clause (a) of sub-section (1) shall apply to a foreign company having a share capital subject to the exceptions and modifications specified below, namely:

(i) A foreign company shall, in respect of its Indian business, submit to the appropriate Registrar in triplicate its balance-sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents as under the provisions of the Act it would, if it had been a company within the meaning of the Act, have been required to make out and lay before the company in general meeting.

(ii) The working capital earmarked for its branch, if any, shall be shown in the balance-sheet.

(iii) The profit and loss account in respect of its Indian business shall disclose the net profit or loss for the year transferred to its principal office in the country of its incorporation.

(iv) The balance-sheet and profit and loss account of the Indian business of the foreign company in terms of clause (i) shall be audited by such person or persons and in such manner as laid down in the Act. In regard to the said balance-sheet and profit and loss account relating to a period on or before the 31st day of March, 1958, it shall be deemed to be sufficient compliance if such documents are audited by auditors of the foreign company in the country of its incorporation.

(v) Omitted by G.S.R. No. 489, dated 1st April, 1961

(vi) The foreign company shall also submit to the appropriate Registrar three copies of the authenticated balance-sheet and profit and loss account (including documents relating to every subsidiary of the foreign company as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law in that country.

(vii) The Government shall have authority, when there is difficulty in reconciling the balance-sheet and profit and loss account of a foreign company submitted in accordance with clause (i) with the balance-sheet and profit and loss account filed by that company in the country of its incorporation, to seek clarification or demand the making of the balance-sheet and profit and loss account filed in that country, as far as practicable, in such form as it would, if it had been a company within the meaning of the Act, have been required to make out and lay before the company in a general meeting, and the foreign company shall be bound to make such clarification or comply with such demand, as the case may be.

(viii) In regard to a foreign shipping or an airlines company, it shall be deemed to be sufficient compliance of the provisions of Part II of Schedule VI to the Act, if the profit and loss accounts of such companies prepared in terms of clause (i) disclose under broad heads the items of indirect expenditure (relating to an entire voyage or flight which cannot be directly charged against the Indian business of such companies) allocated on a reasonable basis.

(ix) It shall be deemed sufficient compliance of the provisions of Section 594 of the Act, if the balance-sheet in respect of the period ending on or before the 31st day of December, 1956, are filed in the manner laid down in sub-section (3) of Section 277 of the Indian Companies Act, 1913 (VII of 1913).
(x) In the case of a foreign company which, if incorporated under the Act would have been deemed to be a private company within the meaning of clause (iii) of subsection (1) of Section 3 of the Act no person other than a member of the company concerned shall be entitled to inspect or obtain copies of

(a) the profit and loss account of its Indian business submitted to the appropriate Registrar in terms of clause (b) hereof;

(b) the profit and loss account submitted to the appropriate Registrar in terms of clause (vi) hereof;

(Notification No. S. R.O. 3213, dated 4th October, 1957.)

Under the provisions of Section 594 read with S.R.O. No. 3215 dated the 4th October, 1957 (given above) a foreign company having a place of business in India is required to file its balance-sheet and profit and loss account in respect of the Indian business along with the copy of the balance-sheet and profit and loss account of the world business filed in the country of incorporation. It was represented by certain foreign shipping and airline companies that it would not be practicable for such companies to comply in full, with the requirements of that section because of the fact that a substantial portion of their transactions related to countries other than India and that it was not easy to allocate the items of expenditure separately for Indian business. The matter was examined in detail in consultation with the Institute of Chartered Accountants of India as well as with the representatives of some of the foreign shipping and airline companies, and it was decided that the following exemption granted to these foreign companies operating in India, notified in G.S.R. 39 dated the 6th January, 1959:

1. "It shall be deemed sufficient compliance of the provisions of clause (a) of subsection (1) of the Section 594 if, in respect of the period ending on or after the thirty-first day of December, 1956, a company submits to the appropriate Registrar of Companies in India, in triplicate,

(i) a copy of the authenticated balance-sheet and profit and loss account (including documents relating to every subsidiary of the company) as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law in that country, and

(ii) a copy of the balance-sheet and profit and loss account referred to in item (i) above, prepared in accordance with the provisions of Schedule VI to the Act, subject to the following further modifications:

(a) any information or particulars not required to be disclosed in the accounts prepared in the country of incorporation by virtue of any special statutes or orders in that behalf, such as, the Companies (Shipping Companies) Exemption Orders, 1948, of the United Kingdom, need not be disclosed;

(b) instead of the gross earnings together with all the relative operating costs chargeable thereto, only the net earnings shall be shown;

(c) debts remaining unrealised after a period of three months need not be shown separately under the heading 'Loans and Advances', as required under note (o) to Part I of Schedule VI to the Act;"
(d) details classifying secured and unsecured loans and debts need not be shown except in respect of debts or loans from or to a body corporate in India, which information shall be disclosed by a note;

(e) the list and other particulars required to be annexed to the balance-sheet under Section 372(9) of the Act need be only in respect of body corporates incorporated in India as are deemed to be in the same group as the company;

(f) disclosure required in note (i) to Part I of Schedule VI to the Act of amounts due from other companies under the same management need be only in respect of such debts from companies registered under the Act as are deemed to be under the same management;

(g) details under 'current liabilities and provisions' need not be disclosed to the extent of the exemption given in item (a) above; and

(h) subdivisions of cash and bank balances need not be shown in detail except that the amount relating to the Indian branch shall be indicative by a note.

2. It shall be deemed to be sufficient compliance of the provisions of clause (a) of Section 594(1) if the balance-sheet and profit and loss account as referred to in para 1 (ii) above, if they are not certified by auditors appointed in the manner laid down in the Act, are audited by the auditors of the foreign company appointed at the annual general meeting in the country of its incorporation.

3. Notwithstanding anything contained in the above paragraphs, the company shall if so required by notice in writing from the Central Government, furnish to the Central Government such information with regard to its accounts as the Central Government may require.

(Extract from the Third Annual Report of the Working and Administration of the Companies Act, 1956—Year ended 31st March, 1964)

Section 594: Applications under Section 594

81.2 If, for any special reasons, any foreign company finds it difficult to comply with the provisions of Section 594, as modified above, it may apply to the Department detailing the nature of the specific difficulties faced by it in complying with the aforesaid modified provisions of the Act and indicating the nature of the modifications sought. No form has been prescribed for making this application but it would be sufficient if it is made under cover of a letter. But the application must be accompanied by the prescribed fee of Rs. 20. Only in very exceptional cases, however, Government would exercise their power of modifying the requirements of Section 594.

(Guide for filing forms and making applications—Page 202 (Department's Publication.)

Section 594: Accounts of foreign company.

81.3 Having regard to the provisions of Section 616(a) of the Companies Act, 1956 and the relevant provisions of the Insurance Act, 1938, notably Section 17 thereof read with Section 594(1)(a) of the Companies Act, 1956 it will be sufficient compliance with the provisions of Section 594 if foreign insurance companies file with the Registrar, the same returns, which they are required to file with the Controller of Insurance under the provisions of the Insurance Act, 1938.

(Circular No. 3/594/37-PR dated 6th July, 1964)
Section 594: Accounts of foreign companies.

81.4 The demand for a supplementary statement for the period between the date of closing of the Indian accounts as incorporated in the world accounts and the date of closing of the Indian accounts as filed with the Registrar of Companies in India seems to have caused some misunderstanding in certain cases. Such a supplementary statement will be necessary only when the dates vary. If, for instance, the Indian accounts filed with the Registrar are for the period ending 29th November, 1958 and the Indian accounts incorporated in the world accounts for the period ending 3rd January, 1959 are also made upto 29th November, 1958, only, there is no question of variations requiring reconciliation by a supplementary statement. In such cases, it is not necessary to insist on a supplementary statement. But where the Indian accounts incorporated in the world accounts as on 3rd January, 1959, are made only upto 29th November, 1958, while the Indian accounts filed with the Registrar of Companies are for the period ending 3rd January, 1959, it will be necessary to explain the variation in the two sets of accounts by a supplementary statement.

(Circular letter No. 8(7)/594/59-PR dated 24th December, 1958.)

Section 594: Accounts of foreign company—Failure to file.

81.5 Failure to file accounts—Default notices should be issued by the Registrar of Companies and prosecution should be launched after 8 months from the date of notice in case of non-compliance.

(Circular letter No. 46(1)-CL. 1196 dated 27-1-61.)

82. Foreign Companies—Fees.

Section 597: Foreign companies—Filing and Registration fees

82.1 A question has been raised as to whether foreign companies are liable to pay filing or registration fees as laid down in Rule 20 of the Companies (Central Government's) General Rules and Forms, 1956, framed under Section 601 of the Companies Act, 1956, in respect of the documents, etc., mentioned in Sections 592, 593, 594, 590 and 605 of the Act, and delivered to the Registrar, New Delhi, and also to the Registrar of the State in which the principal place of business of the company is situate, in pursuance of sub-sections (1) and (2) of Section 597 of the Act. The Central Government are advised that as the law stands at present, payment of filing/registration fees is required to be made to both the Registrars by the companies concerned.

(Circular letter No. 8/597/56-PR dated 6th July, 1966.)

Section 597: Filing and Registration fees payable by foreign companies.

82.2 The question whether a foreign company is required to pay fees in respect of documents filed or registration both with the Registrar of Companies, New Delhi and also with the Registrar of Companies of the State in which its principal place of business is situate, has been re-examined by the Company Law Board. It has now been decided that the filing and registration fees are required to be paid by the foreign companies only to the Registrar of Companies, New Delhi, and not to the Registrar of Companies of the State in which the principal place of business of such companies is situate in pursuance of Section 597(2). It is, however, necessary for the foreign companies to continue to simultaneously file with the Registrar of the State the documents/returns (without fees) as and when they file them with the Registrar of Companies, New Delhi.

(Circular letter No. G.30(J), dated 22nd September, 1963.)
Section 597: Foreign companies—Registration of charges.

823 Under the provision of Section 600 read with Section 597(2) of the Companies Act, 1956 a foreign company has to file the document relating to the particulars of a charge within 21 days* of the date of the creation of the charge with the Registrar of Companies, New Delhi, as well as with the Registrar of Companies of the State in which the principal place of business of the company is situated. Hence, ordinarily, in cases in which the document concerned was not filed with any of these Registrars within the prescribed period, the company should be advised to apply to the Court under Section 111 of the Companies Act, 1956, for necessary relief.

(Note: *Nov 30 Days).

Section 597 and Section 600: Registration of charges.

824 Section 600 of the Companies Act, 1956, govern registration of charges, appointment of receiver, etc., of foreign companies. It will be observed that under Section 600(4) of the Companies Act, 1956, the statutory duty of registration of charges devolves upon the Registrar of Companies, New Delhi. The fact that these documents are also required under Section 597 to be delivered to the Registrar of the State in which the principal place of business of the company is situate merely means that, for facility of inspection by the public in that State, these documents should be filed with the local Registrar as well. Consequently, whenever, any document is presented to the Registrar for certification, he should issue the certificate and inform accordingly the Registrar of the State in which the principal place of business of the company is situate so that his records may be complete.

(Circular Letter No. 857756-PR dated 25th September, 1957.)
CHAPTER XXXI

83. CERTIFIED COPIES—ADDITIONAL FEES

Section 610: Documents kept by Registrar—Copies of correspondence—whether can be given.

83.1 It has been brought to the notice of this Department that parties sometimes approach the Registrars of Companies for certified copies of the correspondence which had passed between the Registrars and the concerned companies.

Clause (a) of sub-section (1) of Section 610 entitles a person to inspect any document filed or registered by the Registrar in pursuance of the Act or any document recording any fact required or authorised to be recorded or registered in pursuance of the Act. Clause (b) of the same sub-section enables him to obtain a certified copy or extract of such document on payment of the prescribed fees. Since, normally the correspondence between the Registrar and the company cannot be regarded as a document filed or registered with the Registrar in pursuance of the Act, it is not open to the Registrar to afford inspection of such correspondence, or supply any copy thereof, to any party. The position would, however, be different if the Registrar was required to produce such correspondence under orders of the Court.

(Circular letter No. 3/610/57-PR dated the 22nd November, 1957.)

Section 610: Documents kept by Registrar

83.2 The facility of free inspection of documents filed by companies with the Registrar pursuant to the provisions of the Companies Act is now allowed inter alia to authorised representatives of the Income tax and Police Departments and of the Reserve Bank of India (vide para 41 of the Department's confidential instructions for the guidance of the Board and Inspection Cells of Registrar's Office forwarded with this Department's letter No. F. 1(7)-Ess 1/56 dated the 18th July, 1956). Two points were raised in this connection recently for consideration by this Department, viz., whether—

(i) certified copies also can be issued free of cost to the Income-tax, etc. Department to whom the right of free inspection is allowed; and

(ii) the concession of free inspection of documents at the Registrar's office may be allowed to representatives of other Government Departments on request.

After a careful consideration of the matter, it has been decided that—

(a) certified copies should not be issued by the Registrar free of cost to anyone. The party given the right of free inspection may as well take a copy at his/their own cost and without the payment of any fee, by deputing responsible officer to the Registrar's office for this purpose. Minor information, such as, the name or registered address of a company, can, of course, be supplied by the Registrar without insisting on the payment of any fee; and

(b) all Government Departments may be treated on the same footing so far as the granting of the free inspection at the Registrar's Office is concerned.

It is, therefore, requested that future applicants for copies of documents filed with Registrars may be advised accordingly.

(Circular letter No. 8(2) 616/60-PR dated the 14th May, 1960.)

39-26 M of IJ&CA/ND/76
Section 610: Documents kept by Registrar—Need not produce the originals in Court

83.3 It has come to the notice of this Department that the Registrars are producing in Court original documents registered with them in connection with the prosecutions launched by them. The attention of the Registrar is, therefore, invited to Section 610(2) and (3) of the Companies Act, 1956.

It is not necessary to produce original documents registered with the Registrars, unless the Court expressly calls for the same. A copy of any document kept by the Registrar, certified by him to be a true copy, is admissible in evidence in all legal proceedings and is required by law to be treated as having equal validity with the original documents. The Commercial Documents Evidence Act, 1939, also provides that the Court shall draw a presumption as to the correctness of the statement contained in the certified copies of memorandum and articles of association of a company and the Court may draw a presumption as to the correctness of the statements made in certified copies of balance sheet, profit and loss account and audit report of a company filed with the Registrar of Companies. In the circumstances, the Registrars of Companies are requested to produce certified copies and not original documents, unless the same is expressly called for by the Court, in the manner laid down in Section 610(3) of the Companies Act, 1956.

(Circular later No. 42 (366)-07-31/56 dated the 14th June, 1956.)

Photostat copies of documents—Suggestion for adoption

83.4 It has been represented to the Department that photostat copies of the original documents filed with the Registrar of Companies should be allowed to be certified by the Registrars of Companies under section 610 of the Companies Act, 1956, so that the unnecessary delay in getting the copies typed in the offices of Registrar of Companies is avoided. The matter has been examined very carefully in the Department and I am directed to say that the Registrars of Companies may, in addition to their certifying typed/printed copies, certify the photostat copies of the documents voluntarily brought to them, by various companies/parties for certification on payment of the prescribed of Rs. 1 for every hundred words or fractional part thereof under their hand and seal after comparing them with the originals.

(Circular No. 11/76 dt. 3-6-1956.)

84. Additional Fees

Section 611—Resubmitting document after making necessary correction without charging fresh filing fee

Query

84.1 As in the cases of documents pending registration they were allowed to be resubmitted after making necessary corrections without charging any fresh filing fee, the parties concerned should, even in respect of documents which were taken on the Register, be allowed to rectify mistakes which may be noticed thereafter, if such mistakes are bona fide made through oversight, without they being required to file fresh documents with the mistakes corrected and with fresh filing fee.

Answer

The Department's view is that in terms of regulation 18 of the Companies Regulations, 1956, no document can be deemed to be properly filed unless the requisite filing fee has been paid thereon. Accordingly, for the validity or recognition of a revised
The prosecution for the liability already incurred, therefore, does not exonerate them from their obligation to file the documents on payment of additional fee. The prosecution relates to the offence committed by them until its initiation and the subsequent liability still continues until the documents are actually filed. When, therefore, documents are filed after prosecution, it is for the Registrar to determine the penalty under Section 611(2). The power to determine and impose the additional penalty is exclusively vested in the Registrar. The court has no such power under Section 614A(2), though it can order the officers while sentencing, acquitting or discharging them to file the documents “on payment of fees including additional fee”. This order is of a general nature and does not enable the court to determine what shall be the fee or the additional fee. The fee is to be determined according to the provisions of sub-section (1) of Section 611 and the additional fee is to be determined by the Registrar under sub-section (2) of Section 611. In other words, the prosecution does not preclude or take away the powers of the Registrar to accept the documents for registration on payment of additional fees to be determined by him. Such acceptance of documents and imposition of additional fee does not prejudice the prosecution or interfere with the court proceedings as they relate to the offences already committed before initiation of the prosecution.
Section 611: Fees for registration of an association not for profit

84.4 In exercise of the powers conferred by sub-sections (1) and (2) of Section 611 of the Companies Act, 1955 (1 of 1956), the Central Government hereby orders that the fees payable under Section 611 of the said Act read with Schedule X thereto, for the registration, as a company with limited liability, of an association not for profit which is licensed under Section 23 of the said Act shall,

(i) where the association has a share capital;

(ii) where the association has no share capital and the number of members is stated in its articles of association to exceed twenty or to be unlimited.

be fifty rupees.

(2) The Orders of the Government of India in the Ministry of Finance (Department of Company Law Administration) No. SRD 771 dated the 1st April, 1956, is hereby cancelled.

(Notification No. S. O. 3979, dated the 22nd December, 1962.)

Section 611: Increase in fees with effect from 1st May, 1972—Notifications Nos. G.S.R. 259(E), G.S.R. 250(E), and G.S.R. 251(E) published in Part II Section 3, sub-section (i) of the Gazette of India Extra-Ordinary dated 21st April, 1972

84.5 Following the recent increase in the fees payable under the Companies Act, some doubts seem to have arisen as to cases in which the fees should be charged at the old rates and cases in which the enhanced rates should be charged. The following clarifications are accordingly issued:

(i) For documents received on or after the 1st May, 1972, the fees are, of course, to be charged at the new rates.

(ii) Where a company is registered on or after the 1st May, 1972, the registration fee is to be charged at the new rate even though the promoters might have presented the documents and paid the registration fee at the old rate before the 1st May, 1972. In such cases the promoters should be advised to pay the difference. If the application of this principle causes any genuine hardship, e.g. in a case where the delay in registration was due to causes for which the promoters were not responsible, such individual cases may be submitted to this Department with your recommendations for orders.

(iii) where the association has no share capital and the number of members is stated in its articles of association to exceed twenty or to be unlimited.

(iv) For applications received before the 1st May 1972 including those under the powers delegated to the Regional Directors the application fee should be charged at the old rate, irrespective of the date of disposal of the application.

(v) As regards payment by cheques of filing fees etc. the date of receipt of the cheques and not the date of encashment should be taken into consideration.

(Gazettal letter No. 10,5/71-OL. V dated the 14th June, 1972.)

85. Filing Returns—Enforcement

Section 614: Enforcement of company's duty to file returns, etc.

It has been found that the nominal fines which are generally imposed by the Courts for defaults in filing annual returns, balance sheets and other documents with
the Registrars are not having the desired effect and that omission to file such outstanding annual returns, balance sheets, etc., is continuing in spite of conviction of the company and/or its officers. It is desired by this Department that steps should be taken under Section 614 of the Companies Act, 1956/Section 249A of the Indian Companies Act, 1913, for compelling the production of the outstanding returns, balance sheets, etc. But it is felt that such proceeding under Section 614/249A are likely to be costly ones and they are also likely to be time-consuming ones. In the circumstances, it has been decided that selective action under Section 614/249A should be taken in suitable cases in all the High Courts.

It has also been decided that when prosecutions are started for non-filing of the annual returns, statements, etc. the previous defaults of the companies and/or their officers to file the outstanding returns, statements, etc. in spite of the conviction in earlier prosecutions, should be brought to the notice of the Courts at the appropriate stage of the trial and the Courts should be requested to pass deterrent sentences.

Action under Section 614 should be taken by the Registrars with the approval of Regional Directors and the Department should be kept informed of all such cases.

(Circular letter No. 46 (83) CL-II/56 dated the 5th September, 1958.)
CHAPTER XXXII

86. GOVERNMENT COMPANIES

Section 619—Government Companies—Audit of

86.1 Section 619 contains special provisions regarding the audit of Government companies. These provisions would apply notwithstanding anything contained in Sections 224 to 233 dealing with the audit of companies in general.

2. Section 619(4) requires the auditor of a Government company to submit a copy of his audit report to the C. & A.G. and further empowers the C & A.G. to comment upon (or supplement) the audit report. Section 619(5) requires any such comments upon the audit report to be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

3. Section 217(3) imposes a duty on the Board of Directors of a company to give the fullest information and explanations in the Board's report regarding every reservation, qualification or adverse remark contained in the auditor's report. In the absence of any similar specific provision regarding the comments of the C & A.G. on the audit report of a Government company, the Board of Directors of such a company is not bound to give information or explanation in respect of such comments.

4. Even the C. & A.G.'s comments would not have been required to be placed before the annual general meeting of a Government company but for the express provisions contained in Section 619(5) of the Act. Similar express provision would be necessary in the Act if it were intended that the provisions of Section 217(3) should also apply in the case of a Government company.

(Extracts from File No. 15/3/63 I.G.C.)

Section 619. Government companies—Appointment of first auditor or auditors

86.2 Under Section 619 read with sub-section (3) of Section 224 of the Companies Act, 1956, the first auditor or auditors of the company are required to be appointed by the Central Government (Company Law Board) on the advice of the Comptroller and Auditor General of India within one month of the date of registration of the Company. At present the Company Law Board or the Comptroller and Auditor General of India are not informed of the registration of a Government Company. In order to obviate delay in the appointment of Auditors in such companies, I am to request that the particulars of the Government Companies, like name, location of registered office, capital structure, period of financial year etc. etc. as may be available, may please be sent to the Company Law Board, immediately, with simultaneous intimation to Comptroller and Auditor General of India, New Delhi.

2. In the case of public limited Government Companies, the date on which the company became entitled to commence business and the certificate of 'Commencement of Business' is granted may also be furnished immediately to this Board, with simultaneous intimation to the Comptroller and Auditor General of India. This information is required so that a watch may be kept regarding the appointment of auditors well before the last date by which the 'Statutory Meeting' under Section 165 of the Act is required to be held.

(Circular No. 20/83 letter No. 15/17/73 I.G.C. dated the 23rd July, 1973.)
Section 619: Government companies—Appointment of auditor

86.3 This section provides that appointment of auditor of a Government company is to be made by the Central Government on the advice of the Comptroller and Auditor General of India. It has been held that if there was a validly appointed auditor before a company became a Government company, the tenure of that auditor would normally continue till the holding of the next annual general meeting. It has also been held that there is no objection to the Central Government appointing auditor for a Government company in liquidation.

In order to obviate delays in the appointment of auditors of Government companies, the Government companies and the Ministries/State Governments who are administratively concerned with them have been advised to forward a panel of three or four names of Chartered Accountants to the Department with such additional information about each of them as the company concerned may deem relevant and also the fees demanded by each Chartered Accountant in the following cases:

(i) Where a company is newly formed and auditors are to be appointed for the first time.

(ii) Where a company has become a Government company during the course of the last/current financial year and has no validly appointed auditor in office for the current year and auditors are required to be appointed for the first time by the Central Government under Section 619 of the Companies Act, 1956.

(iii) Where, for any reason which must be stated, it is not proposed to reappoint the retiring auditors.

In subsequent years, while proposing the name of the retiring auditors for reappointment, the fee demanded by him for the year for which his name has been proposed, is to be indicated.

(Circular letter No. 19(24).CT-IW/6 dated the 1st September, 1961.)

Section 619: Government companies—Power to conduct test audit

86.4 The question is whether the Comptroller and Auditor General can call for a supplemental or special audit report under Section 619 of the Companies Act.

2. Under clause (b) of sub-section (3) of that section, the Comptroller and Auditor-General has the power to conduct a supplementary or test audit of the company's accounts by such person or persons as he may authorise in this behalf. The person to be so authorised may well be the Auditor appointed under sub-section (2) of that section. It is not necessary to rely on the powers of the Comptroller and Auditor-General under Clause (a) of sub-section (5) for the purpose in view.

(Extracts from File No. 17/116/61-1 GC.)

Section 619B of the Companies Act, 1956: Clarification regarding Corporations controlled by Central/State Governments

86.5 Enquiries have been received by the Department whether certain institutions are corporations owned or controlled by the Central/State Governments within the meaning of Section 619-B of the Companies Act, 1956. The matter has been carefully examined by this Department and it is hereby clarified that the following institutions are corporations owned or controlled by the Central Government within the meaning of Section 619-B:

1. Nationalised banks.
2. General Insurance Corporation of India.
3. Life Insurance Corporation of India.
4. Industrial Development Bank of India.
5. Industrial Finance Corporation.
6. Industrial Credit & Investment Corporation of India.

The Co-operative institutions, however, are not covered within the definition of Corporations owned or controlled by the Central/State Governments.

It may, however, be noted that the above list of Corporations is only illustrative and not exhaustive.

(Circular No. 6/76 dated the 17th March, 1976 on File No. 8/25(619B)/75-CL-V)

Section 619B of the Companies Act, 1956. Clarification regarding Corporation controlled by Central/State Governments.

86.0 In partial modification of this Department's Circular letter No. 6/76, dated the 17th March, 1976 on the above subject, I am directed to say that the Industrial Credit and Investment Corporation of India is not a corporation owned or controlled by the Central Government within the meaning of Section 619-B of the Companies Act, 1956.

2. I am further to clarify that the Unit Trust of India is also not an institution owned and controlled by the Central Government within the meaning of Section 619-B of the Companies Act, 1956.

(Circular No. 27/76 dated 18 August 1976).
CHAPTER XXXIII

37. MODIFICATION OF THE ACT

1. Modification of Act—Government Company

Section 620: Notifications under Section 620(1).

I

In exercise of the powers conferred by subsection (1) of Section 621 of the Companies Act, 1956 (1 of 1956) the Central Government hereby directs that the provisions of Sections 17, 18, 19, 166, 186 and 620 of the said Act shall apply to a Government company with the modifications set out below, a copy of this notification having been laid in draft before both Houses of Parliament by sub-section (a) of that section.

(1) Modification. In sections 17, 18, 19 and 186 for the word 'Court' wherever it occurs, the words 'Central Government' shall be substituted.

(2) In Section 166:

(i) In proviso to clause (c) of sub-section (1), for the word 'Registrar', the words "Central Government" shall be substituted;

(ii) In sub-section (2) for the words "some other place within the city, town or village in which the registered office of the Company is situate", the words "such other place as the Central Government may approve in this behalf" shall be substituted, and

(3) In Section 621, sub-section (1), the words "The Registrar or, of a shareholder of the company, of" shall be omitted.


II

In exercise of the powers conferred by subsection (1) of Section 620 of the Companies Act, 1956 (1 of 1956), the Central Government hereby directs that the provisions of Section 13 of the said Act shall apply to a Government Company with the modifications specified below, a copy of this notification having been laid in draft before both Houses of Parliament as required by sub-section (2) of that section;

Modification

In clause (a) of sub-section (1) of Section 13, the words "in the case of a public limited company, and with 'Private Limited' as the last words of the name in the case of a 'Private Limited Company' shall be omitted.

(Notification No. G.S.R. 1234, dated December, 30, 1954.)

III

In exercise of the powers conferred by subsection (i) of Section 626 of the Companies Act, 1956 (1 of 1956) the Central Government hereby directs that the provisions of Sections 21 and 23 of the said Act shall apply to a Government Company with the modifications set out below, a copy of this Notification having been laid in draft before both Houses of Parliament by sub-section (a) of that section.
Modification

(1) To section 21, the following proviso shall be added, namely:

"Provided that nothing in this section shall apply to a Government Company where the change in its name consists only in the deletion of the word "Private" therefrom."

(2) In Section 23, after sub-section (1), the following sub-section shall be inserted, namely:

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

(Notification No. G.S.R. 1549 dated 15th November, 1965.)

88. Modification of the Act to Nidhis—Other Modifications.

Section 620A: Notification under Section 620A.

88.1 In exercise of the powers conferred by Section 620A of the Companies Act, 1956 (1 of 1956), the Central Government hereby,

(i) declares the companies specified in Schedules I and II annexed hereto as Nidhis and Mutual Benefit Societies respectively; and

(ii) directs that the provisions of the said Act specified in column (1) of Schedule III annexed hereto shall not apply or, as the case may be, shall apply with the exceptions, modifications and adaptations specified in the corresponding entry in column (2) thereof, to such Nidhis and Mutual Benefit Societies.

Schedule I—Nidhis

27. Shiyali Janopakara Nidhi Ltd., Madras.
29. Shri Villiputhur Permanent Fund Ltd., Madras.
30. Sunrise Corporation Ltd., Madras.
32. Tinnevelly District Permanent Fund Ltd., Madras.
33. Tiruvatteswaran Hindu Janopakara Nidhi Ltd., Madras.
34. Triplicane Permanent Fund Ltd., Madras.
41. Thirunagai Mutual Benefit Fund Ltd., Madras.
42. Varalakshmi Fund (Vellore) Ltd., Madras.
43. Vellore Saswatha Nidhi Ltd., Madras.
44. Walajabad Dhanasekara Saswatha Nidhi Ltd., Madras.
45. Chittoor Saswatha Nidhi Ltd., Andhra Pradesh.
46. Madanapalle Sri Venkateswara Nidhi Ltd., Andhra Pradesh.
47. Anantapur Sri Satyanarayana Nidhi Ltd., Andhra Pradesh.
49. Adoni Arya Vaisya Fund Ltd., Andhra Pradesh.
52. Hindupur Mutual Benefit Permanent Fund Ltd., Andhra Pradesh.
56. Harpanahalli Sree Venkataranganaswamy Permanent Bhandar Ltd., Mysore.
60. Shri Vasavi Parameswari Permanent Fund Ltd., Madras.
61. Kirrie & Traders Ltd., Ernakulam.
63. Shree Rajagopaul Benefit Fund Limited, Madras.
64. The Madras Chromepet Permanent Fund Ltd., Madras.
65. The Adoni Mutual Benefit Permanent Fund Ltd., Andhra Pradesh.
66. M/s. Sirman Madhaya Siddhanta Omahini Permanent Nidhi Ltd.
67. M/s. Thirumulai Saswatha Sahaya Nidhi Ltd.
68. M/s. Taheri Aid Fund Ltd.
69. M/s. Kumbakonam Diocesean Catholics Permanent Fund Ltd.
70. M/s. Matha Vara Nidhi Ltd.

* Vide Notification No. G.S.R. 353 dated 1-6-64.
* Notification No. G.S.R. 1 dated 21-12-73 [published in Gazette of India dated 3-1-74 Part II - Section 3 (T)].
* Notification No. G.S.R. (600) dated 22-6-74 [Published in the Gazette of India dated 6-7-74 Part II Section 3(1)].
* CL III Notification No. G.S.R. 275 dated 14-2-75 [published in the Gazette of India dated 1-3-75 Part II section (3) (I)].
* Notification No. G.S.R. 409 dated 29-3-75 [published in the Gazette of India Part II-Section (5)(II)].
* Notification No. 377/37-CL III-G.S.R. 1300 [published in the Gazette of India dated 11-9-76 Part II Section 3 (I)].
## MODIFICATION OF THE ACT

**Schedule II—Mutual Benefit Societies.**

Every “Mutual Insurance Company” as defined in clause (a) of sub-section (1) of Section 95 of the Insurance Act, 1938 (4 of 1938).

### Schedule III

<table>
<thead>
<tr>
<th>Provisions of the Act</th>
<th>Extent of Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 53(1)</td>
<td>Shall apply subject to the modification that in the case of:</td>
</tr>
<tr>
<td></td>
<td>(i) a Nidhi or Mutual Benefit Society without a share capital; or</td>
</tr>
<tr>
<td></td>
<td>(ii) a Nidhi or Mutual Benefit Society with a share capital as regards those members who do not hold shares of one hundred rupees or more in face value or more than one per cent of the paid up capital, whichever is less;</td>
</tr>
<tr>
<td>Section 83</td>
<td>Shall not apply.</td>
</tr>
<tr>
<td>Section 87(1) (b)</td>
<td>Shall apply subject to the modification that no member shall exercise voting rights in excess of five per cent of the total voting rights of the equity shareholders.</td>
</tr>
<tr>
<td>Section 139(1)</td>
<td>Shall apply subject to the modification that for the words ‘two immediately preceding years’ in the provision, the words ‘five immediately preceding years’ shall be substituted.</td>
</tr>
<tr>
<td>Section 168(1) (aa)</td>
<td>Shall not apply to a Mutual Benefit Society specified in Schedule II only.</td>
</tr>
<tr>
<td>Section 205(3)(b)</td>
<td>Shall apply subject to the modification that any dividend payable in cash may also be paid by crediting the same to the account of the member if the dividend is not claimed within thirty-two days of the announcement of the dividend.</td>
</tr>
<tr>
<td>Section 207</td>
<td>Shall apply subject to the modification that where the dividend payable to a member is twenty-five rupees or less it shall be sufficient compliance of the provisions of the section if the declaration of dividend is announced in two local newspapers of the wide circulation once in English in an English newspaper and once in the local language in a newspaper of that language and announcement of the said declaration is also displayed in the notice board of the Nidhi or Mutual Benefit Society for at least three months.</td>
</tr>
<tr>
<td>Section 219(1)</td>
<td>Shall apply subject to the modification that in the case of:</td>
</tr>
<tr>
<td></td>
<td>(i) a Nidhi or Mutual Benefit Society without a share capital, or</td>
</tr>
<tr>
<td></td>
<td>(ii) a Nidhi or Mutual Benefit Society with a share capital, so far as the members who do not individually or jointly hold shares of one hundred rupees or more in face value or more than one per cent of the total paid up capital, whichever is less, are concerned;</td>
</tr>
</tbody>
</table>
Section 620A: Clarification of Notification.

88.2 The problem faced by Nidhis and Mutual Benefit Societies incorporated as public limited companies in having to remunerate their part-time directors on a percentage of net profits in compliance with sub-section (4) of Section 309 was considered. During the year under review, the Department finalised the details of the relief to be granted to the 'Nidhi' and 'Mutual Benefit' companies as contemplated under Section 620A and the necessary notification was accordingly issued on the 28th May, 1963.

The Nidhis and Mutual Benefit Societies listed in the Notification were permitted, in modification of subsection (4) of Section 309 of the Act, to remunerate their directors, who were not in the position either of managing or whole-time directors but who rendered specific services to the company, such as, key-guardians, director-surveyor, director-legal advisors, etc., by way of monthly payments, subject to the approval of the Central Government. It is hoped that this concession granted to Nidhis and Mutual Benefit Societies will go a long way to remove the difficulties experienced by them, in complying with the provisions of the Act as amended, relating to managerial remuneration. Prior to the issue of the Notification, special circumstances pertaining to such companies were kept in view while considering individual applications and suitable relaxations permissible under the law were allowed.

(Notification No. G.S.R. 978, dated May 28, 1963.)

88.3 Some companies declared as Nidhis under Section 620A sought general permission to grant loans to their members who are relatives of the directors.
Having regard to the concession already granted to these companies by virtue of the orders made by the Central Government under Section 620A, general permission was granted to the grant of loans only in cases where the amount of loan did not exceed 90% of the actual cash deposits made by the member either by way of recurring deposits or fixed deposits. The Board declined to grant such general approval in respect of loans of any other kind as partial exemption had been allowed in cases where the loans did not exceed Rs. 2,000 or 25% of the value of security offered, by virtue of the notification under Section 620A.

(Extract from the Ninth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1965.)

89. Modification of the Act—Union Territories

Section 620B: Notification under Section 620B—Extent of application of provisions to Union Territories of Goa, Daman and Diu

Notification One

89.1 In exercise of the powers conferred by Section 620B of the Companies Act, 1956 (1 of 1956), as extended to the Union Territory of Goa, Daman and Diu, the Central Government hereby directs that:

(1) from the 26th day of January, 1963, till the date of this Notification, all the provisions except Sections 1 and 3 of the said Act shall not apply to the existing companies as defined in Section 5(1)(i) and (j) of the said Act, as extended to the Union Territory of Goa, Daman and Diu, and

(2) from the date of this Notification all the 31st day of December, 1963, the provisions of the said Act as specified in column (1) of the Schedule annexed hereto shall not apply, or, as the case may be, shall apply to the existing companies aforesaid with the exceptions, modifications and adaptations in the corresponding entry specified in column (2) thereof.

The Schedule

<table>
<thead>
<tr>
<th>Provisions of the Act (1)</th>
<th>Extent of application (2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections 4 to 8, 11 to 16, 20, 26, 27 and 30</td>
<td>Shall not apply.</td>
</tr>
<tr>
<td>Section 31</td>
<td>Only sub-section (1) without the proviso thereunder.</td>
</tr>
<tr>
<td>Sections 32 to 39, 42, 44 to 47 and 76 to 81</td>
<td>Shall not apply.</td>
</tr>
<tr>
<td>Section 84</td>
<td>Only sub-section (1) shall apply.</td>
</tr>
<tr>
<td>Sections 95 to 98, 106 to 115, 117 to 123, 139 to 148, 171, 174 to 183, 190 and 191</td>
<td>Shall not apply.</td>
</tr>
<tr>
<td>Section 192</td>
<td>Only sub-sections (1), (2), (3), clauses (a) and (b) of sub-section (4), sub-section (5) and sub-section (6) shall apply.</td>
</tr>
<tr>
<td>Section 195</td>
<td>Only sub-section (1) without clause (b) thereof shall apply.</td>
</tr>
<tr>
<td>Sections 177 to 209 and 204 to 208</td>
<td>Shall not apply.</td>
</tr>
<tr>
<td>Section 209</td>
<td>Only sub-sections (1) and (1-A) shall apply.</td>
</tr>
<tr>
<td>Section 210</td>
<td>Only sub-sections (1), (2), (3) and (4) shall apply.</td>
</tr>
<tr>
<td>Section 211</td>
<td>Only sub-sections (1) to (5) shall apply.</td>
</tr>
</tbody>
</table>

41—26 M of L J & CA ND 76.


### Notification Two

In exercise of the powers conferred by Section 620B of the Companies Act, 1956 (1 of 1956) as extended to the Union Territory of Goa, Daman and Diu, the Central Government hereby directs that in the case of 'Societas per quotas responsibilitate limitata' formed under the Portuguese Commercial Code and incorporated as companies under the said Act on or before the 30th June, 1965, under the proviso to sub-section (2) of Section 34 of the said Act as extended to the Union Territory of Goa, Daman and Diu, the provisions of the said Act as specified in column (1) of the Schedule annexed hereto shall not apply, or, as the case may be, shall apply with the exceptions, modifications and adaptations in the corresponding entry in column (2) thereof, from the date of such incorporation till the 31st day of December, 1965.

#### The Schedule

<table>
<thead>
<tr>
<th>Provisions of the Act (1)</th>
<th>Extent of Application (2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections 212 to 214</td>
<td>Shall not apply.</td>
</tr>
<tr>
<td>Section 215</td>
<td>Only sub-section (1) and (2) shall apply.</td>
</tr>
<tr>
<td>Sections 216 to 218, 221 to 223, 225, 226, 228, 229, 235 to 231, 233 to 236, 237 to 239, 243 to 249 and 251</td>
<td>Shall not apply.</td>
</tr>
<tr>
<td>Section 294</td>
<td>Only sub-sections (1) shall apply.</td>
</tr>
<tr>
<td>Sections 295 to 312, 314 to 323, 316 to 364 and 269 to 271</td>
<td>Shall not apply.</td>
</tr>
</tbody>
</table>

(Notification No. G.S.R. 515, dated 24-4-1965.)
In exercise of the powers conferred by Section 620B of the Companies Act, 1956 (1 of 1956), as extended to the Union territory of Goa, Daman and Diu, the Central Government hereby directs that Section 115 of the said Act shall apply to the Union territory of Goa, Daman and Diu subject to the modification, specified below:

In the said Section 115, the following proviso shall be inserted at the end, namely:

"Provided that any charge specified in clauses (a) to (d) of sub-section (1) of Section 125 which was created before, and remaining unsatisfied at, the date of incorporation of any "Societé de quotas responsabilité limitée" as a company under the proviso to sub-section (2) of Section 31 shall, in so far as it remains unsatisfied on the date of publication of this notification in the Gazette of India, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in the manner required by this Act, within thirty days of the date of publication of this notification in the Gazette of India."

(Notification No. G.S.R. 641, dated 24-4-1967.)

Section 620B: Clarification of Notification

89.2 It was decided in consultation with the Goa Administration that Per Quota Societies formed under the Portuguese Law should be given an opportunity to be incorporated as companies under the Companies Act. Upon such incorporation such a society should be deemed to be a company under the said Act with effect from the date of its formation under the Portuguese Commercial Code, as if the Companies Act had been in force on the date of its formation under that Code. To achieve this purpose, a notification was issued under Section 620B of the Companies Act (as extended to Goa) amending Section 31 of the Companies Act in its application to Goa, Daman and Diu. The said Notification gave the benefit of continuity of existence to Per Quota Societies, provided they registered themselves as companies under the Companies Act on or before the 30th June, 1965. The time-limit was later extended to the 30th June, 1965, at the instance of the interest concerned. By another Notification, such Per Quota Societies as registered themselves as companies within the aforesaid period were given exemption from the initial payment of registration fee, and fees in respect of filing the documents required to be filed at the time of registration. Till 30th June, 1965, 21 Per Quota Societies have been registered as private companies.

(Extract from the Ninth Annual Report on the Working and Administration of the Companies Act, 1956, Year ended March 31, 1965)

90. Modification of the Act—Jammu and Kashmir

Section 620C: Notification under Section 620C

In exercise of the powers conferred by Section 620C of the Companies Act, 1956 (1 of 1956) the Central Government hereby directs that, with effect from the 15th August, 1968, the provisions of the said Act as specified in column (1) of the Schedule annexed hereto shall not apply, or as the case may be, shall apply with such exceptions, modifications or adaptations specified in the corresponding entry in column (2) thereof, to companies, other than banking, insurance and financial corporations, registered in the State of Jammu and Kashmir before the said date.
<table>
<thead>
<tr>
<th>Provisions of the Companies Act, 1956 (1)</th>
<th>Extent of application (2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-section (4) of Section 89</td>
<td>For the words, figures and letters &quot;the 1st day of December 1949&quot;, the words, figures and letters &quot;the 1st day of August, 1968&quot; shall be substituted.</td>
</tr>
<tr>
<td>Section 211</td>
<td>After the proviso to sub-section (1), the following proviso shall be inserted, namely: &quot;Provided further that in respect of any financial year commencing on a date prior to the 5th day of August, 1968, the balance-sheet of a company registered in the State of Jammu and Kashmir need not be in the form set out in Part I of Schedule V.&quot;</td>
</tr>
<tr>
<td>Section 220</td>
<td>In clause (a) for the words, figures and letters &quot;the 21st day of July, 1971&quot;, the words, figures and letters &quot;the 1st day of August, 1970&quot; shall be substituted.</td>
</tr>
<tr>
<td>Section 231</td>
<td>In the first proviso to sub-section (1), for the words, figures and letters &quot;the 1st day of April, 1952&quot;, the words, figures and letters &quot;the 1st day of August, 1970&quot;, shall be substituted.</td>
</tr>
<tr>
<td>Section 291</td>
<td>(i) Reference to the commencement of the Companies Amendment Act, 1963 shall, in relation to a company registered in the State of Jammu and Kashmir, be construed as reference to the commencement of the Companies Act, 1956, in that State.</td>
</tr>
<tr>
<td>Section 295</td>
<td>(ii) For sub-section (3), the following sub-section shall be substituted, namely: &quot;(3) Where, before the commencement of this Act in the State of Jammu and Kashmir, a company registered in that State has appointed a sole selling agent for any area for a period of not less than five years and the period of such appointment has not expired and is not likely to expire earlier, such appointment shall be placed before the company in general meeting within a period of eighteen months from such commencement, and the company in general meeting by resolution, terminate the appointment with the effect from such date, not being a date later than the 5th day of August, 1970, as may be specified in the resolution; provided that in the event of any omission to place such appointment before the company in general meeting for its approval, such appointment shall stand terminated on the expiry of a period of eighteen months from such commencement.&quot;</td>
</tr>
<tr>
<td>Section 325</td>
<td>In sub-section (5), for the words, figures and letters &quot;the 1st day of April, 1952&quot;, the words, figures and letters &quot;the 1st day of August, 1968&quot; shall be substituted.</td>
</tr>
<tr>
<td>Section 329</td>
<td>In sub-section (4), for the words, figures and letters &quot;the 1st day of August, 1952&quot;, the words, figures and letters &quot;the 1st day of March, 1970&quot; shall be substituted.</td>
</tr>
<tr>
<td>Section 332</td>
<td>Shall not apply.</td>
</tr>
<tr>
<td>Section 334</td>
<td>In sub-section (1), for the words, figures and letters &quot;the 15th day of August, 1968&quot;, the words, figures and letters &quot;the 15th day of March, 1970&quot; shall be substituted.</td>
</tr>
</tbody>
</table>
### MODIFICATION OF THE ACT

<table>
<thead>
<tr>
<th>Provisions of the Companies Act, 1956</th>
<th>Extent of application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 361</td>
<td>For the words and figures &quot;the first day of March, 1958&quot;, the words and figures &quot;the third day of April, 1958&quot; shall be substituted.</td>
</tr>
</tbody>
</table>
| Section 373                           | (i) For the words and figures "after the first day of April, 1958", the words "before the fifteenth day of August, 1960" shall be substituted.  
(ii) For the words "within six months", the words "within eighteen months", shall be substituted. |
| Section 618                           | Shall not apply. |

(Notification No. G.S.R. 71, dated 29th December, 1969.)
CHAPTER XXXIV

91. Legal Proceedings—Application for Relief

Section 633: Court's power to grant relief in certain cases

91.1 Prosecutions should not be started after application for relief has been filed by any officer of the company under Section 633.

(Letter No. 12(117) GL-II/60 dated 12th October, 1960.)

Section 633: Applications to court for grant of relief opposition by Registrar

91.2 For the purpose of obtaining instructions as to whether an application under Section 633 should or should not be opposed, the Registrar should approach the Regional Director when the application under Section 633 relates to an offence for which the Registrar is competent, according to the instructions of this Department, to launch a prosecution without obtaining the sanction of the Regional Director or of the Central Government. But, for the purpose of obtaining instructions as to whether an application under Section 633 relating to any offence prosecution, for which is required to be launched by the Registrar with the sanction of the Regional Director or of the Central Government should or should not be opposed, the Registrar should approach this Department through the Regional Director, who should forward the same together with his comments thereon to this Department. When the Regional Director gives a decision with regard to the question as to whether an application under Section 633 should or should not be opposed, in accordance with the instructions indicated above, he should forward a copy of the same together with his comments to this Department for its information.

(Circular letter No. 42 (69) GL-II/60, dated the 5th March, 1960.)
CHAPTER XXXV

92. DELEGATION OF POWERS

Section 637: Delegation of powers and functions of the Central Government to the Regional Directors of the Company Law Board.

In light of the experience gained in the working of the Companies Act, the Central Government delegated in 1958 some of the powers vested in it under the said Act to the four Regional Directors of the Company Law Administration stationed at Bombay, Calcutta, Kanpur and Madras. The position has since been reviewed and it has now been decided to delegate some more powers under the Act to the Regional Directors. A fresh notification under Section 637 of the Act in supersession of the previous notifications in this behalf is accordingly being published in the Gazette of India (Given below).

The powers of the Central Government that the Regional Directors will henceforth exercise subject to the Control of the Company Law Board are set out below:

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>Power to approve of the change of name by a company</td>
</tr>
<tr>
<td>22</td>
<td>Power to certify the name of a company in certain circumstances</td>
</tr>
<tr>
<td>23</td>
<td>Power to grant or revoke licence, grant exemptions from the provisions of the Act to licensed companies and to approve alterations in the memorandum and articles as long as the licence is in force.</td>
</tr>
<tr>
<td>W(1)</td>
<td>Power to approve of the alterations in the articles for converting a public company into a private company</td>
</tr>
<tr>
<td>43A(4)</td>
<td>Power to approve of the conversion of a public company into a private company</td>
</tr>
<tr>
<td>167</td>
<td>Power to call an annual general meeting of a company where the management has defaulted in holding the meeting in time.</td>
</tr>
<tr>
<td>224(3), 4 and 8 (a)</td>
<td>Power to appoint and to fix the remuneration of auditors for a company where no auditor has been appointed by the company in its annual general meeting.</td>
</tr>
<tr>
<td>Second proviso to sub-section (5) of section 339 and sub-section (5) of the same section.</td>
<td>Authority to empower the Registrar to present a petition to the Court for winding up of a company in certain cases; and the authority to give an opportunity to a company of making representation in this behalf.</td>
</tr>
<tr>
<td>480(1) (a) and section 565 (1) (a)</td>
<td>Power to grant extension of time to the Liquidator for calling a general meeting of a company or of creditors in all cases.</td>
</tr>
<tr>
<td>551(1)</td>
<td>Power to exempt liquidators from the requirement of furnishing information as to pending liquidations.</td>
</tr>
<tr>
<td>Clause (b) of sub-section (7) of Section 553 and proviso to clause (a) of sub-section (9) of the same section.</td>
<td>Power to sanction payment to the contributors out of the Companies Liquidation Account in all cases and power to remit the interest payable by liquidators in case of delay in paying moneys into the Companies Liquidation Account.</td>
</tr>
<tr>
<td>Prov. to sub-section (1) of Section 611</td>
<td>Power to allow inspection of documents filed with the Registrars along with a prospectus.</td>
</tr>
<tr>
<td>627</td>
<td>Right to apply to a High Court for the production and inspection of books and papers of a company where offences are suspected.</td>
</tr>
</tbody>
</table>
In respect of the matters dealt with in the sections enumerated above, companies and members of the public should hereafter address the appropriate Regional Director as indicated below instead of the Company Law Board.

<table>
<thead>
<tr>
<th>State in which the Registered office of the company is situated</th>
<th>Regional Directors concerned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assam, Nagaland, Bihar, West Bengal, Orissa, Manipur, Tripura</td>
<td>Eastern Region, Calcutta.</td>
</tr>
<tr>
<td>Maharashtra, Goa, Daman &amp; Diu, Gujarat, Madhya Pradesh</td>
<td>Western Region, Bombay.</td>
</tr>
<tr>
<td>Uttar Pradesh, Delhi, Punjab, Himachal Pradesh, Rajasthan</td>
<td>Northern Region, Kanpur.</td>
</tr>
<tr>
<td>Andhra Pradesh, Madhya Pradesh, Pondicherry, Kerala</td>
<td>Southern Region, Madras.</td>
</tr>
</tbody>
</table>

(Circular No. F. 2/13/64-F dated 28th January, 1966)

Section 637: Notification under Section 637

Notification One

In exercise of the powers conferred by clause (b) of subsection (1) of Section 31 of the Companies Act, 1956 (1 of 1956), and in supersession of the notification of the Government of India in the late Ministry of Commerce and Industry (Department of Company Law Administration) No. G.S.R. 556 dated the 25th June, 1958 the Central Government—

(i) hereby delegates to the Regional Directors of the Company Law Board at Bombay, Calcutta, Madras and Kanpur also, the powers and functions of the Central Government under the following provisions of the said Act, namely:

Section 21
Section 22
Section 25
Subsection (1) of Section 31
Subsection (4) of Section 43A
Section 167
Subsections (3), (4) and clause (a) of sub-section (8) of Section 224
Second proviso to sub-section (5) of Section 439, and sub-section (6) of the said section.
DELEGATION OF POWERS

Clause (a) of sub-section (1) of Section 496

Clause (a) of sub-section (1) of Section 508 sub-section (1) of Section 551

Clause (b) of sub-section (7) of Section 555 and the proviso to clause (a) of sub-section (9) of the said section

Proviso to sub-section (1) of Section 610 Section 627;

(ii) further directs that every Regional Director shall exercise his powers and perform the functions so delegated to him subject to the control of the Company Law Board.

NOTIFICATION TWO

In exercise of the powers conferred by clause (b) of sub-section (1) of Section 627 of the Companies Act, 1956 (1 of 1956), the Central Government

(i) hereby delegates to the Regional Directors of the Company Law Board at Bombay, Calcutta, Madras and Kanpur, also the powers and functions of the Central Government under the provisions of Section 394A of the said Act;

(ii) further directs that every Regional Director shall exercise his powers and perform the functions so delegated to him subject to the control of the Company Law Board.

(Notification No. G.S.R. 416, dated 22nd February, 1959.)
Chapter XXXVI

93. FEES ON APPLICATION


Rule 2.—Fees (1) Every application made to the Central Government in respect of a company proposed to be registered pursuant to a licence under Section 25 of the Companies Act, 1956 (1 of 1956) (hereinafter referred to as the Act) or by a company (including a foreign company as defined in Section 591 of the Act), under any provision (other than subsection (1D) of Section 108 or clause (b) of subsection (7) of Section 555) of the Act shall be accompanied by the appropriate fee specified below:

Table of Fees

<table>
<thead>
<tr>
<th>Amount of Fees to be paid (Rs. P.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Application by a company having a nominal share capital of:</td>
</tr>
<tr>
<td>(a) Less than Rs. 1,00,000</td>
</tr>
<tr>
<td>(b) Rs. 1,00,000 or more, but less than Rs. 5,00,000</td>
</tr>
<tr>
<td>(c) Rs. 5,00,000 or more, but less than Rs. 25,00,000</td>
</tr>
<tr>
<td>(d) Rs. 25,00,000 or more</td>
</tr>
<tr>
<td>(ii) Application by a company limited by guarantee but not having a share capital or in respect of the company proposed to be registered pursuant to a licence under section 25 of the Act, or by a company having a valid licence issued or deemed to have been issued under the said section</td>
</tr>
<tr>
<td>(iii) Application by a foreign company</td>
</tr>
</tbody>
</table>

(2) Every application made to the Central Government under subsection (1D) of Section 108 of the said Act shall be accompanied by the appropriate fee specified in the Table below:

Table of Fees

<table>
<thead>
<tr>
<th>Amount of fees to be paid (Rs. P.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where the nominal value of the shares involved in a transfer:</td>
</tr>
<tr>
<td>(a) Does not exceed Rs. 5,000</td>
</tr>
<tr>
<td>(b) Exceeds Rs. 5,000</td>
</tr>
</tbody>
</table>

(3) Every application made to the Central Government under clause (b) of subsection (7) of Section 555 of the said Act shall be accompanied by the appropriate fee specified in the Table below:

Table of Fees

<table>
<thead>
<tr>
<th>Amount to be paid (Rs. P.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) When the amount of claim does not exceed Rs. 250</td>
</tr>
<tr>
<td>(b) When the amount of claim exceeds Rs. 250 but does not exceed Rs. 500</td>
</tr>
<tr>
<td>(c) When the amount of claim exceeds Rs. 500 but does not exceed Rs. 1,000</td>
</tr>
<tr>
<td>(d) When the amount of claim exceeds Rs. 1,000 but does not exceed Rs. 5,000</td>
</tr>
<tr>
<td>(e) When the amount of claim exceeds Rs. 5,000</td>
</tr>
</tbody>
</table>

*Substituted by Companies (Fees on Applications) Amendment Rules, 1972 w.e.f. 1-5-1972.*
2. Section 637A: Rationalisation of accounting classification of Government Transactions—Change in the Receipt Head allowed to the Department of Company Law Administration

As you are aware, the head of account to which fees payable by companies to the Registrar of Companies or to the Central Government pursuant to any provision in the Companies Act, or of rules/regulations made or notifications issued thereunder, were hitherto required to be credited has been "XXXVI—Miscellaneous Departments—Miscellaneous—Registration of Joint Stock Companies" vide, rule 22 of the Companies (Central Government's) General Rules and Forms, 1956. Due, however, to the rationalisation of the accounting classification of Government transactions, certain changes have been introduced with effect from the 1st April, 1962 as a result of which all fees payable under the provisions of the Companies Act, e.g., in respect of documents filed with the Registrars of Companies or applications submitted to the Central Government which were so far being paid into the treasuries for credit under the head "XXXVI—Miscellaneous Departments—Miscellaneous—Registration of Joint Stock Companies", should in future be so paid for credit under the head "XXI—Miscellaneous Departments—Miscellaneous—Registration of Joint Stock Companies". The change in the head of the account should, therefore, be carefully noted by companies and others concerned so that they may avoid any possible inconvenience to themselves which might otherwise result from the refusal of the treasuries, the Reserve Bank of India or the State Bank to accept the relevant chalans.

*Since changed to "108—Other General Economic Services—Registration of Joint Stock Cos."

(Circular letter No. 3-11-62-FR dated 2nd May, 1962.)

95. Liquidation under 1913 Act

Section 647: Pending proceedings for winding up

95.1 Liquidation proceedings which had commenced prior to the commencement of the Companies Act, 1956, would continue to be governed by the rules framed under the old Act in view of the provisions of Section 647(ii) of the Act.

(Circular letter No. 1/11/58-CL-III dated the 13th January, 1960.)

Payment of filing fees by liquidators and Receivers in respect of various statements, returns etc. filed with Registrar of Companies under Schedule X of the Companies Act, 1956

95.2 I am directed to refer to this Department's circular No. 2/74 dated the 30th January, 1974, on the above subject and to say that a question has been raised as to whether those liquidators who are required to file statements with the Registrar of Companies under section 244 of the Indian Companies Act, 1913, have to pay fees as per schedule X of the Companies Act, 1956 in the light of Notification No. GSR 280 (E) dated the 24th April, 1972. The matter has been examined, and it has been decided that having regard to the saving in section 647 of the Companies Act, 1956, no fees is payable by the liquidators in filing statements with the Registrars of Companies under section 244 of the Indian Companies Act, 1913. The statement of accounts are governed by the Rules framed by the respective High Courts in that behalf.

(Circular No. 15/70 dated the 24th June, 1975.)
96. SCHEDULES

Schedule VI—Balance Sheet and the profit and loss account according to the requirements of Schedule VI to the Companies Act, 1956—Authentication of Schedules

96.1 It has been noticed from copies of accounts filed with the Registrars that, of late, the practice of showing only the total amounts under the different item heads in the balance sheet and displaying the supporting details therefor in separate schedules or annexures (no doubt with appropriate reference in the balance sheet under the relevant heads) has gained currency among companies. In such cases, it has also been observed that generally the signatories to the balance sheet sign only the balance sheet and not the relevant schedules. It is appreciated that the object underlying the aforesaid practice of showing details in separate schedules may be to avoid the balance sheet and the profit and loss account being cluttered up with too much details and cannot therefore be reasonably objected to. Nevertheless, this Department would like to point out that such schedules are an integral part of the balance sheet etc., and have themselves to be prepared in accordance with the requirements of Part I and II of Schedule VI to the Act. They would therefore, require specific authentication in terms of section 215, in addition to the authentication of the balance sheet and profit and loss account showing the grouped assets and liabilities. Even though these schedules are duly referred to in the balance sheet and profit and loss account, in the absence of proper authentication in the manner required by section 215, the authenticity of the details given in the schedules may be disputed and the directors may very possibly contend that, the details of the constituent items in the schedules not having been authenticated by them, they are not answerable for the correctness of such figures. Therefore, least this practice of non-authentication of the schedules in respect of balance-sheet and profit and loss account becomes widespread due to ignorance of the relevant provisions of the law, this Department would suggest that your constituent companies may be duly advised of the correct position so as to ensure that the relevant schedules annexed to the balance sheet and/or profit and loss account are also duly authenticated by the signatories to the latter.

(Circular letter dated 17th September, 1955.)

Schedule VI—Notification amending Schedule VI. G.S.R. No. 1665

96.2 The notification effecting certain amendments in Part II of Schedule VI to the Companies Act, 1956, was dated the 9th October, 1971 and it was intended to be printed in the Gazette (Part II, section 8, sub-section (i)) of that date. Through some oversight in the Press it was, however, printed in the Gazette dated the 6th November, 1971 though the date on the body of the notification remains what it was originally, i.e. 9th October, 1971.

2. In the absence of any specific indication in the body of the notification itself about the date as from which the amendments are to take effect, numerous enquiries are being received asking for a clarification on the point. The normal rule of interpretation is that in such circumstances a notification takes effect from the date of its publication. The notification under consideration would, therefore, take effect on and from the 6th November, 1971.

Regarding the question of compliance by companies with the amendments effected by the notification, it is expected that they would take them into account while preparing
the accounts of their financial years which end on or after the date of publication of
the notification, i.e. 8th November, 1971.

(Letter No. 286/71-DL dated 3-12-1971.)

97. Official Gazette

Misc. Publication of notices in "Official Gazette"

It has been decided that in cases where it is a statutory requirement that notices
should be published in the Official Gazette, their publication in the press itself would
not be in order. Since the definition of "Official Gazette" in the General Clauses Act
covers State Government Official Gazette also publication of the notice in the Official
Gazette of the State Government concerned would however, be in conformity with the
statutory requirements. Companies seeking advice on this point may be advised ac-
cordingly.

(Circular letter No. 2/43/59-PR dated 12th December, 1959.)
CHAPTER XXXVIII

98. MISCELLANEOUS

Enquiries made by share holders regarding accounts

98.1 The shareholders are taking the opportunity offered by the greater disclosure of information made in the balance sheets and profit and loss accounts framed in accordance with the requirements of Schedule VI of the Act, to ask questions pertaining to the financial position and the trading results of the companies concerned. It is the expectation of the Department that the companies would willingly furnish all reasonable information which may be asked for by the shareholders.

While it is not the intention of the Department that advantage should be taken by unscrupulous persons to harass company management by making irrelevant enquiries in an unreasonable manner, it is quite clear from the provisions of Section 237(b)(iii) of the Act that the members of the companies should be given all the information with respect to the affairs of their company which they might reasonably expect, including information relating to the calculation of the commission payable to managing or other directors, etc.

Indeed, it appears to be the intention of the statute that if a company persistently refuses to supply reasonable information to its shareholders, its affairs should be investigated by the appointment of an Inspector under the powers exercisable suo moto by the Government.

(Extract from the Fourth Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1960.)

Promotion expenses. Ceiling in respect of promotional expenses

98.2 After careful consideration of all relevant aspects of the problem, the Department has consistently suggested the adoption of the following scales of ceilings for promotional expenses (i.e., all expenses incurred in the promotion of the company, such as preliminary expenses for floating the company, advertisement, underwriting commission, payment to promoters for services rendered etc.), in connection with new capital issues:

(a) Companies managed by Board of directors: 2 per cent of the total project cost.
(b) Companies managed by Managing directors: 1 per cent of the total project cost.

It is however, recognised that in cases where the "debt/equity" ratio is weighed in favour of equity capital (because of the fact that substantially the whole or the major portion of the total project cost is financed out of the capital issued), rigid insistence on the above ceilings may result in slight hardship. Accordingly in such cases no objection has been raised to the reimbursement of actual promotional expenditure properly incurred and duly audited, provided they were considered fair and reasonable in relation to the size of the project. In this connection the Department has also consistently taken the view that the limits of 2½ per cent and 1 per cent of the nominal value of the shares should be adopted as the norms of the payment of commission to underwriters and brokers respectively, subject to the stipulation that no underwriting commission or brokerage is to be paid on shares which have already been agreed to be subscribed by promoters, directors, their friends and relatives, existing shareholders (as 'rights' shares or otherwise foreign collaborators, etc). The Department has made it known to all concerned that it
does not favour the payment of brokerage to underwriters irrespect of shares underwritten by them.

(Extract from the 56th Annual Report on the Working and Administration of the Companies Act, 1956—Year ended March 31, 1961.)

99. Share Certificate

Miscellaneous.—Share certificates—Clarification regarding signature by means of machine thereon.

Query

Under the provisions of the Companies (Issue of Share Certificates) Rules, 1960, a director may sign a share certificate by affixing his signature thereon by means of any machine etc. Whether this provision was applicable to both the directors who are required to sign the share certificates or only to “a director” and whether there was any significance why the Secretary was not permitted to affix his signature by means of any machine, etc., as is allowed in the case of a director.

Answer

The Department's reply to the above query is that both the directors can avail of the facility of using machine for affixing the signature on the terms and conditions mentioned in the Companies (Issues of Share Certificates) Rules, 1960.

The reason why the Secretary also is not permitted to avail the same facility is that there should at least be some one belonging to the Board to exercise due check and take responsibility that every thing is all right.

(Company News and Notes dated the 1st July, 1963.)

100. Defective Documents

Filing of defective documents—Courses open to Registrar

The question as to the action to be taken in cases where companies file defective documents with the Registrar of Companies has been recently considered by the Board. It is felt that if a document is sent in time but does not contain some particulars required by law or contains some errors in particulars apparent on the face of it, then the Registrar cannot register the document until the blank is either filled in or the error is rectified by the company. If within the date document is required to be filed, the blank is not filled in or the apparent error is not corrected then the Registrar is at liberty to launch prosecution against the company and its officers for default in filing the document.

If on the other hand, such a document does not contain any blank or any portion left unfilled or any error, apparent on the face of it, and the Registrar in course of his official duties finds that some particulars are either erroneous or incorrect or false, then, depending on the nature of the discrepancy, he can launch prosecution under section 628 or, in the alternative give an opportunity to the company to file a fresh document giving the correct particulars. In such a case, if the company intends to avail of the opportunity to file a fresh document it will be required to pay additional fee under section 611(2).

If a document is sent after the due date, then irrespective of whether it contains full particulars or not and further whether the particulars are correct or not, it would be open to the Registrar to levy additional fee and, in case of failure of the company to file the documents with the normal and the additional fee, to launch prosecution not for default in payment of the additional fee but for default in filing the document itself within time as well as for continuation of the default.

(Company News and Notes, dated the 1st April, 1964.)
INDEX

[All references are to topics]

Accounts

- adjourned meeting to adopt......................................... 43.2
- branch, audit, Exemption Rules......................................... 47.16
- clarification re:.......................................................... 41.3
- definition of.............................................................. 47.25
- inspection of, instructions regarding............................. 42.1
- laying of foreign business, extension of time..................... 26.27
- solicitor of, outside the State........................................... 41.4
- of companies, some problems........................................... 43.7
- summarised returns...................................................... 12.2

Advertisement

- change in the particulars, Fees......................................... 19.7
- for removal of directors.................................................. 19.5
- signing of................................................................. 19.6

Additional fees

- laying of................................................................. 34.1

Additional Director,

- clarification re:.......................................................... 31.14
- .......................................................... 31.15
- .......................................................... 31.16

Abuse

- Holder of coupon, whether.............................................. 20.5

Allotment

- for cash, what constitute............................................ 20.7
- out of issued shares, whether fresh allotment...................... 21.1

Alteration

- of articles............................................................... 14.1
- of articles contravening sections 235, 237, effect................ 51.5
- of capital, increasing, and reducing simultaneously whether alteration.......................................................... 23.3
- in object clause, registration of...................................... 13.5
- associate director...................................................... 99

Amortisation

- application by transferee and transferee companies necessary.. 75.1

Arbitration—Cont.

- examinations disposal of cases...................................... 75.2
- powers delegated to Regional Directors.............................. 75.3
- report of Official Liquidator, essential.............................. 75.5

Annual Return

- certificate required.................................................... 26.21
- date of default, when occurs........................................... 26.20
- when to file.............................................................. 26.19

Annual General Meeting

- adjourned meeting notice of, public holiday...................... 26.30
- application for extension............................................. 26.29
- Calcutta Co. difficulties of........................................... 26.33
- date of, formal minutes................................................. 26.28
- default in holding, nature of proof.................................. 26.38
- during business hours, meaning....................................... 26.35
- extension, beyond calendar year..................................... 26.30
- extension of time, special reason, what are....................... 26.22
- extension of time to levy Balance sheet, how to compay........ 26.36
- holding on a public holiday.......................................... 26.30
- notice of to preference share holders................................ 26.39
- period of, extension.................................................... 26.29
- power of Central Govt. to call....................................... 26.37
- presentation for default................................................ 26.34
- section, mandatory..................................................... 26.31
- "Time" significance of.................................................. 26.24
- 'Appointments' and 'Employment' meaning of...................... 31.2
- Approved Financial Institutions list................................ 31.19

Assets

- depreciable............................................................. 36.1
- Associates of managing agents, appointment of................... 36.2
- to "any other office", section 261A, meaning of................... 36.3

Association net for profit

- election of directors of.............................................. 13.13
- exemptions granted................................................... 13.14
- grant of licence, procedure.......................................... 13.12
- fees payable by........................................................ 84.4
Audit

2.5, 11

2.5. 7

~5.2

?:5.10

14

(kt &'

03.1

13.8

B

Balance sheet

— substitution by Secretary, effect 44.1
— substitution, signing by director/auditor 44.2
— bonus payment, charging to 43.8
— clarification re: Schedule VI 43.10
— display of corresponding figures 43.5
— electric companies, balance sheet of 43.6
— filing, without boards report, notice 46.4
— filing, with boards report 46.3
— filing, when books seized by Police 46.1
— filing, with P/L account, by private cos. 46.2
— form of 43.6
— notification amending Schedule VI 43.11
— laying before central meeting, propriety 46.5
— preparation of instructions 43.4

India Corporate, definition of 1

Societies registered under Societies Regidations Act—whether 16.3

Branch Office

— definition of 3
— audit of accounts of 47.23
— place of manufacture of goods, whether 47.22

Branch audit

— whether to be included in "specified number" 47.7
— branch audit report 47.21
— banking company, audit, exemption 47.27
— banking company, foreign branch, audit of 47.27

Board meeting/Board

— adjournment of 38.1
— frequency of 36.1, 36.2, 36.4, 36.5
— holding on a public holiday 36.2
— place of holding 65.5
— power to make loans 39.1
— power to borrow 39.6
— restrictions on power 39.2, 39.4

Board resolutions

— retrospective operation of 39.6

Board of Directors

— power of Central Govt. to prevent change 76.3
— sitting fees for meeting adjourned 67.11

Central equity

Central Govt's 51.17
— power to prevent oppression 76.1
— power to appoint directors 76.2, 76.3
— fleet, policy 76.5
— power to prevent change in Board 76.4, 76.5

Certified copies

— of correspondence 88.1
Change of name, registration 13.8

Charges

— pledge of moveables, whether 25.2
— calculation of delay in filing 25.10
— delay in filing, additional fee, propriety 25.11
— filing of P.B.P. 14 25.8, 25.9
— 25.6, 25.7

Availability of names

— availability of "Hindustan" and "Corporations" 13.9

C

B
Company Deposits

- advertisement for renewal
- deposit by others
- deposit by directors, shareholders
- Deposit Rules—clarification, Reg.
- secured loan, nature, collateral

Company (Court) Rules

- fees to Central Govt.—calculation
- companies (esp. a/c, payment and of
- company's seal
- collection holding shares
- commission, payment to director
- commission, calculation of
- Company Last Board ponders

Consent

- acting without, consequences
- additional director, by
- reappointed director, by
- directors retiring emolument, filing
- failure to file, effect
- nominated directors, by
- commencement of business
- applicable to Part IX Comp.
- certificate of, co-converted
- restriction on
- Conversion of company
- contribution to MDF
- contribution of share to charity
- Corporation controlled by Central
Corps, clarification
- 'under comm management'—application
- to Ltd. company

Declarot of

- beneficial interest
- solvency

Deceased Public Companies

- application of sec. 294(1), to
- application of other provisions, to

Disqualification using rights

- non-payment of dividend on partly
paid share, effect

Directors

- appointment of by Govt.
- creation of, real claims, effect
- change in, filing of return
- resignation of
- restriction on number, of
<table>
<thead>
<tr>
<th>Page</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>320</td>
<td>Directors—General.</td>
</tr>
<tr>
<td></td>
<td>travelling allowance, payment to 67.7.12</td>
</tr>
<tr>
<td></td>
<td>vacation of office by 35</td>
</tr>
<tr>
<td></td>
<td>wholly employed 33.1</td>
</tr>
<tr>
<td></td>
<td>Director’s Report</td>
</tr>
<tr>
<td></td>
<td>material changes and commitments, meaning of 45.1</td>
</tr>
<tr>
<td></td>
<td>particulars of employees to be furnished 45.3</td>
</tr>
<tr>
<td></td>
<td>Discontinuation of objects 13.4</td>
</tr>
<tr>
<td></td>
<td>Dividend</td>
</tr>
<tr>
<td></td>
<td>declaration, second time 37.4</td>
</tr>
<tr>
<td></td>
<td>deduction of tax at source 36.17</td>
</tr>
<tr>
<td></td>
<td>distribution, within 42 days 40.1</td>
</tr>
<tr>
<td></td>
<td>Dividend warrant, exchangeable only at particular bank 38.7</td>
</tr>
<tr>
<td></td>
<td>Documents</td>
</tr>
<tr>
<td></td>
<td>sent by RDC, production outside 34.3</td>
</tr>
<tr>
<td></td>
<td>produced copies of 33.4</td>
</tr>
<tr>
<td></td>
<td>Donations</td>
</tr>
<tr>
<td></td>
<td>Donation to political parties 68.1</td>
</tr>
<tr>
<td></td>
<td>for advertisements, expenditure 69.2</td>
</tr>
<tr>
<td></td>
<td>of shares, property 20.2</td>
</tr>
<tr>
<td></td>
<td>E</td>
</tr>
<tr>
<td></td>
<td>&quot;Employment&quot;</td>
</tr>
<tr>
<td></td>
<td>appointment, meaning of 31.2</td>
</tr>
<tr>
<td></td>
<td>estate duty, payment before transfer of shares 24.1</td>
</tr>
<tr>
<td></td>
<td>Exemption permission of 67.15</td>
</tr>
<tr>
<td></td>
<td>exemption, withholding of 55</td>
</tr>
<tr>
<td></td>
<td>Exemption: nature regarding special resolution 26.40</td>
</tr>
<tr>
<td></td>
<td>amended to notice 26.42</td>
</tr>
<tr>
<td></td>
<td>contents of 26.43</td>
</tr>
<tr>
<td></td>
<td>reappointment of additional director 26.44</td>
</tr>
<tr>
<td></td>
<td>resignation of 26.41</td>
</tr>
<tr>
<td></td>
<td>Easement of member 16.2</td>
</tr>
<tr>
<td></td>
<td>F</td>
</tr>
<tr>
<td></td>
<td>File</td>
</tr>
<tr>
<td></td>
<td>additional 49.1</td>
</tr>
<tr>
<td></td>
<td>association not for profit, payment of 81.4</td>
</tr>
<tr>
<td></td>
<td>change in sole head 94</td>
</tr>
<tr>
<td></td>
<td>increase in, notification 81.5</td>
</tr>
<tr>
<td></td>
<td>late filing, payment of 81.3</td>
</tr>
<tr>
<td></td>
<td>Filing defective documents 100</td>
</tr>
<tr>
<td></td>
<td>Filing returns, enforcement of duty 85</td>
</tr>
<tr>
<td></td>
<td>Financial institutions approved list 21.10</td>
</tr>
<tr>
<td></td>
<td>Fine</td>
</tr>
<tr>
<td></td>
<td>appointment, in order Secretarial service, effect 36.1</td>
</tr>
<tr>
<td></td>
<td>whether, interest 13.14</td>
</tr>
<tr>
<td></td>
<td>Foreign Company</td>
</tr>
<tr>
<td></td>
<td>accounts of 81.3</td>
</tr>
<tr>
<td></td>
<td>application u/s 294 82.1</td>
</tr>
<tr>
<td></td>
<td>Central Govt. policy to 81.1</td>
</tr>
<tr>
<td></td>
<td>failure to file accounts 81.5</td>
</tr>
<tr>
<td></td>
<td>payment of fees by 32.1</td>
</tr>
<tr>
<td></td>
<td>&quot;person&quot; definition 30.1</td>
</tr>
<tr>
<td></td>
<td>registration of changes, by 82.3</td>
</tr>
<tr>
<td></td>
<td>returns to be filed by 32.4</td>
</tr>
<tr>
<td></td>
<td>Further issue of shares</td>
</tr>
<tr>
<td></td>
<td>&quot;one year&quot;, calculations 24.4</td>
</tr>
<tr>
<td></td>
<td>G</td>
</tr>
<tr>
<td></td>
<td>Guarantee Co.</td>
</tr>
<tr>
<td></td>
<td>appointment of first directors 86.2</td>
</tr>
<tr>
<td></td>
<td>audit of accounts of 86.1</td>
</tr>
<tr>
<td></td>
<td>modification of act 67</td>
</tr>
<tr>
<td></td>
<td>test audit, power to conduct 86.4</td>
</tr>
<tr>
<td></td>
<td>Govt. power to call annual general meeting 20.37</td>
</tr>
<tr>
<td></td>
<td>Guarantee to Bank Sec. 370, application 73.4</td>
</tr>
<tr>
<td></td>
<td>Guarantee commission, whether remuneration 67.7</td>
</tr>
<tr>
<td></td>
<td>H</td>
</tr>
<tr>
<td></td>
<td>Holding Company, definition of 9</td>
</tr>
<tr>
<td></td>
<td>I</td>
</tr>
<tr>
<td></td>
<td>Inspection of accounts,</td>
</tr>
<tr>
<td></td>
<td>instructions reg. 42.2</td>
</tr>
<tr>
<td></td>
<td>Inspection of documents relating to MCA agency 62.2</td>
</tr>
<tr>
<td></td>
<td>inspection of documents at Regional office 63.2</td>
</tr>
<tr>
<td></td>
<td>Inspection report, publication of 50.2</td>
</tr>
<tr>
<td></td>
<td>Intercompany loan, guarantee, Press note 73.2</td>
</tr>
<tr>
<td></td>
<td>Inward Direct</td>
</tr>
<tr>
<td></td>
<td>approval of Central Govt. 61.8</td>
</tr>
<tr>
<td></td>
<td>classification, reg. Amendment Act 63.2</td>
</tr>
<tr>
<td></td>
<td>classification, sec. 300 65.4</td>
</tr>
<tr>
<td></td>
<td>counting for purpose of quorum 64.9</td>
</tr>
<tr>
<td></td>
<td>63.3</td>
</tr>
<tr>
<td></td>
<td>contracts by, sanction of board necessary 81.1</td>
</tr>
<tr>
<td></td>
<td>contract not exceeding Rs. 500, clarifications 81.5</td>
</tr>
<tr>
<td></td>
<td>distance of interest by Govt. directors 66.12</td>
</tr>
<tr>
<td></td>
<td>holding less than 2% 61.13, 61.5</td>
</tr>
<tr>
<td></td>
<td>66.3, 66.7</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>----------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>62.1</td>
<td>application for approval—form</td>
</tr>
<tr>
<td>73.9</td>
<td>by banks, applicability of sec. 370</td>
</tr>
<tr>
<td>62.4</td>
<td>clarifications</td>
</tr>
<tr>
<td>73.3</td>
<td>exempted from taxes by</td>
</tr>
<tr>
<td>73.10</td>
<td>counting for ceiling purposes</td>
</tr>
<tr>
<td>73.7</td>
<td>exemption seeking, necessity of approval</td>
</tr>
<tr>
<td>73.2</td>
<td>Govt. approval</td>
</tr>
<tr>
<td>73.3</td>
<td>guarantee given by a bank</td>
</tr>
<tr>
<td>73.1</td>
<td>inter-company, guidelines</td>
</tr>
<tr>
<td>73.5</td>
<td>special resolutions, details to be given</td>
</tr>
<tr>
<td>73.6</td>
<td>by subsidiary to holding com.</td>
</tr>
<tr>
<td>36.2</td>
<td>Manager—definition of</td>
</tr>
<tr>
<td>5</td>
<td>Managing Director</td>
</tr>
<tr>
<td>52.2</td>
<td>appointment of non-retiring</td>
</tr>
<tr>
<td>52.3</td>
<td>approval of Central Govt., for</td>
</tr>
<tr>
<td>6</td>
<td>definition of</td>
</tr>
<tr>
<td>33.3</td>
<td>deputy managing director position</td>
</tr>
<tr>
<td>52.3</td>
<td>effective date of appointment of employee of co. whether</td>
</tr>
<tr>
<td>43.2</td>
<td>interested in sole selling agency, appointment of</td>
</tr>
<tr>
<td>52.8</td>
<td>liable for retirement, by rotation, whether</td>
</tr>
<tr>
<td>52.1</td>
<td>liable to retire, re-elected appointment of</td>
</tr>
<tr>
<td>52.7</td>
<td>Private Co. becoming public office</td>
</tr>
<tr>
<td>52.12</td>
<td>Professional persons, as</td>
</tr>
<tr>
<td>52.10</td>
<td>restriction on appointment of</td>
</tr>
<tr>
<td>71.1</td>
<td>Member, firm as</td>
</tr>
<tr>
<td>13.14</td>
<td>expulsion of member</td>
</tr>
<tr>
<td>16.2</td>
<td>Memorandum of Association</td>
</tr>
<tr>
<td>13.2</td>
<td>management of objects clause</td>
</tr>
<tr>
<td>13.3</td>
<td>diversification</td>
</tr>
<tr>
<td>13.4</td>
<td>Managerial personnel, nomenclature of</td>
</tr>
<tr>
<td>31.1</td>
<td>Managerial remuneration in deemed public companies</td>
</tr>
<tr>
<td>17.9</td>
<td>Minimum remuneration, Govt.'s power</td>
</tr>
<tr>
<td>33.4</td>
<td>Minimum subscription, what is</td>
</tr>
<tr>
<td>20.1</td>
<td>Minor as member</td>
</tr>
<tr>
<td>16.1</td>
<td></td>
</tr>
<tr>
<td>16.5</td>
<td></td>
</tr>
<tr>
<td>16.6</td>
<td></td>
</tr>
<tr>
<td>30.3</td>
<td>keeping of, in bound books</td>
</tr>
<tr>
<td>30.4</td>
<td></td>
</tr>
<tr>
<td>36.1</td>
<td>loose leaf, maintenance of</td>
</tr>
<tr>
<td>30.7</td>
<td>place of keeping the minute</td>
</tr>
<tr>
<td>30.6</td>
<td>signing, when can be done</td>
</tr>
<tr>
<td>30.8</td>
<td></td>
</tr>
<tr>
<td>30.2</td>
<td>typewritten, posting</td>
</tr>
<tr>
<td>30.4</td>
<td>writing of</td>
</tr>
</tbody>
</table>
Qualification shares obtaining of, time limit . . . . . . 53
Qualified Secretary, Ministers speech . . . . . . . . 74

Quorum
- 'interested director', counting of . . . . . . . . . . 57
- preference shareholders, counting of . . . . . . . . 26.46
- single member, whether quorum . . . . . . . . . . 26.45

R
Recognised Stock Exchanges . . . . . . . . . . . . . . . 8
Rights shares, prospectus whether to be filed . . . . . . 18.12

Register of contracts
- clarification reg . . . . . . . . . . . . . . . . . . . . . . 65.7

Register of Directors
- deemed directors, filing F.32 . . . . . . . . . . . . . . 51.1
- shareholding in other cos, clarification regarding . . 64.4
- . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 64.5
- . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 66.7

Register of Members
- closure of "Record date" meaning of 24.4
- Joint holders occupation of . . . . . . . . . . . . . . . 26.10
- notice, entry in . . . . . . . . . . . . . . . . . . . . . . . 26.11
- notification of transfer . . . . . . . . . . . . . . . . . . 26.10
- reference to, in notices . . . . . . . . . . . . . . . . . 26.17
- Trustees names, entry in . . . . . . . . . . . . . . . . . 26.12
- Registered office, location of . . . . . . . . . . . . . . 26.1
- Registrar's power to call information . . . . . . . . . . 49.1
- clarification reg . . . . . . . . . . . . . . . . . . . . . . 49.3
- Relative 'definition of . . . . . . . . . . . . . . . . . . . 10

Examination
- calculation of . . . . . . . . . . . . . . . . . . . . . . . 32.1
- clarification reg, 'perquisites' . . . . . . . . . . . . . . 32.2
- criterion for payment . . . . . . . . . . . . . . . . . . 33.7
- devaluation, calculation of in case of . . . . . . . . . 68.4
- excessive remuneration, writer . . . . . . . . . . . . . 67.15
- increase in remuneration . . . . . . . . . . . . . . . . 68.1
- . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 69.3
- increase in, to foreign technician 69.6
- increase in remuneration without Govt's sanction . . 68.7
- increase, to be according to section . . . . . . . . . . 33.10
- minimum remuneration . . . . . . . . . . . . . . . . . 33.4

Amounts which can be applied . . . . . . . . . . . . . . 33.5

Payment of remuneration
- daily allowance, whether . . . . . . . . . . . . . . . 68.5
- exceeding limits . . . . . . . . . . . . . . . . . . . . . . 33.6
- to firm in which director is a partner . . . . . . . . . 67.10
- percentage of profit payment of . . . . . . . . . . . 67.3
- professional service, payment . . . . . . . . . . . . . 67.4
- retired director, payment to . . . . . . . . . . . . . . 68.2
- to technical director . . . . . . . . . . . . . . . . . . . 33.7
- Reserve, general transfer to . . . . . . . . . . . . . . . 31.2

Reserve Rules
- to amount of depreciation, whether to be provided . . 39.1
- current profit, meaning of . . . . . . . . . . . . . . . 39.2
- Resignation, of director . . . . . . . . . . . . . . . . . 65.1
- Resolution, filing, amending . . . . . . . . . . . . . . 39
- Restriction on transfer of shares . . . . . . . . . . . . . 24.9

Retiring director, position of additional director . . . . . . 51.10
- retirement of all directors, effect . . . . . . . . . . . . 51.7
- annual general meeting not held, effect . . . . . . . . . 51.6
- clarification . . . . . . . . . . . . . . . . . . . . . . . . . 51.4

- notice when required . . . . . . . . . . . . . . . . . . . . 31.9
- whether amount to a change . . . . . . . . . . . . . . 66.3
- Return of allotment, extension of time . . . . . . . . . . 29.4

Rotational directors, in private co . . . . . . . . . . . . . 51.3

S
Sam management', applicability to . . . . . . . . . 29.8
Security deposit, investment . . . . . . . . . . . . . . . . 27.1
- collection in trust money . . . . . . . . . . . . . . . . . 27.5
- employees contribution to Provident Fund . . . . . . . 27.3
- clarification reg . . . . . . . . . . . . . . . . . . . . . . . 27.4
- staff mutual benefit fund, nature . . . . . . . . . . . . 27.2
Schedule VI . . . . . . . . . . . . . . . . . . . . . . . . . 60.1
- allotment to shares . . . . . . . . . . . . . . . . . . . . 66.2

Share
- allotment for each, meaning of . . . . . . . . . . . . . 29.7
- charitable trust, name of holder . . . . . . . . . . . . . 16.9
- contribution to charities . . . . . . . . . . . . . . . . . 59.3
- donation of, properties . . . . . . . . . . . . . . . . . . 20.2
- further acquisition of, approval . . . . . . . . . . . . . 24.7
- public servant holding, whether permissible . . . . . . . 16.7
- Society holding in trust . . . . . . . . . . . . . . . . . 27.1
Share capital, consolidation of, what amounts to . . . . . . 52.4

Share certificate
- signing of, by machine, clarification reg . . . . . . . . . 99
<table>
<thead>
<tr>
<th>Share certificate—Contd.</th>
<th>21.5</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Whether official publication</td>
<td>22.4</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Shareholders, information required by</td>
<td>23.1</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Shareholding of directors in other companies</td>
<td>23.4</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Share Transfer form 'any entry' meaning</td>
<td>24.6</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Sitting for, enhanced document</td>
<td>24.14</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Special audit, importance</td>
<td>24.1</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Central Govt, power req.</td>
<td>24.2</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Special resolution for another appointment, other required</td>
<td>24.11</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Explanatory statement</td>
<td>25.19</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>'Specific period determination'</td>
<td>25.7</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Selling agents</td>
<td>61.1</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment of</td>
<td>61.2</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval of appointment of</td>
<td>61.7</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment of con. firm, associated with Mr.</td>
<td>61.4</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorisations reg.</td>
<td>61.5</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Involvement of Managerial personnel</td>
<td>61.6</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Underlined practice in appointment of</td>
<td>61.8</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Technical director, certification</td>
<td>52.4</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer of shares</td>
<td>24.2</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Blank transfer, procedure</td>
<td>24.14</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>'entry' meaning of</td>
<td>24.6</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Estate duties, payment</td>
<td>24.1</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Extension of time, grounds</td>
<td>24.5</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer of shares—Contd.</td>
<td>24.2</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Copy of share certificate, instrument of transfer</td>
<td>24.11</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Rebut to register</td>
<td>24.11</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Extinction, etc.</td>
<td>24.8</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Unpaid, undivided Dividend</td>
<td>78.10</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Application to Central Govt</td>
<td>78.24</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost instructions</td>
<td>78.24</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Inheritance bond form</td>
<td>78.24</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Unpaid dividend payment by cheque or cash, procedure</td>
<td>78.24</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Variation of Shareholders right</td>
<td>33.1</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Provisionary shares (Regulation of Deposits) Act, right covers shares under whether amounts to earnings</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Void order—revival</td>
<td>13.5</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>W</td>
<td>52.4</td>
</tr>
<tr>
<td>Whole-time director clarification reg.</td>
<td>52.4</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Whole-time employee, appointed as director, effect of</td>
<td>52.11</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Whole-time, Sales manager, whole</td>
<td>52.11</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Manager appointed as directors, effect of</td>
<td>33.2</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Branch manager, appointed as</td>
<td>52.9</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Closing up</td>
<td>76.2</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Commencement of</td>
<td>76.4</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Notice of</td>
<td>76.3</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Exercise of Central Govt, in the prerenal for</td>
<td>78.1</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>XYZ</td>
<td>78.1</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

MGIDIP1: 11-26 11 of Lj & CAND/36-27-7-77-6,000.