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CHAPTER I

Procedure for incorporating a company and for commencement of business

The relevant sections relating to the above are Sections 12 to 15, 26 to 30, 33 to 37, 41, 146 to 149 and 266.

The classification of companies into 'company limited by shares', 'company limited by guarantee', and 'unlimited company' continues as before.

There are some changes with regard to the contents of the Memorandum of Association. The following are the particulars that the Memorandum of Association should contain :

(i) Name of the company : the word 'limited' should be added after the name of every public company. The words 'private limited' should be added after the name of every private company. In the case of companies for promoting commerce, art, science, religion, charity or any other useful object which intend to apply their profits in promoting their objects and which prohibit dividends to its members, the Central Government may by licence direct that the company may be registered without the addition to its name of the word 'limited' or 'private limited' : (for further details please see Sec. 25 which deals with the class of companies formerly registrable under Section 26 of the 1913 Act) ;

(ii) the State in which the registered office is to be situate ;

(iii) the objects of the company *and the state or states to whose territory the objects extend* : this latter requirement is dispensed with in the case of trading corporations. The objects should be divided into objects to be pursued on incorporation and objects to be pursued subsequently ;

(iv) that the liability of the members is limited : (except in the case of unlimited companies) ;

(v) the amount of the share capital and its division, or the amount of the guarantee, as the case may be.

The number of persons required to form public companies and private companies respectively remains the same as before, *i.e.*, 7 persons for public companies and 2 persons for private companies. The Memorandum should be printed : (*vide* Section 15). It should also be stamped in accordance with the requirements of the Stamp Act.

The Memorandum should then be presented for registration to the Registrar of the State in which the registered office of the company is to be situate under the Memorandum. When applying for registration, Articles of Association prescribing the regulations of the company should also be filed in the case of unlimited companies, companies limited by guarantee, and private companies limited by shares. Articles are optional in the case of public companies limited by shares. The Articles contained in Table A in the First Schedule to the Act will apply to all companies registered without Articles, or with Articles which do not exclude or modify the Table A regulations. None of the Articles in Table A are compulsory : (*vide* Section 28). The following further documents should also accompany the Memorandum and Articles when applying for registration. (*vide* Section 33) :

(a) the Managing Agency or Secretaries & Treasurers' agreement, if any ;

(b) a declaration that the requirements of the Act (and the Rules) in regard to registration have been complied with : this declaration should be by an Advocate Chartered Accountant, or a person named in the Articles as a Director, Managing Agent, Secretaries & Treasurers, Manager or Secretary of the company ;

(c) in the case of public companies limited by shares, separate written consents to act as director signed by the respective proposed directors should be filed with the Registrar. (*vide* Section 266).

(d) intimation of address of registered office : (this may be done within 30 days after registration). (*vide* Section 146).

Details of the fees payable in connection with registration are given in Schedule X to the Act.

After registering the company, the Registrar will issue a Certificate of Registration. The names of the subscribers of the Memorandum shall thereupon be entered as members in the company's Register of Members. (*vide* Section 41).

After registration, every private company and every other company not limited by shares can straightway commence business. But public companies limited by shares cannot commence business or exercise any borrowing power without obtaining from the Registrar a Certificate of Commencement of Business. To be eligible for such a certificate, a company which has issued a prospectus should have collected the "minimum subscription" and the directors should have taken at least their qualification shares. As

to the meaning of "minimum subscription" please see clause (5) of Part I of Schedule II. Companies which have not issued a prospectus should file with the Registrar a statement in lieu of prospectus and the directors should have taken at least their qualification shares: (for further details please see Section 149).

After Registration and commencement of business, consent of the company by a special resolution is necessary to commence any new line of business.

As regards information to be given in 'Prospectus' and 'Statement in lieu of Prospectus' please see Schedules II and III to the Act.

CHAPTER 2

Procedure for alteration of Memorandum and Articles

The relevant sections relating to the above are Sections 16 to 19, 31, 38, 40 and 192.

For purposes of alteration, the provisions contained in the Memorandum of Association are classified into two heads as follows:

A. conditions ; and ;

B. other provisions.

Item A above comprises those provisions of the Memorandum which are required to be stated in it by the Act: *e.g.*, name of company, location of registered office, objects, details of share capital, etc. All provisions contained in the Memorandum, which are not statutorily required to be stated in the Memorandum, will fall under items B above.

The procedure for alteration of any of the matters falling under item B above is simple: they could be altered in the same manner as the Articles of the company ; and if they relate to any matter in regard to which the Act has laid down a particular procedure for alteration, then, it could be altered in that manner. (For instance, according to the Act, Articles can be altered only by special resolution: but the terms of a managing agency agreement could with consent of Central Government, be altered by ordinary resolution ; so if it is contained in the Memorandum, it could be altered by ordinary resolution).

As regards matters falling under item A above, the following may be noted:

(i) the name of a company could be changed: the procedure relating to this is set out in a separate Chapter in this booklet ;

(ii) the situation of the registered office of a company could be changed: the procedure for this is set out in this booklet in a separate Chapter ;

(iii) the capital of a company could be varied: the procedure for this also is set out in this booklet in a separate Chapter ; and

(iv) the objects of a company may be altered to the extent required to enable it to carry on its business more economically or more efficiently ; or to attain its main purpose by new or improved means ; or to vary the local area of the company's operations ; or to carry on any convenient or advantageous additional business ; or to sell or dispose of the undertaking partly or wholly ; or to amalgamate with some other company. The procedure for effecting this alteration is *first,* the company should pass a special resolution effecting the alteration ; next, within 30 days of the passing of the special resolution, a printed or type-written copy thereof, certified by an officer of the company, should be filed with the Registrar ; next, the appropriate Court must be petitioned to confirm the alteration ; next, a certified copy of the Court's order confirming the alteration together with a printed copy of the altered Memorandum should be filed with the Registrar within 3 months from the date of the order. The alteration will be effective on the Registrar's certifying that the alteration has been registered.

Articles of Association may be altered by special resolution of the company: but this is subject to any conditions contained in the Memorandum of Association. Further, where the alteration has the effect of converting a public company into a private company, or is in respect of certain matters relating to Managing Agents and Directors, the consent of the Central Government is necessary before the alteration could be effective: (for these matters, please *see* Sections 259, 268 and 310). Within 30 days of the passing of the special resolution, a printed or type-written copy of the alteration certified by an Officer of the company, shoud be filed with the Registrar and in the case of alterations made in the Articles, which have the effect of converting a public company into a private company, a printed copy of the altered Articles shall also be filed with the Registrar within one month of the date of receipt of the order of approval by the Central Government.

Alterations in the Memorandum or Articles should be carried out in every copy of the Memorandum or Articles issued after the date of the alteration.

CHAPTER 3

Procedure for changing name of company

The relevant sections relating to the above are Sections 21 to 24, 40 and 192.

The procedure to be adopted by a company for changing its name is as follows: first, the written consent of the Central Government for the change should be obtained: Government's consent is not necessary for merely including or deleting the word 'private'. Next, a special resolution effecting the change should be passed by the company. Next, within 30 days after the passing of the special resolution, a printed or type-written copy thereof should be filed with the Registrar. Next, the Registrar will then issue a fresh certificate of incorporation, and the change of name will be effective only thereafter. Next, the change of name should be carried out in all copies of the Memorandum and Articles issued after the date of the alteration.

Where a company has been registered by a name which in the opinion of the Central Government is identical with or nearly resembles the name by which a company in existence has been previously registered, then, the change of name may be effected by ordinary resolution instead of by special resolution: but all other steps of the procedure remain the same.

Within 12 months of (*a*) the registration of a company or (*b*) the registration of the company under a changed name, the Central Government may direct any company to change its name. In such a case, with the previous written consent of the Central Government the company concerned should change its name within three months from the date of the direction or such other longer period as may be allowed by the Central Government. In this case also, the change may be made by ordinary resolution, but all other steps in the procedure remain the same.

CHAPTER 4

Procedure for changing Registered Office of company

The relevant sections relating to the above are Sections 18, 19, 40, 146 and 192.

In an earlier chapter it has been pointed out that within 30 days after its incorporation, every company shall give the Registrar notice of the situation of its Registered Office.

There is no statutory restriction in regard to the removal of the Registered Office of a company from one place to another

within the local limits of the City, Town, or Village where it is situated: but whenever it is so removed notice of the new location of the Registered Office should be given to the Registrar within 30 days of the removal.

For removing the Registered Office of the company to a place outside the local limits of the City, Town, or Village where it is situated, so long as such removal is within the same State, the following procedure should be observed: First, a special resolution should be passed by the company authorising the removal. The removal may then be made: but within 30 days after the passing of the resolution, a printed or type-written copy thereof should be filed with the Registrar: and within 30 days of the removal, notice of the new location of the Registered Office should be given to the Registrar.

For removing the Registered Office from one State to another the following procedure should be adopted: First, a special resolution authorising the change should be passed by the company Next, within 30 days of the passing of the resolution, a printed or type-written copy thereof, duly certified by an Officer of the company, should be filed with Registrar. Next, the appropriate Court should be petitioned for confirming the alteration. Next a certified copy of the Court's order confirming the alteration should be filed by the company with the Registrar of the State from which the Registered Office is being removed, *and also* with the Registrar of the State to which the Registered Office is being transferred: this should be done within three months of the Court's order. Next, a certificate of the registration of the transfer should be obtained from both the Registrars: the Registered Office may then be transferred. And within 30 days of the transfer, notice of the new location of the Registered Office should be given to the Registrar of the State in which it is located. The change of Registered Office should be carried out in every copy of the Memorandum and Articles of the company issued after the date of the alteration.

CHAPTER 5

Procedure for issue of shares

This subject is dealt with under two heads as follows:

A. Procedure for the issue of shares ; and

B. Procedure for the allotment of shares.

It has to be noted first that consent of the Controller of Capital Issues should be obtained for all issues of capital in excess of 25 lakhs in any year. Further, before a public company proceeds to allot any of its shares for the first time, it must have *either* issued

a prospectus and collected the 'minimum subscription' stated therein, *or* filed with the Registrar a statement in lieu of prospectus. The statute prescribes severe penalties for certain acts and omissions in connection with the prospectus and the statement in lieu of prospectus. Hence it is desirable to avail of expert or legal assistance in the preparation of the prospectus or statement in lieu of prospectus. The statute imposes also some restrictions on the kinds of shares that may be issued, and the rights that may be attached to them and also on the subject of commissions and discounts on shares, and issue of shares at a premium: these are given in other Chapters in this booklet.

A. *Procedure for issue of shares*

The relevant sections relating to the above are Sections 55 to 68, 76, 78 to 81, 82 to 84 and Schedules II and III.

Once a prospectus complying with the statutory requirements has been prepared, the following are the steps to be taken for the issue of shares: First, the prospectus should be dated and signed by all the Directors. Next, on the same day a copy thereof signed by every Director should be delivered to the Registrar for registration: (Note: the copy should be accompanied by the documents listed in Section 60). Next, within 90 days after the date on which the copy has been delivered to the Registrar, the prospectus should be 'issued' (by advertisement or otherwise). All forms of application for shares offered to the public should be accompanied by the prospectus.

B. *Procedure for allotment of shares*

The relevant sections relating to this are Sections 69 to 75.

Under the statute, a company cannot proceed to make any allotment of its shares which have been offered to the public for subscription unless,

(a) the 'minimum subscription' as stated in the prospectus has been subscribed, or,

(b) the statement in lieu of prospectus in accordance with Schedule III has been delivered to the Registrar for registration at least three days before the first allotment of the shares.

Procedure where a prospectus has been issued : The first step is to wait until the 'minimum subscription' has been subscribed. If the 'minimum subscription' has not been subscribed within 120 days of the issue of the prospectus ('issue of the prospectus' means for all practical purposes the date on which the prospectus is signed), then, all moneys received from applicants for shares should be forthwith repaid to them within 10 days thereafter.

Even within the above limit of 120 days, the 'minimum subscription' may be subscribed within a few hours of the issue, or a few days, or a few weeks: the statute prescribes that until the beginning of the 5th day after that on which the prospectus is issued (or such later time as is specified in the prospectus itself) the company should not proceed to make the allotment.

If the prospectus says that application will be made to the stock exchange for permission for those shares to be dealt in on the stock exchange, then, the permission should be applied for before the 10th day after the issue of the prospectus. If the permission has not been granted before the expiry of 4 weeks from the date of the closing of the subscription lists or such longer period not exceeding 7 weeks as may be notified to the applicants by the stock exchange within the said 4 weeks, then, any allotment made in pursuance of that prospectus will be void: and the company should forthwith repay the moneys to the respective applicants, (*i*) within 8 days from the issue of the prospectus in cases where the company had omitted to apply to the stock exchange for the said permission, or (*ii*) where the stock exchange had refused the permission, or the permission had not been received from the stock exchange within the specified time, then, within 8 days after the refusal or expiry of the time as the case may be.

Until allotment is made or moneys are refunded as the case may be, all moneys received from applicants should be kept in a separate bank account with a scheduled bank.

Whenever any allotment is made (and this applies to private companies also), then, within 30 days after such allotment, the company should file with the Registrar a Return of Allotments in accordance with the provisions of Section 75. This return is necessary in respect of (*i*) all shares allotted for cash ; (*ii*) all shares allotted otherwise than for cash ; (*iii*) all allotments of bonus shares and (*iv*) all allotments of shares issued at a discount. This return is not necessary in the case of shares which had been forfeited for non-payment of calls and have been issued and allotted thereafter.

CHAPTER 6

Kinds of Shares

The Act, has imposed certain restrictions on the kinds of shares that may be issued. After the commencement of the new act, any fresh issue of shares should only be of two kinds, namely, Equity Shares and Preference Shares. All non-preference shares will be equity shares. "Preference Share" is defined by the Act as that part of the share capital of the company which fulfils both the following requirements, namely, that it carries a preferential

right in respect of dividends and also that it carries a preferential right in regard to repayment of capital. Preference shares participating in surplus profits, or participating in surplus assets on a winding up are also allowed. It is also permissible to issue redeemable preference shares, but they cannot be redeemed out of the sale proceedings of any property: they can be reedemed only out of profits or out of the proceeds of a fresh issue.

The issue of shares at a premium or at a discount is permitted subject to some restrictions.

Private companies are at liberty to issue any kind of shares and not necessarily equity shares or preference shares.

In regard to the points mentioned above, the relevant sections are Sections 78, 79, 80 to 90.

Voting rights on shares

The Act has imposed some restrictions on voting rights on shares.

After the commencement of the Act no fresh issue of shares may be made carrying any disproportionate rights in regard to voting, dividend, capital or otherwise: all rights should be proportionate to the amount paid up, and in conformity with the rights given to holders of equity shares. Thus, deferred shares cannot be issued. In respect of shares carrying disproportionate voting rights issued before the 1st December 1949 the Central Government is given discretion to grant suitable exemptions from the provisions of the new Act.

Under the new Act voting rights in respect of shares are to be as follows. Only equity shareholders will have the right to vote: and the voting right should be in proportion to the amount paid up. Preference shareholders will have the right to vote only on resolutions directly affecting their rights. But if the dividend on preference shares has been in arrears for certain periods as mentioned in Section 87 of the Act, then the preference shareholders also will have the right to vote similarly as equity shareholders.

None of the above restrictions relating to voting rights apply to private companies other than subsidiaries of public companies.

Where any shares held in trust the right to vote including the right to vote by proxy can be exercised only by the Public Trustee or his proxy.

The relevant sections regarding voting rights are Sections 87 to 90, and 187B.

CHAPTER 7

Share Certificates

The relevant sections relating to the above are Sections 83, 84 and 113.

A company share is movable property, transferable in the manner provided by the company's Articles. The statute requires that each share should bear a separate number: a certificate under the common seal of the company specifying the shares held by him should be issued to each member. An obligation is cast upon the company "to complete and have ready for delivery" certificates for all shares. And the period within which this should be done is 'within 3 months after the allotment' or 'within 2 months after the application for registration of the transfer' as the case may be.

The issue of share certificates has to be in conformity with the regulations contained in the Companies (Issue of Share Certificates) Rules, 1960, which are given in Appendix III to this booklet.

A share certificate may be renewed or a duplicate may be issued only if the original certificate has been lost or destroyed, or having been defaced or mutilated or torn has been surrendered to the company.

CHAPTER 8

Procedure regarding subsequent issues of shares

The relevant section relating to the above is Section 81.

Where at any time after the expiry of two years from the formation of a company or the expiry of one year from the first allotment of shares in the company, whichever is earlier, the Board of Directors decides to increase the subscribed capital of the company by the allotment of further shares, then, the new shares should be offered to the persons who on that date are the holders of equity shares of the company, proportionately to their equity holding. The offer should prescribe a time limit of at least 15 days for acceptance, declining or renunciation in favour of somebody else. Thereafter, the Board may proceed to dispose of the shares in such manner as they consider most beneficial to the company. The new shares need not be offered to the existing equity holders, if the company in general meeting has so decided by a special resolution, or, if the company in general meeting has decided by ordinary resolution and the same has been approved by the Central Government.

Private companies are exempt from the above restrictions. Increase of subscribed capital caused by conversion of debentures and loans is also exempt from the above restrictions, under certain circumstances.

CHAPTER 9

Procedure for increasing share capital

The relevant sections relating to the above are Sections 94 to 97 and 40.

The statute permits any limited company having a share capital to alter, if so authorised by its Articles, its share capital in any of the following ways: (a) increase it by issuing new shares ; (b) consolidate and divide its shares into shares of larger amounts ; (c) convert fully paid shares into stock, or stock into fully paid shares ; (d) sub-divide its shares into shares of smaller amounts ; or (e) cancel shares not subscribed for.

The procedure to effect any of the above is as follows: First, an ordinary resolution effecting the alteration should be passed by the company. Next, notice specifying the alteration should be given to the Registrar within 30 days of the alteration (in the case of increase of share capital), or in cases falling under (b), (c), (d) and (e) above, within 30 days of the alteration.

The alteration should be noted in every copy of the Memorandum and Articles issued after the date of the alteration.

CHAPTER 10

Procedure for reducing share capital

The relevant sections relating to the above are Sections 100 to 105, 192 and 40.

The statute permits any company having a share capital to reduce its share capital, provided the company's Articles authorise the same. The procedure for reducing share capital is as follows: First, a special resolution reducing the share capital should be passed by the company: within 30 days thereafter, copy thereof should be filed with the Registrar. Next, the appropriate Court should be petitioned for confirming the reduction. Next, the Court's order confirming the reduction together with a certified copy thereof should be produced before the Registrar. Next, a certificate should be obtained from the Registrar of the registration of the Court's order. The reduction of the share capital then becomes effective.

The alteration should be carried out in every copy of the Memorandum and Articles issued thereafter.

CHAPTER 11

Procedure relating to bearer shares

The relevant sections relating to the above are Sections 114 and 115.

A bearer share is a warrant under the common seal of the company stating that the bearer of the warrant is entitled to the shares specified therein. Such a warrant can be issued only in respect of fully paid up shares. Bearer shares may be issued only by a public company limited by shares and that too only if the same is authorised by the company's Articles. Bearer shares may be transferred by delivery of the warrants.

The procedure for the issue of bearer shares is as follows: First, the consent of the Central Government should be obtained prior to the issue. Next, after the issue of the share warrants the following steps be taken:

(i) the name of the member entered in the Register of Members in respect of the shares specified in the warrant, should be removed from the Register of Members ;

(ii) the fact of the issue of the share warrant should be entered in the Register of Members ;

(iii) a statement of the shares included in the warrant giving the distinguishing number of each such share should be entered in the Register of Members ; and

(iv) the date of the issue of the share warrant should be entered in the Register of Members.

The statute provides that if the bearer of a share warrant desires his name to be entered in the Register of Members, he will be entitled to have it done after the warrant has been forwarded to the company for cancellation and after paying such fee as the Board of Directors may fix from time to time.

CHAPTER 12

Procedure relating to transfer of shares

The relevant sections relating to the above are Sections 108 to 113. (It is also necessary to comply with the provisions of Section 84 of the Estate Duty Act and Rules 29, and 29A of the Estate Duty Rules. But Estate Duty Clearance Certificates are not required for transmission of shares by operation of Law).

Share transfers should be made on the prescribed form. Before it is signed by or on behalf of the transferor it should be presented to the prescribed authority who will endorse on it the date of such presentation. Thereafter, the completed share transfer deed should be delivered to the company within the following period : in the case of quoted shares, at any time before the closure of the Register of Members for the first time after the date of presentation mentioned above ; in other cases, within two months from the said date.

The above restrictions relating to endorsement of date by the prescribed authority and delivery of the completed transfer deed to the company within the time limits, do not apply where shares are pledged with banks under blank transfer. Further, the Central Government may on application, extend the period for delivery of the completed transfer deed to the company.

The procedure relating to transfer of shares is as follows: First, the necessary instrument of transfer duly stamped and executed by both the transfer and transferee, together with the relevant share certificate or letter of allotment should be received by the company. (But this is not necessary where the right to the shares has been transmitted by operation of law). A legal representative of a deceased member may make a valid transfer of the shares of the deceased member even though he himself is not a member of the company.

Where the application for registering the transfer is made by the transferor and relates to partly paid shares, the company should give notice of the application to the transferee, and if the transferee makes no objection to the transfer within two weeks from the receipt of the notice, then, the company may proceed to deal with the transfer.

If the Board of Directors refuse to register the transfer, then notice of the refusal should be given both to the transferor and the transferee within two months from the date on which the instrument of transfer was delivered to the company.

If the Board decide to accept the transfer, then, the transferee's name should be entered in the Register of Members and also in the relevant share certificate which should be completed and kept ready for delivery within two months after the application for registration of the transfer.

CHAPTER 13

Procedure for variation of shareholders' rights

The relevant sections relating to the above are Sections 106 and 107.

The Statute permits a company having a share capital to vary the rights attached to any class of its shares, provided such variation is authorised by the Memorandum or Articles or if such variation is not prohibited by the terms of issue of the shares of that class. The procedure for effecting the variation is as follows:

A meeting of the shareholders of that class should be convened, and their consent obtained for the variation by a special

resolution, i.e., by three-fourths majority: (instead of a meeting, the consent may be obtained by circulation). If within 21 days thereafter, the dissentient shareholders have not made an application to the court to have the variation cancelled, the variation becomes effective, and nothing further need be done.

The statute permits holders of 10% of the issued shares of that class, who had not assented to the variation, to apply to the appropriate Court to have the variation cancelled. Thereupon, if the Court confirms the variation, the company should, within 30 days after the service on the company of the Court's order, forward a copy of the order to the Registrar.

CHAPTER 14

Procedure for entering into contracts

The relevant sections relating to the above are Sections 46 to 48.

Contracts which, if made between private persons, are required by law to be in writing, may be made on behalf of companies also, in writing: but they should be signed by a person acting under the express or implied authority of the company. In the same manner, such contracts may also be varied or discharged.

Contracts which could be made between private persons orally, could also be made orally on behalf of a company by any person acting under its express or implied authority. In the same manner, they could also be varied discharged.

A bill of exchange, hundi or promissory note may be made, accepted, drawn, or endorsed on behalf of a company: but the drawing, acceptance, making or endorsing should be done in the name of, or on behalf of, or on account of the company. It should be done by any person acting under its express, or implied authority.

Under its common seal a company may, in writing, appoint any person as its attorney to execute deeds on its behalf.

CHAPTER 15

Procedure for the issue of debentures

The relevant sections relating to the above are Sections 2 (12), 292, 293 (1) (d), 56(3), 60, 64, 67, 70 to 74, 108 to 113, 117 to 123, 128, 129, 133, 134, 143, 152 and 154.

Under the new definition of debenture in the Act, the expression 'debenture' includes debenture stock, bonds and any other Securities of a company, with or without a charge on its assets.

After the commencement of the new Act, no company may issue any debentures carrying any voting rights in respect of any meeting of the company.

The Act does not prohibit the issue of perpetual debentures.

The procedure for the issue of debentures is as follows: First a resolution authorising the issue must be passed by the Board of Directors at a meeting of the Board. The consent of the Controller of Capital Issues should be obtained for the issue where the aggregate of the company's capital issue (both shares and debentures) during the year is in excess of Rs. 25 lakhs. If the borrowings under the debenture, together with any moneys already borrowed by the company (apart from temporary loans obtained from the company's bankers in the ordinary course of business) will exceed the aggregate of the company's paid-up capital *plus* free reserves, then, in the case of public companies and their subsidiaries, a meeting of the shareholders should be convened and their consent should be obtained for the issue by ordinary resolution.

If the debentures create a charge, then, particulars of the charge should be filed with the Registrar within thirty days after the execution of the deed containing the charge: (in this connection, please *see* Sections 128 and 129). A certificate of registration should be obtained from the Registrar and a copy of the certificate should be endorsed on every debenture certificate. Particulars of the debentures should also be entered in the company's Register of Charges (*vide* Section 143).

Next, where the debentures are offered to the public, then, a prospectus (prepared in accordance with the provisions of the Act) should be filed with the Registrar on the same date on which the prospectus is issued: if a prospectus is not issued, then, a statement in lieu of prospectus should be filed with the Registrar at least three days before the first allotment of the debentures. If the prospectus says that application will be made to the stock exchange for permission for the debentures to be dealt in on the stock exchange, then such permission should be applied for before the tenth day after the issue of the prospectus. If the permission has not been so applied for, or it has not been granted by the stock exchange before the expiry of four weeks from the date of the closing of the subscription lists, or before the expiry of such longer period not exceeding seven weeks as may within the said four weeks be notified by the stock exchange, then, all the application moneys for the debentures should be refunded to the applicants within eight days thereafter.

Next, all moneys received from the applicants for debentures should be kept in a separate bank account with a scheduled bank.

The allotment may thereafter be made: but if a prospectus has been issued, the allotment of debentures should not be made

until the beginning of the fifth day after that on which the prospectus was issued.

After the allotment of the debentures, it is not necessary to file a return of allotments, with the Registrar: the Act, however, requires that within three months of the allotment, the debenture certificates should be completed and had ready for delivery.

Next, after the allotment, the name of the debenture-holder together with his address, occupation, number of debentures held by him, and the date of allotment to him of the debentures, should be entered in the Register of Debenture-holders. And where the number of debenture-holders exceeds fifty, then, the names of the debenture-holders and the relative folio number in the Register of Debenture-holders should be entered in the Index of Debenture-holders, which may be maintained in the form of a card index.

The Act provides that if a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures will not be deemed to have been redeemed by reason only of the current account ceasing to be in debit. The Act further provides that when a company has redeemed any debentures issued by it, then, in the absence of any specific provisions to the contrary, the company has the right to keep the debentures alive. For the purpose of keeping the debentures alive, they may be transferred to a nominee of the company. Any transfer from the nominee will then be a reissue of the debenture. The reissue will be treated as a new issue only for the purposes of stamp duty.

CHAPTER 16

Procedure relating to transfer of debentures

The relevant sections relating to the above are Sections 108 to 113, 152 and 154.

Under the Act no company may register a transfer of debentures unless the proper instrument of transfer duly stamped and executed by both the transferor and the transferee has been delivered to the company along with the relevant debenture certificate or letter of allotment.

The application should then be placed before the Board, and if they approve of the transfer, then, the necessary changes should be entered in the Register of Debenture-holders, in the Index of Debenture-holders, and in the relevant debenture certificate, which should be completed and kept ready for delivery within two months after the application for registration of the transfer.

If the Board refuse to register the transfer, then, within two months from the date on which the transfer deed was delivered to the company notice of the refusal should be given to the transferor and the transferee.

CHAPTER 17

Registration of mortgages and charges

The relevant sections dealing with this subject are Sections 124 to 145.

Under the Act the following mortgages and charges are required to be filed with the Registrar for registration within 30 days of their creation.

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

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

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

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

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

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

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

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

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

CHAPTER 18

Procedure for making investments

The relevant sections relating to the above are Sections 49, 77, 292, 293, 295 and 369 to 374.

The Act has imposed severe penalties for contravention of the restrictions in regard to loans and investments, and it is, therefore, desirable that before making loans or investments, legal or expert advice should be availed of.

1. The Act requires that investment of the funds of a company may be made only by the Board of Directors, and that too only by means of resolutions passed at meetings of the Board. It is, however, permissible for the Board, by a resolution passed at a Board meeting, to delegate to any committee of directors, a managing director, managing agent, Secretaries and Treasurers, or manager or any other Principal Officer of the company or Principal Officer of any branch office of the company the power to make investments of the company's funds: but the resolution delegating this power should specify the total amount up to which funds may be invested by the delegate, and also the nature of the investments which may be made by the delegate.

The above restriction applies to all companies, whether public or private: but certain concessions are given in the case of Banking Companies, for which please see Section 292 as amended.

2. In the case of public companies and their subsidiaries if the whole or substantially the whole of the undertaking of the company has been the subject of public acquisition, then, the sale proceeds resulting from the acquisition may be invested,

(*i*) by the Board of Directors, in trust securities ; or

(*ii*) by the Board of Directors with the consent of the shareholders by ordinary resolutions passed in general meeting, in other than trust securities ; or

(*iii*) by an ordinary resolution of the shareholders in general meeting, in any manner whatsoever.

3. A company cannot invest its moneys in the purchase of its own shares.

4. Public companies and their subsidiaries are prohibited from giving any loan or other financial assistance for the purchase of their own shares or shares of their holding company ; the only exceptions to this rule are the lending of money by a banking company in the ordinary course of its business ; the provision of funds by a company in accordance with a general scheme to enable its employees to hold its shares, or the making of loans to its employees to enable them to purchase its shares, within certain limits.

5. If a company desires to make a loan to any of the following persons, it should obtain the previous approval of the Central Government: that is to say, loans to,

(*i*) any director of the lending company ;

(*ii*) (where the lending company is a subsidiary company) any director of its holding company ;

(*iii*) any partner or relative of any such director as is mentioned in (*i*) and (*ii*) above ;

(*iv*) any firm in which such director [as is referred to in (*i*) and (*ii*) above] or his relative is a partner ;

(*v*) any private company in which any such director [as is referred to in (*i*) and (*ii*) above] is a director or member ;

(*vi*) any company 25% or more of whose total voting power is exercisable by any such director|directors [as is referred to in (*i*) and (*ii*) above] ;

(*vii*) any company the management of which is accustomed to act in accordance with the directions or instructions of any director|directors of the lending company.

The above restrictions do not apply to loans,

(*a*) by any private company, other than subsidiaries of public companies ;

(*b*) by a banking company ;

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

(*d*) by the managing agent or Secretaries and Treasurers to the managed company.

The above restrictions apply to any transaction represented by a book debt which from its inception is in the nature of a loan or an advance.

6. Public companies and their subsidiaries are prohibited from making any loan to their managing agents or their associates, or to any other company the management of which has been declared by the Central Government as being accustomed to act in accordance with the directions or instructions of the managing agent of the lending company or his associate.

7. To give a loan to any company, sanction of the shareholders of the lending company by special resolution should be obtained, and particulars of the transaction should be entered in the register to be kept for the purpose pursuant to Section 370.

The aggregate of the loans given should not without Central Government's consent exceed 30% of the lending company's subscribed capital plus free reserves: within this overall ceiling the loans given to companies under the same management should not without Central Government's consent exceed 20% of the lending company's subscribed capital plus free reserves. A special resolution is not necessary each time a loan is given. One special resolution authoising the making of loans within these limits will be sufficient. Further where the aggregate of the loans to companies not within the same group does not exceed 10% of the lending company's subscribed capital plus free reserves, a special resolution of the lending company is not necessary, and a resolution by the Board will be sufficient.

Two companies will be deemed to be under the same management, if a person occupying any of the following positions in one of the companies, occupies any of those positions in the other company:

Managing agent ;
Secretaries and Treasurers ;
Managing director ;
Manager ;

Partner in managing agency firm or firm of Secretaries and Treasurers ;

Director in managing agency private limited company or private limited company of Secretaries and Treasurers.

If a majority of the directors of one company constitute a majority of the directors of another company, either presently or

at any time within the preceding six months, then also the two companies will be deemed to be under the same management.

A loan by a company to a firm one of whose partners is a company under the same management as the lending company will be deemed to be a loan to a company under the same management.

Where not less than 1|3rd of the total voting power with respect to any matter relating to each of two companies is exercised or controlled by the same individual or company, then the two companies will be deemed to be under the same management.

If the holding company of one company is under the same management as another company in any of the ways described above then also the two companies will be deemed to be under the same management (example: A is a holding company with B as its subsidiary. C is another company under the same management as A. Then C and B are also deemed to be under common management).

If one or more directors of one company, either by themselves or together with their relatives, hold the majority of shares in that company and also in any other company then the two companies will be deemed to be under a common management.

The above provisions of Section 370 do not apply to loans by private companies which are not subsidiaries of public companies ; by companies established with the object of financing industrial enterprises ; by a holding company to its subsidiary ; by a managing agent to his managed company ; or by a banking company or insurance company in the ordinary course of business.

8. The Act has imposed the following restrictions on investment in shares and debentures of any other company belonging to the same group: (two companies will be deemed to belong to the same group if they are under the same management as explained in para 7 above, or if they are related to each other as managing agent and managed-company),

(*i*) the shareholders of the investing company may by ordinary resolution make such investments without any limit, but only with the approval of the Central Government ;

(*ii*) the Board of Directors of the investing company may make such investments (within certain limits) by a unanimous resolution passed at a meeting of the Board of which notice (both of the meeting and also of the resolution) has been given to all the directors at their addresses in India. The limits are:—Up to not more than 10% of the subscribed capital of the company in whose shares or debentures the investment is being made: but the aggregate of the investments by the Board in all the companies in the

same group should not exceed 20% of the subscribed capital of the investing company.

The Act further provides that the aggregate of the investment made by the Board in all other companies, whether within the same group or outside of the group should not exceed 30% of the subscribed capital of the investing company: for purposes of this ceiling, investment in debentures of companies outside the group will not be taken into account. Moreover, investment in shares of any other company outside the group should not exceed 10% of the subscribed capital of such other company. Some concessions are allowed in respect of investment in rights shares for which please see Section 372.

The Act requires particulars of the investments in shares and debentures of companies in the same group to be entered in a separate register showing the name of the company in which the investment is made, the date of making the investment, and the names of companies within the group.

The Act also requires every company to annex to its Balance Sheet each year a list of the companies in the same group in which such investments have been made, and the nature and extent of the investments in each of them.

The above restrictions regarding investments in companies in the same group do not apply to investments,

(*a*) by a banking company ;

(*b*) by an insurance company ;

(*c*) by a private company (other than subsidiaries of public companies) ;

(*d*) by a holding company in its subsidiary ; and

(*e*) by a managing agent in a company managed by him.

9. The Act requires that all investments made by a company on its own behalf should be made and held by it in its own name. The following are the only permissible exceptions to this rule:

(*i*) if a company has the right to appoint a director to the Board of another company, then, to enable such director to hold the necessary qualification shares, the company may hold the same in the joint names of itself and such director ;

(*ii*) shares of a company in its subsidiary may be held in the name of one or more nominees to ensure that the subsidiary has the minimum number of members required by law (*i.e.*, two for private companies and seven for public companies) ;

(*iii*) if the principal business of a company consists of buying

and selling shares or other securities, then, it is completely outside the purview of this restriction ;

(*iv*) depositing shares or securities with the companies' bankers for the collection of dividend or interest or for facilitating transfers (but only for a period not exceeding six months) is not prohibited ;

(*v*) the provision of security for the repayment of any loan advanced to the company is not prohibited ;

(*vi*) the provision of security for the performance of any obligation undertaken by the company is not prohibited.

In respect of shares or securities in which investments have been made by a company but not held by it in its own name as permitted above, particulars thereof should be entered in a separate register maintained for the purpose: (for further details, please *see* Section 49).

CHAPTER 19

Appointments

The Act has imposed several restrictions in regard to such matters as appointment of staff, appointment of sole selling agents, appointment to any office or place of profit, appointment of buying agents, appointment of selling agents, etc. As the making of appointments is an important function of the management, it has been considered desirable to draw attention in this Chapter to the above restrictions.

The relevant sections are Sections 204, 294, 314, 356, 357, 358, 359, 360 and Schedule VII. A brief summary of the restrictions contained in the above sections is given below.

Section No.	Brief summary.
204	A firm or company should not be appointed to any place of profit for a period of more than five years at a time. But this restriction will not apply to the appointment of a firm or company as a technician or consultant. But if the firm or company is the managing agent or Secretaries and Treasurers of the company making the appointment, then, they cannot be appointed even as technicians or consultants for more than five years at a time: further, this disability will apply also to some per-

Section No.	Brief summary.

sons connected with the managing agent or Secretaries and Treasurers, as listed in sub-Section (2) of Section 204,

Initial appointment of a firm or company to any office or place of profit for a term not exceeding 10 years may however be made with the approval of the Central Government.

None of the above restrictions apply to appointments made by a private company which is not a subsidiary of a public company.

An office or place will be deemed to be one of profit if it brings to the person holding it any kind of remuneration such as salary, fees, commission, perquisites, right to occupy rent-free premises as residence, etc.

294 Sole selling agents for any area cannot be appointed by the Board of Directors except subject to the conditions that the appointment will be only for periods of 5 years at a time, and will cease to be valid if not approved by the company in the next general meeting.

314. There is a bar to the following persons holding any office or place of profit under a company without the consent of the company by special resolution, at the first general meeting after the appointment. The persons are:

(*i*) any director of the company ;	For any office or place of profit.
(*ii*) any partner or relative of such director (meaning by relative, such relative as is defined in Section 6 of the Act) ;	For any office or place of profit carrying a total monthly remuneration of Rs. 500/- or more.
(*iii*) any firm in which such director or relative is a partner ;	
(*iv*) any private company in which such director is a shareholder or director ;	
(*v*) the managing agent, Secretaries and Treasurers, director or manager of any such private company as is mentioned in (*iv*) above ;	

Section No.	Brief summary.
	The above restriction will apply also to places of profit under a subsidiary of the company unless the remuneration received from such subsidiary is made over to the holding company.
	The above restriction does not apply to the following places of profit: managing director, managing agent, Secretaries and Treasurers, manager, legal adviser, technical adviser, banker or trustee for debenture-holders.
	The above restriction does not apply where a relative etc. of a director is already holding an office or place of profit before the director was appointed as a director.
	For the purposes of the above restrictions, a director will be deemed to be holding an office or place of profit if he gets any remuneration over and above that to which he is entitled as a director. Any other person, firm or company will be deemed to be holding an office or place of profit if in respect thereof he|it receives any remuneration such as salary, fees, commission, perquisites, right to occupy as residence rent-free premises, etc.
356	A company cannot appoint its managing agent or his associate as selling agent in India for its goods produced in India. But the managing agent or his associate may under certain circumstances be so appointed for places outside India by special resolution of the company for a period of not more than five years at a time.
358.	A company cannot appoint its managing agent or his associate as its buying agent within India: the appointment can, however, be made for places outside India under certain circumstances, for not more than three years at a time if it is approved by the company by special resolution.
388	A manager as defined in the Act can be appointed only with the approval of the Central Government, according to Section 269.
	Any appointment of an officer or member of the staff (of the managed company) may be made by a managing agent only within the scale of remuneration fixed by the Board.

Section No. Brief summary.

A managing agent cannot, without the previous approval of the Board, appoint as an officer or member of the staff of the managed company any person who is a relative (as defined in Section 6 of the Act) of the managing agent himself or of any partner of the managing agency firm or of any shareholder or director of the managing agency where it is a private company.

CHAPTER 20

Procedure relating to shareholders' meetings

The relevant sections relating to the above are Sections 165 to 197, 210, 217 to 220, 224, 225, 230, 231, 256, 257, 261, 263 and 264.

The statutory meeting (required in the case of companies having a share capital) should be held within a period of not less than one month nor more than six months from the date at which the company is entitled to commence business. The provisions relating to the statutory meeting are in Section 165.

The first Annual General Meeting of the company should be held within eighteen months of incorporation. Subsequent Annual General Meetings should be held within fifteen months of the preceding Annual General Meeting, but it should also be within six months from the end of the financial year of the company. In case of any difficulty to hold the subsequent Annual General Meetings within the specified time limit, application for extension of time may be made to the Registrar, who is empowered to grant such extensions, up to not more than three months, for any special reason.

The Act requires that on the requisition of members holding 10% of the paid-up capital carrying voting rights or members holding 10% of the total voting power, the directors should within twenty-one days of the deposit of the requisition proceed to call a General Meeting which should be held within forty-five days of the deposit of the requisition.

Once the date of the General Meeting has been decided, the following is the procedure to be observed :

(*i*) twenty-one days' notice should be given of the General Meeting. The notice should be sent to (*a*) every member of the company ; (*b*) every person entitled to a share in consequence of the death or insolvency of a member ; and (*c*) the company's auditor or auditors ;

(*ii*) a copy of the Balance Sheet, Profit and Loss Account, and Auditor's Report should be sent twenty-one days before the date of the Meeting to (*a*) every member of the company ; (*b*) every debenture-holder of the company ; (*c*) every trustee for debenture-holders ; (*d*) every person entitled to a share of the company in consequence of the death or insolvency of a member ; and (*e*) the company's auditor or auditors ;

(*iii*) the notice of the Meeting should contain the following particulars :—

(*a*) where it relates to an Annual General Meeting, a Statement to the effect that it is notice of the Annual General Meeting ;

(*b*) the place at which the Meeting will be held: (this should be either the Registered Office of the company, or a place within the town or village in which the Registered Office is situate but with the consent of all their members or by their articles private companies which are not subsidiaries of public companies may fix any place for holding their Annual General Meetings) ;

(*c*) the date on which the Meeting will be held: (this should be a day that is not a public holiday) ;

(*d*) the hour at which the Meeting will be held: (this should, unless the Articles otherwise prescribe, be during business hours) ;

(*e*) a statement of the business to be transcted at the Meeting: (consideration of directors' report and accounts, declaration of dividend, election of directors in place of those retiring, and election of auditors—these will be deemed to be ordinary business ; all other business will be deemed to be special business) ;

(*f*) in the case of special business, the notice should contain also a statement setting out all material facts concerning each item of special business ;

(*g*) in regard to all special business, the notice should also contain a statement of the nature and extent of the interest of the directors, managing agents, Secretaries and Treasurers, or manager in such business ; extent of share holding interest in the company of every director, managing agent, Secretaries and Treasurers and manager shall also be set out in the statement where he it holds 20% or more of the company's paid-up capital.

(*h*) where the business of the meeting includes approval for any document, the notice should contain also a statement of the time and place where the documents can be inspected ;

(*i*) in the case of companies having a share capital, the notice should also contain a statement that a member entitled to attend and vote is entitled to appoint one or more proxies, and also that the proxy need not be a member ;

(*j*) the notice of meeting should have attached to it a Balance Sheet and Profit and Loss Account relating to the period beginning with the day immediately after the period for which the account was last submitted to an Annual General Meeting, and ending with a day which should not precede the day of the meeting by more than six months or by more than six months *plus* any extension granted by the Registrar for holding the Annual General Meeting. A report of the directors for the financial year should also be attached to the Balance Sheet.

The Act says that any requirement that members should lodge proxies with the company more than forty-eight hours before the Meeting would be void. A proxy need not be a member. Only one proxy may be appointed (in case of private companies) unless the Articles provide otherwise. Members will be entitled to inspect the proxies lodged with the company: but such inspection may be made only during the period of beginning twenty-four hours before the hour fixed for commencement of the meeting and ending with the conclusion of the meeting.

If members having 5% of the total voting power of the company or if one hundred members having the right to vote and commanding a paid-up capital of Rs. 1 lakh or more require the company to do so, the company should circulate any resolution of which those members give notice of intention to move at the meeting, and also circulate any statement of not more than one thousand words with respect to any matter or resolution to be considered at the meeting. As far as possible, circulation of such resolutions and statements by the company should be done along with the notice of meeting to its members. The company is not bound to circulate such resolutions or statements unless the same is deposited with the company six weeks before the meeting (in the case of resolutions) and two weeks before the meeting (in the case of statements). The requisitionists should also have deposited with the company a reasonably sufficient sum to meet the expenses in effecting the circulation. If the Board of Directors of a banking company consider that any statement required to be circulated by the requisitionists will be detrimental to the company's interests then, they need not circulate such statement: the Board, however

have no authority to refuse circulation of resolutions. In the case of all companies it is permissible to apply to the Court, for an order not to circulate the resolution or statement if it is defamatory.

The Act recognises three types of resolutions that may be moved at General Meetings. These are :—

(*i*) ordinary resolution of shareholders ;

(*ii*) special resolution of shareholders: (the requirements for this are that the intention to propose it as a special resolution should have been given in the notice of the meeting ; and the resolution should be passed by such a majority that the number of votes cast in favour of the resolution is three times the number cast against it: a list of the matters for which special resolution is required is given in a separate chapter in this booklet) ;

(*iii*) resolutions with special notice: (*i.e.,* fourteen days' notice should be given to the company of the intention to move such resolution, and the company should give notice of the resolution to its members: a list of resolutions for which such special notice is required is given in a separate chapter in this booklet).

As regards the procedure at the meeting itself, the following points may be noted :—

(*i*) *Quorum :* The quorum for a General Meeting is at least two members in the case of a private company and five members in the case of other companies: the Articles may provide only for a larger quorum.

(*ii*) *Chairman :* Any member elected by the members present at the meeting may preside over the meeting. It is, however, permissible for the Articles to make a provision to the contrary.

(*iii*) *Voting :* All resolutions should be decided in the first instance by a 'show of hand'. If a poll is demanded, then, if it relates to the question of election of the Chairman, or adjournment of the meeting, the poll should be taken at once: otherwise, it may be taken later, but within forty-eight hours of the demand. The Chairman of the meeting may regulate the manner in which the poll should be taken: but the Chairman should appoint two scrutineers to scrutinise the votes. A poll may be demanded only by the Chairman of the meeting, or five members present in person or by proxy, or members representing 10% of the paid-up capital or 10% of the issued capital or in the case of private companies one member where not more than seven members are present, and two members if more than seven members are present. The Act permits a member having a number of votes to cast some votes and

not cast the others, and also to cast some votes one way and some the other way. A proxy will not have the right to speak. Unless the Articles provide otherwise a proxy may vote only on a poll but not on a 'show of hands'.

(The Act provides a number of rights and restrictions in regard to (*i*) polling, and (*ii*) proxies, and it is desirable that the sections themselves be referred to).

(*iv*) *Election of Directors :* At each Annual General Meeting, one-third of the elected directors should retire: they will be eligible for re-election, and unless it is expressly resolved not to re-elect them or somebody else is appointed in their place, they will be deemed to be re-elected: (for further details please *see* Section 256). If a person who is not a retiring director is to be elected, then, at least fourteen days' notice of the intention to nominate him at the meeting should be given to the company: (but this does not apply to private companies other than subsidiaries of public companies). If officers, employees, associates, etc. of the managing agent (for details, please *see* Section 261) are to be elected as directors, it can be done only by special resolution: further fourteen days' notice of the intention to nominate such persons to directorship should be given to the company, and the company should give notice of the resolution to its members. For the election of directors, there should be a separate resolution for every director, that is to say, two or more directors cannot be elected under the same resolution unless the company unanimously resolves otherwise. Further, if a person who is not a retiring director is to be elected, his consent to act as director should first have been filed with the company, and the same should be filed with the Registrar within 30 days of his election.

(*v*) *Election of Auditors :* Under the statute, the first auditor is to be appointed by the Board within one month from the date of incorporation. Subsequent appointments of auditors are to be made at each Annual General Meeting. At each Annual General Meeting the retiring auditor should be re-appointed unless he is not qualified for appointment or he is unwilling to be appointed or the company expressly resolves not to appoint him. If any person other than the retiring auditor is to be appointed, then fourteen days' notice of the intention to nominate him for election should be given to the company, and the company should send a copy thereof immediately to the auditor and give notice of the resolution to members. But the retiring auditor may make a representation to the company and the company is bound to circulate it to its members or if that is not possible due to want of time it should be read at the meeting (for further details, please *see* Section 225). Within 7 days of the appointment, the company should give intimation thereof to every auditor appointed, other than the retiring auditor.

The Auditor is also entitled to attend the General Meeting

and speak on any part of the business which concerns him as auditor. The Auditor's report should be read at the General Meeting.

The Act provides that the Minutes of General Meetings should contain a fair summary of the proceedings of such meetings, and also of all material questions asked at the meeting. It is not obligatory that the Minutes should be circulated: but if a member requests for a copy, he is entitled to be furnished with a copy on payment. Minutes should be entered in the minutes book within 30 days of the conclusion of the meeting: every page of the minutes shall be initialled or signed, and the last page of each such minutes should be dated and signed. Minutes should not be attached to the minutes book by pasting or otherwise. Minutes of Board Meetings may be signed by the Chairman of the particular meeting or of the next succeeding meeting. Minutes of general meetings should be signed by the Chairman of the particular meeting within 30 days after the meeting, or by a director authorised by the Board for the purpose.

After the conclusion of the meeting, three copies of the Balance Sheet and Profit and Loss Account signed by the managing director, managing agent, Secretaries and Treasurers, manager or secretary or by a director, should be filed with the Registrar within thirty days of the meeting. In the case of private companies copies of Balance Sheet and Profit and Loss Account should similarly be filed with the Registrar. If the meeting does not adopt the Balance Sheet, etc., a statement of the fact and the reasons for the non-adoption should be annexed to the Balance Sheet and filed with the Registrar.

CHAPTER 21

Special Resolutions

Under the Companies Act, 1956, the requirements for a special resolution are as follows (*vide* Section 189):—

(*i*) the notice required by the Act for general meetings should have been duly given: (*i.e.*, twenty-one days' notice, except where 95 to 100 per cent of the members agree to a shorter notice) ;

(*ii*) the intention to propose the resolution as a special resolution should have been duly specified in the notice ; and

(*iii*) the number of votes cast in favour of the resolution should be three times the number cast against it.

The Act requires sanction of shareholders by special resolution in respect of a number of matters. These are listed below.

Section No.	Brief summary.
17	A company may by special resolution alter the provisions of its Memorandum so as to change the place of its Registered Office from one State to another or to change the objects of the company in some respects: confirmation of Court is also necessary.
21	A company may by special resolution and with the approval of the Central Government change its name.
31	A company may by special resolution alter its Articles.
99	A company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up.
100	A company may, if so authorised by its Articles, by special resolution reduce its share capital subject to confirmation by Court.
146	Except on the authority of a special resolution the Registered Office of a company shall not be removed outside the local limits of the city, town or village in which it is situated.
149	Consent of the company by special resolution is necessary to commence a new line of business.
208	Where any shares in a company are issued for the purpose of raising money to defray the expenses of the construction of any work or building, or the provision of any plant which cannot be made profitable for a lengthy period, the company may pay interest on the paid-up amount of such share capital if the same is authorised by the company's Articles or by special resolution.
237.	The Central Government shall appoint inspectors to investigate the affairs of a company, if the company by special resolution declares that the affairs of the Company ought to be so investigated.
261	If a public company or its subsidiary is managed by a managing agent and the managing agent is authorised to appoint any director to the Board, then, certain persons (specified in Section 261) shall not be appointed as a director of the company whose period of office is liable to determination by retirement of directors by rotation except by a special resolution of which special notice had been given to the company.
309	The remuneration payable to any director should be determined only by a special resolution the company so require.

Section No.	Brief summary.
	In the case of public companies and their subsidiaries, special resolution is necessary to authorise remuneration to a director on the basis of a percentage of the net profits where such director is neither in the whole-time employment of the company nor is a managing director nor a director whose remuneration includes a monthly payment.
314	Except with consent of the company by special resolution, no director of a company, no partner or relative of such director, nor firm in which such director or relative is a partner, no private company of which such a director is a director or member, and no director, managing agent, Secretaries and Treasurers, or manager of such private company, shall hold any office or place of profit under the company or under any of its subsidiaries, unless in the latter case the remuneration from the subsidiary is made over to the holding company. This restriction does not apply to the office of managing director, managing agent, Secretaries and Treasurers, manager, legal adviser, technical adviser, banker, or trustee for debenture-holders. In the case of directors this restriction applies to all offices or places of profit. In the case of directors' relatives etc. this restriction applies only in respect of offices or places of profit carrying a total monthly remuneration of Rs. 500/- or more.
323	A company may by special resolution alter its Memorandum so as to render unlimited the liability of its directors, managing agents, Secretaries and Treasurers or manager.
338	A company may by special resolution remove its managing agent for gross negligence or mismanagement.
352	Additional remuneration beyond 10 per cent of the net profits may be paid to a managing agent if sanctioned by special resolution and approved by the Central Government as being in the public interest.
356	A company may by special resolution appoint its managing agent or his associate as selling agent for its goods for places outside India.
357	Where the business of a company consists in the supply or rendering of any services, the company may by special resolution appoint its managing agent or

Section No.	Brief summary.
	his associate as agent for procuring business from places outside India.
358	A company may by special resolution appoint its managing agent or his associate as buying agent for places outside India.
360	A company may by special resolution enter into a contract with its managing agent or his associate for the sale, purchase or supply of any property or for the underwriting of shares or debentures or by special resolution and approval of Central Government, for the supply or rendering of any services.
370	For giving loans to companies under the same management ; or for giving loans to companies not under the same management, where the aggregate of the loans exceed 10% of the lending company's subscribed capital *plus* free reserves, the lending company's consent by special resolution is necessary. In addition, Central Government's consent is also necessary where the aggregate of the loans exceed 30% of the lending company's subscribed capital *plus* free reserves, or in the case of loans to companies within the same group, 20% of the lending company's subscribed capital *plus* free reserves.
370 & 370 A	To extend the time to enforce repayment where the loans, etc., exceed the limits prescribed in Section 370 or are to a managing agent or his associate.
370-A	A company may by special resolution extend the time for enforcing repayment etc. of any loan which could not have been made if the amended Section 370 had been in force.
375	A managing agent shall not on his own account engage in any business which is of the same nature as, and directly competes with the business carried on by a company, of which he is the managing agent or by a subsidiary of such a company, unless such company by special resolution permits him to do so.
484	A company may be wound up voluntarily if it passes a special resolution to that effect.
494	A special resolution is necessary for a liquidator to accept shares etc., as consideration for sale of company's property.

550 When the affairs of a company have been completely wound up, its books and papers may be disposed of, in the case of a members' voluntary winding up, in such manner as the company by special resolution directs.

CHAPTER 22

Resolutions requiring Special Notice

The Companies Act, 1956, introduces a new kind of resolutions called 'resolutions requiring special notice'. Under Section 190 of the Act, what is required in the case of such resolutions (*i.e.*, resolutions requiring special notice) is that notice of the intention to move the resolution should be given to the company not less than 14 days before the meeting at which it is to be moved, excluding the day on which the notice is served, and the day of the meeting. And the company should give to its members notice of such resolution forthwith, or by advertisement in a newspaper or according to the Articles, not less than 7 days before the meeting.

The following is a list of the matters in respect of which 'special notice' is required:

Section No.	Brief summary.
225	Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor.
	Special notice shall be required for a resolution at an annual general meeting providing expressly that a retiring auditor shall not be re-appointed.
261	Certain persons shall not be eligible for appointment as a director (whose period of office is liable to determination by retirement of directors by rotation) except by special resolution : special notice shall be required of any such resolution.
284	Special notice shall be required of any resolution to remove a director before the expiry of his period of office.
	Special notice shall be required of any resolution to appoint a director (in place of a director removed before the expiry of his period of office) at the meeting at which a director is removed.

CHAPTER 23

Provisions relating to Dividends

The relevant sections relating to the above are Sections 93, 205, 206 and 207.

A company may if so authorised by its articles pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

No dividend may be declared or paid except out of the profits of the company arrived at after providing for depreciation, or out of the funds provided for the purpose by the Central or State Governments pursuant to a guarantee regarding dividend. For details of the quantum of depreciation to be provided, please see Section 205. Dividends shall be paid either in cash, (which includes cheque or warrant) or by issue of fully paid bonus shares or by paying up uncalled amounts in respect of partly paid shares.

Dividend may be paid only to the registered holder, or to his order, or to his bankers, or (in the case of bearer shares) to the bearer of the share warrant or to his bankers.

Where a dividend has been declared by the company and the dividend has not been paid (or the dividend warrant has not been posted) within forty-two days from the date of declaration of the dividend, then, the directors, managing agents, Secretaries and Treasurers, partners of managing agency firm, or firm of Secretaries and Treasurers, directors of managing agency limited company, or limited company of Secretaries and Treasurers, who are knowingly party to this default, will be liable to penalty of imprisonment up to seven days in addition to fine of unspecified amount. The only exceptions to this are :

(*i*) where the dividend could not be paid by reason of some law ;

(*ii*) where the shareholder has given some directions regarding the payment of the dividend which are incapable of being complied with ;

(*iii*) where there is a dispute as to the right to the dividend ;

(*iv*) where the dividend has been adjusted against a claim of the company ; or

(*v*) where the company's failure to pay the dividend or post the dividend warrant was not due to any fault on its part.

CHAPTER 24

Provisions relating to Accounts

The relevant sections relating to the above are Sections 209 to 223 inclusive. A brief summary of the provisions of the above sections is given below. The penalty clauses are noted in a separate chapter on penalties.

Section No.	Brief summary.
209	Every company should keep at its Registered Office (or any other place in India as decided by the Board) proper books of account showing (a) receipts and expenses ; (b) sales and purchases ; (c) assets and liabilities ; and (d) In the case of a manufacturing company particulars relating to utilisation of material or labour if so required by Central Government. Where a company has a branch office, it is permissible for proper books of account to be kept at the branch, and quarterly returns thereof being sent to the head office. "Proper books of account" means such books as are necessary to show a "true and fair" view of the company's affairs. The books of account should be open to inspection by any director during business hours, and also by the Registrar or any Officer authorised by Central Government. The Act requires that books of account should be preserved in good order up to the immediately preceding 8 years.
210	A Balance Sheet and Profit and Loss Account should be laid before every Annual General Meeting of the company. In the case of non-profit companies, an Income and Expenditure Account may be substituted for the Profit and Loss Account. The Profit and Loss Account should relate, in the case of the first Annual General Meeting, to the period beginning with the incorporation of the company and ending with a day, the interval between which and the date of the meeting does not exceed nine months. In the case of

Section No. Brief summary.

subsequent Annual General Meetings, the Profit and Loss Account should relate to the period beginning with the day immediately after the period for which the preceding Profit and Loss Account was made, and ended with a day, the interval between which and the date of the meeting does not exceed six months: but where the Registrar has granted extension of time for holding the meeting that period might be excluded in computing the interval of six months. The period for which the Profit and Loss Account relates is called the "financial year": but the period of the financial year should in no case exceed fifteen months, and with special permission of the Registrar, eighteen months.

211 Except where special legislation (such as Banking Companies Act, Insurance Act, etc.) provide otherwise, the Balance Sheet should give a "true and fair" view of the state of affairs of the company as at the end of the financial year to which the Balance Sheet relates. The form of Balance Sheet and the details to be given in the Profit and Loss Account are set out in Schedule VI to the Act. The Balance Sheet may however be in any other form, with the approval of the Central Government.

212 & 213 The Balance Sheet of a holding company should have annexed to it the following documents relating to its subsidiary:

(*i*) a copy of the Balance Sheet of the subsidiary ;

(*ii*) a copy of the Profit and Loss Account of the subsidiary ;

(*iii*) a copy of the directors' report of the subsidiary ;

(*iv*) a copy of the Auditor's Report of the subsidiary ;

(*v*) a statement containing the following particulars—

(*a*) extent of the holding company's interest in the subsidiary at the end of the last financial year of the subsidiary ;

(*b*) the net aggregate amount of the profit or losses of the subsidiary in its last financial year, but which has not been dealt with in the holding company's accounts, and also for all the financial years of subsidiary after it became a subsidiary of the holding company ;

(*c*) the net aggregate amount of the profits or losses of the subsidiary in its last financial year which

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has been dealt with in the holding company's accounts ; and also for all the financial years of the subsidiary after it became a subsidiary of the holding company ; .

(*vi*) a statement containing the following information in cases where the financial year of the subsidiary does not coincide with the financial year of the holding company:

(*a*) any change in the holding company's interest in the subsidiary during the period between the end of the subsidiary's financial year and the holding company's financial year ;

(*b*) any material changes which have occurred during the above period, in respect of the subsidiary's fixed assets, its investments, moneys lent by it and moneys borrowed by it otherwise than for its current liabilities ;

(*vii*) where the directors of the holding company are unable to obtain the necessary information for the purposes aforesaid, then a statement to that effect.

The financial year of the subsidiary should end on a day which is not earlier than six months from the day on which the holding company's financial year ends. Further, the duration of the financial year of the subsidiary, for the purposes of the Balance Sheet and Profit and Loss Account, should not be less than the duration of the financial year of the holding company. The Central Government is however given the power to grant exemptions partly or wholly in regard to any of the above requirements. In particular, the Central Government may extend the financial year of a subsidiary so as to enable the financial years of the subsidiary and of the holding company to coincide or to enable the financial year of the subsidiary to end on a day not earlier than six months from the day on which the financial year of the holding company ends.

214 A holding company may by resolution authorise its representatives to inspect the books of account of its subsidiaries.

215 Except in the case of banking companies, the Balance Sheet and Profit and Loss Account should be signed on

Section No.	Brief summary.

behalf of the Board of Directors by two directors and countersigned by the managing agent, Secretaries and Treasurers, manager, or secretary, if any. If the company has a managing director, he should be one of the two signing directors. If only one director is in India at that time, he alone may sign it, but an explanatory statement to that effect should be added.

The Balance Sheet and Profit and Loss Account should be approved by the Board of Directors before they are submitted to the auditors for their report.

216 The Profit and Loss Account and auditor's report should be attached to the Balance Sheet.

217 There should be attached to the Balance Sheet a report of the Board of Directors regarding the state of the company's affairs, the amount proposed to be carried to reserves, the amount recommended for dividend, and also to any change which occurred during the financial year in question in regard to the nature of the business of the company and its subsidiaries, as also material changes affecting the financial position of the company which have occurred between the end of the financial year and the date of the report. The report should also give explanatory statements on all adverse remarks of the auditor.

219 Not less than twenty-one days before the date of the meeting, a copy of the Balance Sheet together with all its annexures (*i.e.*, Profit and Loss Account, auditor's report, etc.) should be sent to the following persons :

(*i*) every member of the company ;

(*ii*) every debenture-holder of the company (other than bearer-debentures) ;

(*iii*) every trustee for debenture-holders ;

(*iv*) every person entitled to a share in consequence of the death or insolvency of a member ; and

(*v*) the company's auditors.

(It has to be noted that private companies are not exempt from this provision).

220 Three copies of the Balance Sheet and Profit and Loss Account should be filed with the Registrar within 30 days after the Annual General Meeting. This applies to private companies also.

Section No.	Brief summary.
221	All officers of companies are bound to make necessary disclosures and give all necessary information (for the purposes of the Balance Sheet and Profit and Loss Account) to the company and to the company's auditors, whenever required.
223	Banking companies and insurance companies should publish half-yearly statements in February and August, in Form F.

CHAPTER 25

Provisions relating to Audit

The provisions relating to audit are contained in Sections 224 to 233-B of the Act. A brief summary of them is given below.

Section No.	Brief summary.
224	At every Annual General Meeting an auditor should be apointed and the auditor appointed should also be intimated within 7 days of the appointment, unless he is a retiring auditor. Non-retiring auditors should inform the Registrar within 30 days of the appointment whether they have accepted or refused to accept the appointment. A retiring auditor must be re-appointed unless he is disqualified for appointment as auditor, or he has expressed his unwillingness to be appointed, or the company has passed a resolution against his re-appointment, or notice has been given to the company for the appointment of another person as auditor and that other person has become incapable of acting. If an auditor is not appointed or re-appointed at the Annual General Meeting, then, the company should notify the fact to the Central Government within seven days thereafter, and thereupon the Central Government may make the appointment. The first auditors should be appointed by the Board within one month of the company's registration, but the company may remove such auditor and appoint somebody else. If an auditor resigns, the vacancy may be filled up only by the company: any casual vacancy in the office of auditor arising by any other reason may be filled up by the Board.

Section No.	Brief summary.

Auditors (other than the first auditors) may be removed by the company before the expiry of their term only with the consent of the Central Government.

225 For the appointment as auditor of a person other than the retiring auditor, fourteen days' notice should be given to the company. On receipt of such a notice, the company should immediately send a copy thereof to the retiring auditor. The retiring auditor is thereupon entitled to make a written representation of reasonable length, which the company should bring to the notice of members of the company: otherwise, the auditor is entitled to have his representation read out at the meeting. If the auditor abuses this right so as to secure needless publicity to defamatory matter, an application may be made to the Court by the company or by any other person for not circulating the auditor's statement or for other appropriate relief.

226 Only a person qualified as an auditor may be appointed auditor. This applies to all companies, including private companies.

The following persons are not eligible for appointment as auditors :

(*i*) any limited company ;

(*ii*) any officer or employee of the company whose accounts are to be audited ; also their partners and employees ;

(*iii*) persons indebted to the company for more than Rs. 1,000|- ;

(*iv*) if the company is managed by a managing agent or Secretaries and Treasurers, then, their partners where they are a firm, and members or directors where they are limited companies: also directors or members holding more than 5% (in nominal value) of the subscribed capital of the company which is acting as managing agent or Secretaries and Treasurers.

If an auditor becomes disqualified in any of the above ways after his appointment as auditor, then he shall be deemed to have vacated office.

227 The auditor should report as to whether the company's accounts give a "true and fair" view.

Section No.	Brief summary.
228	The accounts of branch offices should also be audited by the head office auditor or by qualified auditors: in the latter case the head office auditor will be entitled to check the books of the branch but in the case of banking companies having foreign branches, this condition will not apply.
229.	The auditor's report should be signed only by a qualified auditor practising in India (*i.e.*, not by a firm).
230	The auditor's report should be read at the General Meeting.
231	The auditor will be entitled to attend General Meetings and speak thereat on matters which concern him as auditor.
233-A	Where the Central Government is of the opinion that the affairs of any company are not being managed in accordance with sound business principles or prudent commercial practices ; or that any company is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains ; or that the financial position of any company is such as to endanger its solvency, the Central Government may at any time by order direct that a special audit of the company's accounts for such period or periods as may be specified in the order shall be conducted. The special auditor will make his report to the Central Government.
233-B	In the case of a manufacturing company where in the opinion of the Central Government it is necessary to do so it may order the audit of the company's cost accounts. Such auditor is to be appointed by the company in general meeting but is to submit his report to the Company Law Board with a copy to the company.

CHAPTER 26

Investigation of affairs of companies

The relevant sections relating to the above are Sections 235 to 246. A brief summary of the provisions in this regard is given below.

Section No.	Brief summary.
235	The Central Government may appoint inspectors to investigate the affairs of any company in the following cases :

Section No.	Brief Summary.

(*a*) in the case of a company having share capital, on the application of two hundred members, or members holding 10 per cent or more of the total voting power in the company ;

(*b*) in the case of a company not having share capital, on the application of one-fifth of the total number of members of the company ;

(*c*) in the case of any company, on a report by the Registrar that the company has failed to furnish him with information or explanation he had called for, or that the documents filed by the company disclose an unsatisfactory state of affairs or that any documents filed by the company are not a full and fair disclosure of the matter to which they relate ;

(*d*) the rights conferred under (*a*) and (*b*) above may be exercised in respect of a subsidiary company by the members of its holding company.

236 Application by members for the appointment of inspectors [such as are referred to in clauses (*a*), (*b*) and (*d*) of the previous para] should, if so required by the Central Government, be supported by evidence and security for costs up to Rs. 1,000|-.

237 If the company by special resolution, or the Court by order, so requires, the Central Government shall appoint inspectors to investigate the affairs of the company concerned.

The Central Government may *suo motto* appoint inspectors to investigate the affairs of companies if in its opinion there are circumstances suggesting (*i*) that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that company was formed for a fraudulent or unlawful purpose ; or (*ii*) that the persons concerned in the formation or management of the company have, in connection therewith, been guilty of fraud, misfeasance or other misconduct either towards the company itself or towards any of its members ; or (*iii*) that the members of the company have not been given all the information with respect to its affairs which the members might reasonably expect, including information relating to the calculation of the com-

Section No.	Brief summary.
	mission payable to the company's managing agent, Secretaries and Treasurers, manager or managing director.
238	Only individuals may be appointed as inspectors.
239	An inspector investigating the affairs of a company, may, with the previous consent of the Central Government, inspect also the affairs of other connected companies (*i.e.*, subsidiary companies of the company whose affairs are being investigated ; similarly, holding companies ; similarly, other companies under the same managing agent ; similarly, other companies managed by an associate of the managing agent, etc.).
240	It is the duty of all officers and other employees and agents of the company whose affairs are being inspected, and also of the other connected companies referred to above (under Section 239) and of the officers, partners, etc. of the managing agent or Secretaries and Treasurers, to give the inspector all necessary assistance and to produce before him such books and papers as may be required by the inspector. The inspector has also the power to have such persons examined by the Court.
240-A	The Inspector may also, with the sanction of the Tribunal or Magistrate, seize books and documents where he apprehends they may be falsified, secreted, destroyed etc.: but shall return the same to the company on completion of the investigation.
241	The inspector should submit a report to Government on the conclusion of the investigation: he may also send interim reports. Government should make available to the company a copy of the report of the inspector. Government may also, if it thinks fit, furnish a copy on payment, to any member of the company, any partner of the managing agent of the company, or any creditors of the Company. Where the inspector was appointed on the application of members of the company or at the instance of the Court, a copy of the report should be furnished to the members or the Court, as the case may be. Government may also publish the report.
242.	If on the basis of the inspector's report it is found that any person has been guilty of any criminal offence in relation to the company, Government has discretion to launch a prosecution.
243	On the basis of the inspector's report, if the Central Government considers it desirable to do so, it may arrange to have the company wound up.

Section No.	Brief summary.
244	The Central Government has also the discretion to institute proceedings for the recovery of damages from any person guilty of fraud, misconduct or misfeasance in connection with the promotion or formation or management of the company, or for the recovery of any property of the company which has been misapplied or wrongfully retained. The Central Government may institute such proceedings only when it appears that it has to be done in the public interest.
245	Under certain circumstances, the Central Government is empowered to recover the expenses of the investigation from any person who has been guilty of fraud, misfeasance, misconduct, wrongful retainment of company's property, etc., or from the persons at whose instance the inspection was ordered.
246	The inspector's report is admissible as evidence in legal proceedings.

CHAPTER 27

Investigation of ownership of companies

In the U.K., the Companies Act, 1948, contains some provisions enabling the Board of Trade, under certain circumstances, to investigate the ownership of shares and debentures of companies. Similar provisions have now been included in our Companies Act, 1956, with the addition of a further provision for investigating also the question as to whether any individual, firm or company is an associate of a managing agent.

The sections in the new Act dealing wit hthe above subject are Sections 247 to 251, a brief summary whereof is given below.

Section No.	Brief summary.
247	Whenever it appears to the Central Government that there is good reason to do so, it may appoint one or more inspectors to investigate and report on the membership of any company and other matters relating to the company, so as to determine the true persons who control the company or materially influence its policies, or are financially interested in it. An inspector appointed for this purpose may investigate also whether there are any secret arrangements or understandings observed in practice. He may also investigate (in cases where the company is managed by a managing agency company) the owner-

Section No.	Brief summary.

ship of the shares of the managing agency company, the persons who control the managing agency company and the persons who share the managing agency remuneration. With the previous consent of the Central Government the inspector may also investigate the ownership of other connected companies such as subsidiary companies, holding companies, companies under associates, etc. The inspector should submit a report to Government, but Government is under no obligation to supply copies of the inspector's report except at its discretion.

248 Whenever it appears to the Central Government that there is good reason to do so, it may appoint one or more inspectors to investigate the ownership of shares and debentures of managing agency companies and firms.

249 When any question arises as to whether an individual, firm or company is an associate of a managing agent or Secretaries and Treasurers of any company, the Central Government, if it considers that there is good reason to do so, may investigate the question by appointing inspectors or by departmental enquiries.

250 Whenever any investigation of any of the kinds referred to above is in progress, and also whenever the Central Government considers it necessary to impose restrictions with a view to find out the relative facts about any shares, the Central Government may impose the following restrictions on any shares: that those shares should not be transferred ; that no voting rights should be exercised in respect of those shares ; that no payment in respect of those shares by way of dividend, capital or otherwise should be made ; that there shall be no further issue of similar shares. Such restrictions will continue until further orders of Government. The Central Government has also the power to impose similar restrictions on debentures.

Where a transfer of shares in a company has taken place or is likely to take place and as a result thereof a change in the management is apprehended, and the Central Government is of opinion that such change would be prejudicial to the public interest, Government may direct that voting rights in respect of those shares shall not be exercisable for a period up to 3 years, and that the apprehended change in the management shall not have effect unless approved by the Central Government.

Any person feeling aggrieved by an order of the Central Government imposing any of the above restrictions, may apply to the Court for relief.

CHAPTER 28

Provisions relating to Directors

(*Note :* The provisions relating to remuneration of directors are given in a separate Chapter on 'Managerial Remuneration'. The penalty clauses are in another Chapter on 'Penalties'. The figures within brackets are numbers of the relevant sections.)

Public companies should have at least three directors. Private companies including Section 43-A companies should have at least two directors. (252).

Only individuals may be directors. (253).

Unless the Articles provide otherwise, the subscribers to the Memorandum (who are individuals) will be deemed to be directors. (254).

In the case of public companies and their subsidiaries, at least two-thirds of the total number of directors should be subject to retirement by rotation. (255).

In the case of public companies and their subsidiaries at every Annual General Meeting one-third of the directors liable to retire by rotation should retire, but will be eligible for election, and will be deemed to be re-elected under certain circumstances. (256).

In the case of public companies and their subsidiaries, a person other than a retiring director will not be eligible for election unless at least fourteen days' notice has been given to the company. (257).

Within the limits fixed by the Articles of Association, any increase or decrease in the number of directors may be made by an ordinary resolution of the shareholders. This applies to all companies both public and private. (258).

An increase in the number of directors beyond twelve or the maximum fixed under the company's Articles as at 21st July, 1951, or in the case of subsequent companies as under their first Articles, in case these are larger, will not have effect unless approved by the Central Government. (259).

The Board of Directors may appoint additional directors within the maximum fixed under the Articles: Central Government's consent is not necessary for this: but such additional directors should retire at the succeeding Annual General Meeting. (260).

In the case of public companies and their subsidiaries, which are managed by managing agents, certain persons will not be eligible for election as director liable to retire by rotation, or for

appointment as additional or alternate directors or to casual vacancies, except by special resolution passed after special notice. The persons are briefly, officers and employees of any of the managed companies, associates of the managing agent, and persons sharing in the managing agency remuneration. Please *see* the section for details. (261).

In the case of public companies and their subsidiaries casual vacancies in the Board may be filled up by the Board: and the person appointed will continue till the time the original incumbent would have continued. (262).

For the election of directors, there should be a separate resolution for each director. (263).

In the case of public companies and their subsidiaries, a person other than a director retiring by rotation or otherwise cannot be appointed as a director unless his consent has been filed with the Company: and the director appointed should file his consent with the Registrar within 30 days of his appointment. (264).

It is permissible for the Articles of public companies and their subsidiaries to provide for the appointment of two-thirds of the directors by the system of proportional representation. (265).

In the case of companies having a share capital (other than private companies) no person may be named as a director in the Articles, or in a prospectus, or in a statement in lieu of prospectus, unless his consent has been filed with the Registrar and he has taken or undertaken to take qualification shares. (266).

Undischarged insolvents, persons who have suspended payment or who have been convicted by a Court for an offence involving moral turpitude, cannot be managing director of any company. (267).

In the case of public companies and their subsidiaries, amendment of any provision relating to the appointment or re-appointment of a managing director, a whole-time director, or a director not liable to retire by rotation, will not be effective unless approved by the Central Government. (268).

In the case of public companies and their subsidiaries, the appointment of a managing director or a whole-time director or a manager for the first time after the commencement of the Act in the case of existing companies, and beyond three months from the incorporation in the case of new companies, will not be effective unless approved by the Central Government. (269).

Directors should obtain their share qualification if any within two months after their appointment. The nominal value of the qualification shares should not exceed Rs. 5,000|-, or the nominal value of one share where it exceeds Rs. 5,000|-. Bearer shares will not count for purposes of qualification shares. This does not apply to private companies which are not subsidiaries of public companies. (270).

The following shall not be capable of being appointed as directors :

(*i*) persons of unsound mind ;

(*ii*) undischarged insolvents ;

(*iii*) persons convicted of any offence involving moral turpitude and sentenced to six months imprisonment (the bar will be for a period of five years from the expiry of the sentence) ;

(*iv*) persons in respect of whom calls are in arrears.

The Central Government may grant exemption in appropriate cases in respect of items (*iii*) and (*iv*) above.

Only a private company may provide additional grounds of disqualification. (274).

No person may be a director of more than twenty companies. (275). In computing this number of twenty, directorship of private companies (other than subsidiaries), unlimited companies, non-profit associations, and alternate directorships may be omitted. (278). If a person, who is already a director of twenty companies, is appointed as a director in any other companies, the appointment will not be effective unless within fifteen days thereafter, the director has vacated his office in some other company|companies so as to keep the number within the maximum allowed. (277).

The office of a director shall be vacated if (*i*) he fails to obtain the share qualification ; or (*ii*) he becomes insane ; or (*ii*) he becomes insolvent ; or (*iv*) he is sentenced to six months imprisonment for any offence involving moral turpitude ; or (*v*) he fails to pay calls ; or (*vi*) he absents himself from Board meetings without permission of the Board for three consecutive meetings, or for a continuous period of three months, whichever is longer ; or (*vii*) he or a firm in which he is a partner, or a private company in which he is a director, has accepted a loan from the company without the Central Government's approval ; or (*viii*) he fails to disclose to the Board his interest in any contract or arrangement of the company ;

or (*ix*) he is debarred by a Court from being a director ; or (*x*) he is removed from directorship by an ordinary resolution of the shareholders ; or (*xi*) he is a nominee and his connection with the authority that nominated him has ceased. Only a private company which is not a subsidiary of a public company may provide additional grounds for vacating office. (283).

A company may, by ordinary resolution passed after special notice, remove a director before the expiry of his period of office but this will not apply to directors of private companies holding office for life on the 1st April, 1952. (284).

There should be a Board meeting at least once in every three months and at least four meetings should be held in every year. The Central Government is however empowered to grant relaxation from this requirement in respect of any class of companies. (285).

Notice of Board meetings should be given to every director (even to directors outside India, but to their registered address in India). (286).

The quorum for Board meetings will be one-third of the total strength of the Board *minus* any vacancies, or two directors, whichever is higher. Interested directors should be left out of account at the time of discussion or vote on any matter in which they are interested: if the number of interested directors exceeds two-thirds of the total strength of the Board, the balance, subject to a minimum of two disinterested directors will be the quorum. (287).

For a resolution passed by circulation to be valid, it should have been (a) circulated to all the members of the Board in India and to all other directors at their addresses in India ; and (b) approved by a majority of the directors for the time being in India. (289).

The acts of a director will be valid notwithstanding any defect or disqualification. (290).

The Board of Directors shall be entitled to exercise all the powers of the company other than those reserved for the company in General Meeting. (291).

The following powers may be exercised only by the Board, and only at Board meetings :—

(*i*) power to make calls ;
(*ii*) power to issue debentures ;
(*iii*) power to borrow otherwise than on debentures ;
(*iv*) power to invest funds ;
(*v*) power to make loans.

But the Board may, by resolution at a meeting, delegate to any committee or managing director|managing agent|Secretaries and Treasurers|manager|principal officer of the head office or branch office the powers listed in items (*iii*), (*iv*) and (*v*) above. But the Board should specify the limits of such delegation.

The arrangement made by the company for the borrowings of money by way of overdraft or cash, credit or otherwise will alone be deemed to be "borrowing" and not the actual day to day operation on overdraft, cash, credit or other accounts.

The company in general meeting may impose restrictions on the Board's powers. (292).

In the case of public companies and their subsidiaries, the Board of Directors cannot do any of the following without the consent of the company in general meeting :—

(a) sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company ;

(b) remit or give time for re-payment of a debt due by a director ;

(c) invest otherwise than in trust securities, the sale proceeds, resulting from acquisition without the consent of the company, of any property or undertaking of the company ;

(d) borrow in excess of the *aggregate* paid-up capital of the company *plus* its free reserves (temporary loans from the company's bankers in the ordinary course of business being left out of account for this purpose: temporary loans mean loans repayable on demand or within six months such as short term loans, cash credit arrangement, discounting of bills, and loans of a seasonal character, but excludes loans raised for financing capital expenditure) ;

(e) contribute to charities, etc., in excess of Rs. 25,000|- or 5% of average net profits in the course of any financial year.

Every company shall disclose in its Profit and Loss Account any amount contributed by it to any political party or for any political purpose: this applies also to private companies.

(f) Acceptance of deposits by banking companies will not be deemed to be borrowings by them. (293).

Appointment of sole selling agents by the Board of Directors should be approved by the shareholders in the next general meeting after the appointment, otherwise, the appointment will cease to be valid. Such appointments may be made only for periods of 5 years at a time.

Managing Agents who have resigned cannot be appointed as Sole Selling Agents within 3 years of their resignation.

The Central Government is empowered to vary the terms and conditions of Sole Selling Agencies in any case. (294).

With regard to compensation to sole selling agents for the unexpired period of their agreement, in certain circumstances, no compensation should be paid at all and in others compensation should be paid only for the unexpired period of the agreed term, but not exceeding three years. (294-A).

Without the consent of the Central Government, no Company may, "directly or indirectly" make any loan to or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by,

(*i*) any director of the lending company ;

(*ii*) (where the lending company is a subsidiary company) any director of its holding company;

(*iii*) any partner or relative of any director referred to in (*i*) and (*ii*) above.

(*iv*) any firm in which any such director or relative is *a* partner ;

(*v*) any private company in which any such director is director or member ;

(*vi*) any company 25% or more of whose total voting power may be exercised or controlled by any such director|directors ;

(*vii*) any company whose Board of Directors|managing director|managing agent|manager|Secretaries and Treasurers is accustomed to act in accordance with the directions or instructions of any director|directors of the lending company.

The above restrictions do not apply to loans etc., by a private company (except subsidiaries of public companies) ; or by a banking company ; or by a holding company to its subsidiary ; or by a managing agent|Secretaries and Treasurers to the managed company (295).

For the purpose of Section 295 a book debt will be treated as a loan or advance if it was such from its inception. (296).

Except with the consent of the Board given at a Board meeting a director of the company, or his relative, or a firm in which such director|relative is a partner, or any other partner of such a firm, or a private company in which such director is a member| director, should not enter into any contract with the company for the sale, purchase, or supply of any goods, materials, or service, or for under-writing the company's shares|debentures.

Such contracts up to not more than Rs. 5,000|- in the aggregate in any calendar year are, however, permitted if they are part of the regular trade or business of such director, etc.

The Board's consent to such contracts should be given prior to the contract or within three months after the contract was entered into.

Purchases and sales for cash at prevailing market price do not require Board's consent.

Transactions by banking and insurance companies in the ordinary course of business with such directors etc. do not require Board's consent. (297).

The Act provides that under certain circumstances the managing agent|Secretaries and Treasurers will be deemed to have vacated office or to have been suspended from office. When that contingency occurs the Board of Directors have the power to carry on the affairs of the company until other arrangements are made by the company. (298).

Disclosure of interest in any contracts, etc., by directors should be done at meetings of the Board.

The disclosure should be made at the first Board meeting after the directors becoming interested or at the Board meeting in which the contract etc., is discussed.

A general notice by a director that he is a director|member of a particular company|firm will be deemed to be sufficient disclosure: but such general notices should be given once every financial year. Further, such general notices should be given only at Board meetings.

Nothing in the section applies to any contract or arrangement between two companies where one or more of the directors of one of the companies holds not more than 2% of the paid-up capital of the other company. (299).

An interested director should not participate in discussions

or exercise his vote on the particular contract, etc. His presence will not count for quorum at the time of the discussions or vote. If a director holds not more than 2% of the paid-up capital of any company he will not be deemed to be interested in that company.

The above restriction does not however apply to certain contracts by private companies, certain contracts of indemnity, and certain other contracts. Government has also the power to grant exemptions from this restriction in appropriate cases. (300).

Every company should maintain a separate register showing therein particulars of contracts in which directors and their relatives are interested, and also particulars of firms and companies in which directors are interested as partners, members or directors. (301).

When a company appoints or varies the terms of appointment of a manager, managing director, whole-time director, managing agent, or Secretaries and Treasurers, and any director of the company is directly or indirectly concerned or interested in the matter, then an abstract of the matter and of the director's interest therein should be circulated by the company to its members within twenty-one days. (302).

Every company should maintain a register showing name, address, nationality, occupation, etc., of the company's directors, managing director, managing agent, Secretaries and Treasurers, managers and secretary.

Any person in accordance with whose instructions the Board of Directors is accustomed to act will also be deemed to be a director for the purposes of this register.

Particulars of the entries in the said register and of any change in directors, managing directors, managing agents, Secretaries and Treasurers, managers or secretaries should be filed with the Registrar within 30 days of the appointment or change as the case may be. (303). The directors etc. should make the necessary disclosures to the company to enable it to maintain this register (305).

Every company should maintain a register showing, in regard to each director, managing agent, Secretaries and Treasurers and manager of the company, the number and amount of shares debentures of the company, its subsidiaries, or its holding company, or a subsidiary of the company's holding company, held by the director etc. himself or in trust for him or of which he has the right to become the holder.

For the purposes of this register any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act will be deemed to be a director of the company.

For the purposes of this register, shares or debentures held by another company will be deemed to be held by the director etc. if the Board of that other company is accustomed to act in accordance with his instructions, or if he controls one-third or more of the voting power in that other company. (307). Directors and others concerned are expected to make the necessary disclosures to the company to enable it to maintain this register. (308).

After the commencement of the Act no director may assign his office. (312).

Alternate directors (in place of directors absent from the State for three months or longer) may be appointed only by the Board. (313).

An office or place of profit under a company or under any subsidiary of that company may be held by any of the following persons only with the consent of the former company by special resolution at the first general meeting after the appointment :

(*i*) any director of the company ;	For any office or place of profit.
(*ii*) any partner of such director ;	In respect of any office or place of profit carrying a total monthly remuneration of Rs. 500/- or more
(*iii*) any relative of such director ;	
(*iv*) any firm in which such director/ relative is a partner ;	
(*v*) any private company in which such director is a director or member ;	
(*vi*) any director, managing agent, Secretaries and Treasurers or manager of such private company.	

The office of managing director, managing agent, Secretaries and Treasurers, manager, legal adviser, technical adviser, banker or trustee for debenture-holders is however exempt from the above restriction.

The above restriction does not apply where a relative etc. of a director is already holding an office or place of profit before the director was appointed as a director. (314).

No compensation for loss of office may be paid by a company to any director other than managing directors, directors who are managers, and directors who are in the whole-time employment of the company. (318).

If a company or its undertaking is to be transferred, no director may receive compensation for loss of office from the company: but from the transferee, such compensation may be received, provided the shareholders of the first-named company approve of such payment being made by the transferee. (319 & 320).

CHAPTER 29

Matters which may be transacted by directors only at Board Meetings

The Act prescribes that certain matters may be transacted by the directors only at Board meetings and not by circulation. A list of such matters is given below.

Section No.	Brief summary.
262	In the case of public companies and their subsidiaries a casual vacancy in the Board in respect of a director appointed by the company in general meeting may be filled up by the directors only at a meeting of the Board.
292	Only the Board of Directors may exercise the following powers on behalf of the company, and the Board shall do so only by means of resolutions passed at meetings of the Board: (*i*) power to make calls ; (*ii*) power to issue debentures ; (*iii*) power to borrow moneys otherwise ; (*iv*) power to invest company's funds ; and (*v*) power to make loans.
292	The directors may, by resolution passed at a meeting of the Board, delegate to any committee of directors, or to the managing director, or to the managing agent, or to the Secretaries and Treasurers, or to the manager or to the principal officer of the head office or of a branch the power to borrow moneys otherwise than on debentures (provided the resolution specifies the total amount up to which moneys may be borrowed by the delegate) ; also the power to invest the company's funds (provided the resolution specifies the total amount up to which funds may be invested, and the nature of the investments which may be made by the delegate) ; and/or the power to make loans (provided the total amount up to which the loans may be made, the purpose for which the loans may be made, and the maximum amount for each such purpose are specified in the resolution).
297	The Board's sanction for any contracts in which any directors, their relatives and firms are interested

Section No.	Brief summary.
	should be given only by a resolution passed at a meeting of the Board.
299	Disclosure by a director of his interest in any contract or arrangement by the company should be made only at a meeting of the Board.
308	Disclosure by directors of their shareholdings (for the purpose of enabling the compay to maintain the Register of Directors' Shareholdings) should be given in writing at a meeting of the Board.
316	Appointment as managing director of a person who is already the managing director or manager of another company may be made only by a unanimous resolution passed by the directors at a meeting of the Board.
372	Investment in shares and debentures of companies under the same management may be made by the directors (within the limits specified in Section 372) only by a unanimous resolution passed at a meeting of the Board.
386	Appointment as manager of a person who is already manager or managing director of another company may be made only by a unanimous resolution of the directors passed at a meeting of the Board.

CHAPTER 30

Provisions relating to Managing Agents

In the Companies Act, 1956, as amended, there are 56 sections dealing with managing agents: these are Sections 324 to 377. The substance of these provisions is given below in brief :—

Section No.	Substance in brief.
324	The Central Government may, by notification in the Official Gazette declare that from such date as may be specified in the notification companies engaged in the classes of industry or business specified in the notification shall not have managing agents. Upon such notification managing agencies in that class of industry or business shall cease at the expiration of three years from the date given in the notification or 15th August, 1960, whichever is later. Further, in such class of industry or business no managing agent should be newly appointed after the date specified in the notification.

Section No.	Substance in brief.
325	A company which is acting as managing agent of another company should not itself be managed by a managing agent.
325-A	After the commencement of the Companies (Amendment) Act, 1960, no company shall appoint as its managing agent any body corporate which is a subsidiary either of itself or of any other body corporate unless immediately before such commencement the company has any such subsidiary as its managing agent.
326	Appointment or re-appointment of a managing agent can be made only by the company in general meeting and that too only with the approval of the Central Government. The Central Government is not to give its approval unless it is satisfied that it is not against public interest to allow the company to have a managing agent ; that the proposed managing agent is fit and proper for such appointment ; that the conditions of the managing agency agreement are fair and reasonable ; and that the proposed managing agent has fulfilled any other conditions imposed by the Central Government.
328	After the commencement of the Act a company cannot appoint a managing agent for the first time for a period exceeding fifteen years ; subsequent appointments should be for periods not exceeding ten years at a time. A re-appointment can be made only within the two years immediately preceding the expiry of the term, and not earlier: but this last condition may be relaxed in suitable cases by the Central Government. The restrictions contained in this section may be relaxed in the case of private companies by the Central Government.
329	The terms of a managing agency agreement may be varied by an ordinary resolution of the shareholders with the previous sanction of the Central Government.
332	After 15th August, 1960 no person may be managing agent of more than ten companies at the same time. In computing this number managing agencies of the following companies will be excluded: (*a*) of a private company which is neither a subsidiary nor a holding company of a public company ; (*b*) of any non-profit association ; and (*c*) of an unlimited company. In computing this limit of 10, every partner of managing agency firms, and every director, Secretaries and Treasurers or manager of managing agency companies, and every

Section No.	Substance in brief.
	member controlling 10% or more of the voting power where the managing agency is a public company, and every member controlling 5% or more of the voting power where the managing agency is a private company, will be deemed to be a managing agent.
333	If a managing agent vacates office on account of insolvency, etc., or if he is removed from office for gross negligence or mismanagement, the company will nevertheless be liable to him for any moneys due to him as also for any obligation properly incurred by him on behalf of the company previously.
334	A managing agent shall be deemed to have vacated office if he becomes insolvent, or applies to be adjudicated as insolvent, or the managing agency firm is dissolved, or the managing agency company is wound up.
335	If a receiver is appointed by a Court for the property of a managing agent, the managing agent will be deemed to have been suspended from office: but the Court may relax this provision in appropriate cases.
336	If the managing agent or any of his partners, where the managing agent is a firm, or directors officers where the managing agent is a limited company, is convicted of an offence and sentenced to six months imprisonment, then also the managing agent will be deemed to have vacated office.
337	A company may, by ordinary resolution of the shareholders remove its managing agent from office for fraud or breach of trust.
338	A company in general meeting may, by special resolution remove its managing agent from office for gross negligence or gross mismanagement of the managed company or its subsidiaries.
339 to 341	These sections contain some ancillary provisions in relation to vacation of office by a managing agent on insolvency, conviction, etc., and removal of a managing agent for fraud, breach of trust, gross negligence, etc.
342	A managing agent may resign by notice to the Board: but the resignation will not take effect until a statement of affairs of the company is prepared by the managing agent or the Board and the same has been audited and placed before the company in general meeting. The

Section No.	Substance in brief.

company in general meeting may, by resolution accept the resignation or take such other action as it deems fit. The resignation will not be effective until accepted by the company in general meeting.

343 Transfer of office by a managing agent will not be effective unless approved by the company in general meeting and by the Central Government.

344 Any provision in the managing agency agreement providing for the managing agency to be heritable will be void.

345 In existing cases, succession to a managing agency by inheritance will not be effective unless approved by the Central Government.

346 Where the managing agent of a public company (or a private company which is a subsidiary of a public company) is a firm or limited company, if any change takes place in the constitution of the firm or limited company, then, the managing agent will cease to act as such on the expiry of six months from the date on which the change takes place unless within that time or such extended time, as may be allowed by the Central Government, Central Government's approval has been obtained to the change in the constitution. The conversion of a private company into a pubilc company or *vice versa,* or a change in the directors, or managers of the company, or a change in the ownership of the company's shares (except in the case of managing agents who are public limited companies and whose shares are quoted in a recognised Stock Exchange) or a change in the constitution of the parent company where the managing agent is a subsidiary company will all be deemed to be changes in the constitution of the managing agent.

347 Every firm or private company which acts as managing agent of any company should file with the managed company within one month from the appointment as managing agent, certain particulars regarding partners of the managing agency firm and members and directors of the managing agency limited company as required by Schedule VIII.

348 A company shall not pay to its managing agent in respect of any financial year beginning at or after the commencement of the Act, by way of remuneration, whether in respect of his services as managing agent or

Section No.	Substance in brief.

in any other capacity, any sum in excess of 10% of the net profits of the company for that financial year.

Payments by way of remuneration to partners of managing agency firms, directors of managing agency public limited companies and directors and members of managing agency private limited companies will be treated as part of the managing agency remuneration.

349 & 350 — These sections relate to the determination of net profits. This is dealt with in the chapter on "Managerial Remuneration".

352 — Additional remuneration beyond 10% of the net profits may be paid to a managing agent only if it is sanctioned by special resolution of the company and is approved by the Central Government as being in the public interest. If any such additional remuneration is sanctioned, then, the ceiling of 11% fixed for managerial remuneration under Section 198 may be exceeded to the extent of such additional remuneration.

353 — The remuneration of a managing agent shall not be paid to him until the audited accounts of the company have been laid before the company in general meeting. But if a "minimum remuneration" is fixed for the managing agent, such "minimum remuneration" may be paid to him in suitable instalments as may be fixed by the company.

354 — A managing agent should not be paid any office allowance, but he may be re-imbursed in respect of expenses incurred by him on behalf of the company provided the same is sanctioned by the Board or by the company in general meeting.

355 — The provisions contained in Sections 348 to 354 relating to the remuneration of managing agents will not apply to such managed companies as are private companies (other than subsidiaries of public companies).

356 — A managing agent or his associate cannot be appointed as selling agent for the company's goods within India. They can be so appointed for places outside India provided the following conditions are fulfilled:

(*a*) they should be already maintaining a place of business (but not for any of their managed companies) in the place for which they are so appointed ;

Section No.	Substance in brief.

(*b*) the remuneration for such appointment should be sanctioned by the company by special resolution ;

(*c*) no other sum by way of expenses or otherwise should be payable for this purpose ;

(*d*) the appointment can only be for five years at a time ;

(*e*) the material terms of the appointment should be set out in the resolution ;

(*f*) particulars of the appointment should be entered in a separate register.

357 Where and in so far as the business of a company consists in the supply or rendering of any service the provisions of Section 356 will apply in respect of any such business procured for the company by its managing agent or his associate from places outside India.

358 A managing agent or his associate should not receive any payment (other than expenses) in respect of purchases of goods made on behalf of the company. If such purchases are made for the company by the managing agent or his associate from a place outside India, then, the Company may pay him for making such purchases, provided the following conditions are fulfilled:

(*a*) the managing agent should be maintaining an office at such foreign place for his own purpose and not for any of his managed companies ;

(*b*) the payment to the managing agent should be sanctioned by a special resolution of the company ;

(*c*) the special resolution should set out details of the nature of the office maintained by the managing agent or his associate outside India, the purpose for which such office is maintained, the scale of its operations, the expenses incurred in maintaining that office and the proportion of these expenses attributed to doing work for the company ;

(*d*) the special resolution will be valid only for three years at a time ; and

Section No.	Substance in brief.
	(*e*) every resolution in this regard should be entered in a separate register maintained for the purpose.
359	If a managing agent or his associate is a representative of some other concern and that concern supplies goods or service, etc., to the managed company, then, to retain any commission paid by such concern to the managing agent or his associate, sanction of the managed company by resolution is necessary. Particulars of all contracts in regard to this matter should be entered in a separate register.
360	A managihg agent or his associate may enter into a contract with the managed company only with the consent of the company by special resolution, for the sale, purchase, or supply of any property, or for the supply or rendering of any service, or for under-writing any shares or debentures of the company: for the supply or rendering of any service other than that of Managing Agent, Central Government's approval is also necessary. If any payment is due to the company from the managing agent or his associate in this regard, such payment should be made within one month from the date of the supply of the goods or rendering of the services, as the case may be. Particulars of all contracts referred to by this section should be entered in a separate register. Contracts up to Rs. 5,000/- in any calendar year in respect of property or services in which the company or the managing agent regularly trades or does business are however exempt from this restriction.
362	The registers referred to in Sections 356 to 360 shall, subject to reasonable restrictions be open to inspection of members, etc.
363	If a managing agent or his associate receives any remuneration in contravention of the provisions of the Act, he will be deemed to hold the same in trust for the company, is liable to refund the same to the company and the company shall not waive recovery thereof without Central Government's consent.
364	Any assignment, mortgage, etc., of managing agency remuneration will not bind the company.
365 & 366	These sections impose certain restrictions on the compensation that may be paid to the managing agent

Section No.	Substance in brief.

for loss of office. The maximum compensation should not exceed the average remuneration of three years. Further, in certain cases, specified in Section 365, no compensation will be admissible.

368 A managing agent will exercise his powers subject to the superintendence, control and direction of the directors, and in particular, he should not without the specific approval of the Board in each case appoint any manager as defined in the Act ; appoint any relation as officer of member of the staff of the managed company ; appoint any officer or member of the staff on remuneration exceeding the limits laid down by the Board; remit or extend time for payment for amounts due from him or his associates to the managed company ; compound any claim against the company by the managing agent or his associate. It may be specially mentioned that the power to purchase capital assets or sell capital assets will be exercisable only when the price limits have first been fixed by the Board ; without such fixation, the power cannot be exercised at all.

369 No company should directly or indirectly make a loan or any financial assistance to its managing agent or his associate. Current accounts between the managed company and the managing agent should not exceed Rs. 20,000|- or such less sum as fixed by the Board, and it will be settled on a monthly basis generally. Loans by holding company to its subsidiary are outside the purview of the section.

370 Loans or financial assistance to other companies cannot be given without the consent of the shareholders of the lending company by special resolution. Further details of this restriction are given in the Chapter on investments.

370-A Special resolution is necessary to extend the time for enforcing repayment etc. of any loan which could not have been made if the amended Sections 369 and 370 had been in force.

372 Investment in shares of other companies and in shares and debentures of other companies under the same management can be made by the Board within certain limits, and beyond those limits only by an ordinary resolution of the shareholders and in addition the consent

Section No.	Substance in brief.

of Central Government. Further details of this are given in the Chapter on investments.

375 A managing agent should not engage on his own account in any business which is similar to and directly competes with the business of the managed company. He may do so only with the consent of the managed company by special resolution. A managing agent will be deemed to be engaged in such business on his own account in the following cases, that is to say, where the business is carried on by (*a*) any firm in which he is a partner ; (*b*) any private company 20% or more of whose total voting power is controlled by him, the partners of the managing agency firm or officers of the managing agency company ; (*c*) a company 70% or more of whose total voting power is similarly controlled by the managing agent etc., as stated above. If a managing agent engages in business on his own account in contravention of this provision, he shall be deemed to hold in trust for the company all incomes received thereby.

376 Any condition prohibiting the reconstruction or amalgamation of a managed company except with a provision that the previous managing agent should continue as a managing agent of the reconstructed or amalgamated companies also will be void.

377 A managing agent may appoint to the Board of the managed company only one director where the number of members of that Board does not exceed five, and only two directors where that number exceeds five. But the managing agent cannot appoint the Chairman of the Board.

197-A If a company has a managing agent it cannot have Secretaries and Treasurers, manager or managing director.

CHAPTER 31

Provisions relating to Secretaries and Treasurers

The Companies Act has given statutory recognition to the system of Secretaries and Treasurers.

The Act defines "Secretaries and Treasurers" as meaning any firm or company (not being the managing agent) which, subject to the control, superintendence and direction of the Board, has

the management of the whole or substantially the whole of the affairs of a company, whether with or without a contract of service. In the net result an individual cannot occupy the position of Secretaries and Treasurers.

If a company has Secretaries and Treasurers it cannot have managing agent, manager, or managing director.

Except for the modifications noted below, all the provisions of the Act relating to managing agents and their associates apply *mutatis mutandis* to Secretaries and Treasurers and their associates also.

In the Chapter on managing agents, it has been noted that the Central Government may, by notification, prohibit managing agencies in any specified classes of industry or business. This power of the Central Government is applicable in respect of managing agents only, and not Secretaries and Treasurers.

Section 332 of the Act provides that after 15th August, 1960, no managing agent may be managing agent of more than ten companies: this provision, however, does not apply to Secretaries and Treasurers.

Secretaries and Treasurers may be remunerated only on the basis of a percentage of net profits, and the percentage should not exceed 7½. In the absence or inadequacy of profits, they may be paid a minimum remuneration subject to the provisions of Section 198 noted in the Chapter on managerial remuneration.

Secretaries and Treasurers will have no night to appoint directors to the managed companies as managing agents do.

Secretaries and Treasurers will have no right, unless and except to the extent to which they are authorised by the Board of Directors to do so, to sell any goods, or articles manufactured or produced by the company, or to purchase machinery, stores, goods or materials for the purposes of the company, or to sell the same when no longer required.

The relevant sections dealing with the above provisions are Sections 2 (definitions) and Sections 378 to 383.

CHAPTER 32

Provisions relating to Managers

The Companies Act, 1956, has defined 'manager' as meaning an individual, not being the managing agent, who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole or substantially the whole of the

affairs of a company and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not.

Only an individual may occupy the position of 'manager' as defined in the Act.

A manager cannot be appointed without Central Government's consent in the case of public companies and their subsidiaries.

If a company has a manager it cannot have a managing agent, Secretaries and Treasurers or managing director.

A manager may be appointed only for five years at a time.

Undischarged insolvents, persons who have suspended payment and persons who, within the preceding five years, have been convicted by a Court in respect of an offence involving moral turpitude, should not, after the commencement of the Act, occupy the position of manager in any company. The Central Government, however, is empowered to relax this restriction in appropriate cases.

After the commencement of the Act no company may employ as manager a person who is already manager or managing director of another company. But a person who is already the manager or managing director of one and not more than one company may, however, be appointed as manager of another company, if the Board of Directors of the company making the appointment approves of the same by a unanimous resolution. A person may be appointed as manager of more than two companies if the Central Government permits the same as being necessary to enable the companies to function as a single unit with a common manager for their proper working.

A manager may be remunerated either by way of a monthly payment or by way of a percentage of the net profits. In the case of public companies and their subsidiaries the percentage should not exceed five except with Government's consent and further, 'net profits' should be as defined in the Act. In the absence or inadequacy of profits, the manager may be paid a minimum remuneration, subject to the restrictions in the Act relating to managerial remuneration.

No increase in the remuneration of managers will be effective unless approved by the Central Government.

In the case of public companies and their subsidiaries, an amendment of any provisions relating to the remuneration of the manager so as to increase it, will not have effect unless approved by the Central Government.

The relevant sections relating to managers are Sections 2 (definitions), 384 to 388, 269, 310, 311, 312 and 317.

CHAPTER 33

Managing Directors

The relevant sections relating to the above are Sections 269, 310, 316 and 317.

The appointment of a managing director for the first time after the commencement of the Act in the case of existing companies, and beyond three months from incorporation in the case of new companies will not be effective unless approved by the Central Government.

Public companies and their subsidiaries cannot appoint as managing director a person who is manager or managing director of another company.

A person who is already manager or managing director of a company can be appointed as managing director of another company if the Board of Directors of the latter approved of the appointment by a unanimous resolution passed at a Board meeting.

If at the commencement of the amending Act a person is manager or managing director in more than two companies, of which one at least is a public company or its subsidiary, he should, within one year, choose the companies in which he desires to continue to hold office, resign from the rest and intimate the choice made by him to the companies concerned, to the Registrar, and to the Central Government.

The Central Government may, in appropriate cases, permit the same person to be manager or managing director of more than two companies.

A managing director cannot be appointed for a term exceeding five years at a time.

No increase in the remuneration of managing directors will be effective unless approved by the Central Government.

None of the above restrictions apply to private companies other than subsidiaries of public companies.

If a company has managing director it cannot have a managing agent, Secretaries and Treasurers or manager.

CHAPTER 34

Managerial Remuneration

The Companies Act, 1956, has laid down certain regulations regarding the quantum of remuneration of directors, managing agents, Secretaries and Treasurers, and managers. The relevant sections are Sections 198, 199, 200, 309, 310, 311, 348 to 355, 381, and 387. (The Act also imposes certain restrictions on the appointment of managing agents and their associates as buying agents or selling agents as also on managing agents and their associates entering into contracts with the managed company on principal-to-principal basis. These are dealt with in the chapter on managing agents).

(The figures within brackets indicate the section numbers).

The Act requires that the total remuneration payable by a company to its directors|managing agent|Secretaries and Treasurers| manager should not exceed in the aggregate 11 per cent of the net profits of the company. This restriction applies only to public companies and private companies which are subsidiaries of public companies. [198(1)].

In computing the above ceiling of 11 per cent the fees payable to directors for attending Board meetings may be excluded. [198(2)].

If in any financial year a company (*i.e.*, public companies and their subsidiaries) has little or no profits, it may pay a minimum remuneration to any directors, managing directors, whole-time directors, managing agents, Secretaries and Treasurers and| or managers: but the minimum remuneration should not exceed Rs. 50,000|- per annum in the aggregate for all of them together. The Central Government has, however, the power to increase the minimum remuneration in appropriate cases. [198(4)].

If any officer or employee of a company (who is not a director, managing agent, Secretaries and Treasurers, or manager) is remunerated on the basis of a percentage of the net profits, the net profits should be computed in the manner set out in the Act. [199(1)].

Under the Companies Act, 1956, as amended, the meaning of 'Net Profits' is as follows :

> "Net Profits" = "Gross Profits" including bounties and subsidies, and profits from sale of fixed assets to the extent of the excess over the written down value but below original cost ; but excluding profits from (*i*) premium on shares|debentures ; (*ii*) sale of forfeited shares ; (*iii*) sale of the undertaking ; and (*iv*) sale of capital assets (except to the extent mentioned above).

Minus

the following :—

(*a*) working charges ;

(*b*) bonus or commission to staff ;

(*c*) E.P.T. and B.P.T. ;

(*d*) interest on debentures, mortgages, charges, loans and advances ;

(*e*) repairs not of capital nature ;

(*f*) normal depreciation ;

(*g*) outgoings ;

(*h*) losses arising after commencement of Act ;

(*i*) damages for breach of contract and premium on any insurance against such damage ;

(*j*) bad debts.

But the following items shall not be deducted :—

(*a*) remuneration of directors and managing agents ;

(*b*) income-tax, super-tax and other taxes on income ;

(*c*) damages of any kind other than (*i*) above ;

(*d*) capital losses.

NOTE :—*Remuneration of directors shall be deducted for calculating managing agent's remuneration.*

No company shall pay to any officer or employee any remuneration free of any tax. Existing contracts for tax-free remuneration may however continue for the residue of the term of the contract. (200).

The remuneration payable to the directors of a company (including managing directors, and whole-time directors) should

be determined either by the Articles of Association of the company, or by the company in General Meeting. [309(1)].

Remuneration for services rendered by a director in any other capacity will also be deemed to be director's.

Remuneration except where the services are of a professional nature and in the opinion of the Central Government he is a professionally qualified person.

A director may receive remuneration either by way of a monthly payment or by way of a fee for each meeting attended or both: but remuneration by way of a monthly payment in lieu of sitting fees will not be permitted beyond two years from commencement of the amending Act. [309(2)].

A whole-time director or a managing director may be paid a percentage of the net profits, but except with Government's consent, such percentage should not exceed five per cent for any one such director, or where there is more than one such director, ten, for all of them put together. [309(3)]. In case of other directors (*i.e.*, those who are not managing directors or whole-time directors) remuneration by way of a monthly, quarterly or annual payment may be given with the approval of the Central Government : but remuneration by way of a percentage of net profits may be given only if they are not in receipt of a monthly payment: further, it should be sanctioned by special resolution and will be valid only for five years at a time: the percentage in this case should not without Government's consent, exceed the following limits : (to all such directors put together) 3 per cent of the net profits : but if the company has a managing agent, Secretaries and Treasurers, manager, managing director, or whole-time director, then, the percentage should not exceed 1 per cent for all such directors put together. [309(4)].

A whole-time director or managing director, whose remuneration includes a percentage of the net profits, should not reeceive any remuneration from any subsidiary company. [309(6)].

If a director receives remuneration in excess of the above limits he is liable to refund the same to the company, and the company cannot waive recovery thereof without Government's consent. [309(5A) and (5B)].

The provisions of Section 309 do not apply to private companies, other than subsidiaries of public companies. [309(9)].

In the case of public companies and their subsidiaries, an amendment of any provision relating to the remuneration of any director with a view to increase the same except in the case of sitting fees up to not more than Rs. 250|- for each meeting will not be effective unless it is approved by the Central Government. (310 & 311).

The remuneration of a managing agent for any financial year, whether in respect of his services as managing agent or in any other capacity, should not exceed 10 per cent of the net profits of that financial year. Remuneration paid to partners of managing agency firm, directors of managing agency public limited company, and members or directors of managing agency private limited company will be deemed to be part of managing agency remuneration. (348).

Sections 349 and 350 prescribe the mode of determining net profits, and this has already been set out ealier.

Where there is an arrangement for sharing profits between several companies under the same managing agent, any profits paid pursuant to that arrangement should, in computing the net profits, be deducted from the net profits of the company making the payment, and included in the net profits of the company receiving the payment. (351).

Additional remuneration may be paid to a managing agent (beyond 10 per cent of the net profits and beyond the ceiling of 11 per cent fixed by Section 198 to managerial remuneration) if the payment of such additional remuneration is sanctioned by the company by special resolution and approved by the Central Government as being in the public interest. (352).

Until the audited accounts have been laid before the company in General Meeting, the remuneration should not be paid to the managing agent : but if a minimum remuneration (as per Section 108(4) is fixed for the managing agent, the same may be paid in such suitable instalments as may be specified by the company (353).

A managing agent is not entitled to any office allowance. But he may be re-imbursed in respect of actual expenses incurred on behalf of the company if the same is sanctioned by the Board or by the company in General Meeting. (354).

None of the above restrictions relating to remuneration of managing agents apply to managing agents of private companies which are not subsidiaries of public companies. (355).

Secretaries and Treasurers may be paid only 7½ per cent of the net profits. (381).

The remuneration of a manager as defined in the Act should not, without Government's consent, exceed 5 per cent of the net profits. (387).

Government have prescribed a sliding scale for the remuneration of managing agents and Secretaries and Treasurers, for which please see Appendix VI.

CHAPTER 35

Associates of Managing Agents

The Companies Act, 1956, defines certain persons as associates of managing agents and places certain disabilities on them. The definition of "Associates" in the new Act is as follows :

"(3) 'associate' in relation to a managing agent, means any of the following, and no others :—

(*a*) where the managing agent is an individual :	any partner or relative of such individual ; any firm in which such individual, partner or relative is a partner ; any private company of which such individual or any such partner, relative or firm is the managing agent or secretaries and treasurers or a director or the manager ; and any body corporate at any general meeting of which not less than one-third of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, such individual, partner or partners, relative or relatives, firm or firms ; and private company or companies ;
(*b*) where the managing agent is a firm :	any member of such firm, any partner or relative of any such member, and any other firm in which any such member, partner or relative is a partner ; any private company of which the firm first-mentioned, or any such member, partner, relative or other firm is the managing agent, or secretaries and treasurers, or a director, or the manager ; and any body corporate at any general meeting of which not less than one-third of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the firm first-mentioned, any such member or

	members, partner or partners, relative or relatives, other firm or firms and private company or companies ;
(*c*) where the managing agent is a body corporate :	(*i*) any subsidiary or holding company of such body corporate ; the managing agent or secretaries and treasurers, or a director, the manager or an officer of the body corporate or of any subsidiary or holding company thereof ; any partner or relative of any such director or manager ; any firm in which such director, manager, partner or relative, is a partner ;
	(*ii*) any other body corporate at any general meeting of which not less than one-third of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the body corporate and the companies and other persons specified in paragraph (*i*) above ; and
	(*iii*) any subsidiary of the other body corporate referred to in paragraph (*ii*) above :
	Provided that where the body corporate is the managing agent of the other body corporate referred to in paragraph (*ii*) above, a subsidiary of such other body corporate shall not be an associate in relation to the managing agent aforesaid ; and
(*d*) where the managing agent is a private company or a body corporate having not more than fifty members ;	in addition to the persons mentioned in sub-clause (*c*), any member of the private company or body corporate ;

Explanation.—If one person is an associate in relation to another within the meaning of this clause, the latter shall also be

deemed to be an associate in relation to the former within its meaning ;

(4) 'associate', in relation to any Secretaries and Treasurers, means any of the following, and no others :—

(*a*) where the secretaries and treasurers are a firm : any member of such firm, any partner or relative of any such member, and any other firm in which any such member, partner or relative is a partner ; any private company of which the firm first-mentioned, or any such member, partner, relative or other firm is the managing agent, or secretaries and treasurers or a director, or the manager ; and any body corporate at any general meeting of which not less than one-third of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the firm first-mentioned, any such member or members, partner or partners, relative or relatives, other firm or firms, and private company or companies ;

(*b*) where the Secretaries and Treasurers are a body corporate :

(*i*) any subsidiary or holding company of such body corporate ; the managing agent or secretaries and treasurers, or a director, the manager or an officer of the body corporate or of any subsidiary or holding company thereof ; any partner or relative of any such director or manager ; any firm in which such director or manager, partner or relative, is a partner ;

(*ii*) any other body corporate at any general meeting of which not less than one-third of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the body

corporate and the companies and other persons specified in paragraph (*i*) above; and in addition to the persons mentioned in sub-clause (*b*), any member of the private company or body corporate ;

(*iii*) any subsidiary of the other body corporate referred to in paragraph (*ii*) above :

Provided that where the body corporate is the secretaries and treasurers of the other body corporate referred to in paragraph (*ii*) above, a subsidiary of such other body corporate shall not be an associate in relation to the secretaries and treasurers aforesaid ; and ;

(*c*) where the secretaries and treasurers are a private company or a body corporate having not more than fifty members :

in addition to the persons mentioned in sub-clause (*b*) any member of the private company or body corporate ;

Explanation.—If one person is an associate in relation to another within the meaning of this clause, the latter shall also be deemed to be an associate in relation to the former within its meaning ;

The disabilities on associates are as follows :

1. An Inspector investigating the affairs of a company may also investigate, with the prior consent of the Central Government, the affairs of any associates of the managing agent of the company or of any company managed by such associates in the past or at the time of inspection. Before giving its consent the Central Government is to give the associate an opportunity to be heard. (Section 239).

2. If in the course of investigation the Inspector apprehends that books and documents may be falsified, destroyed etc., the Inspector may with Magistrate's or Tribunal's consent, *inter alia*, seize books and documents of associates. (Section 240-A).

3. The Central Government may at its discretion investigate the question whether any firm or company is an associate of any managing agent. (Section 249).

4. In the case of public companies and their subsidiaries, if they are managed by a managing agent, any associate of such managing agent will not be eligible for appointment as a director except with the consent of the company by special resolution. Further, special notice of 14 days should be given to the company of the intention to propose any such person for such appointment. (Section 261).

5. The restrictions placed by the Act on the appointment of managing agents as buying agents, selling agents, etc. (for which please *see* Sections 356 to 360, inclusive) apply also to associates.

6. Public companies and their subsidiaries, which are managed by a managing agent, should not give any loan or financial assistance to any associate of their managing agents. (Section 369).

7. When as a result of an enquiry by Court into complaints of oppression or mismanagement a company's managing agent is terminated, any person who was an associate of such managing agent will not be eligible for appointment as managing agent of the company for a period of five years thereafter without the leave of the Court. (Section 407).

CHAPTER 36

"Accustomed to act....

The Companies Act, 1956, provides that for certain purposes any person in accordance with whose directions or instructions the directors of a company are accustomed to act will also be deemed to be a director or officer, and in some other sections, the Act imposes restrictions on loans as between a company managed by such persons and a company whose Board is so accustomed to act. These are stated below briefly.

1. Particulars of such persons should be entered in the Register of Directors. (Section 305).

2. Particulars of the shareholding of such persons should be entered in the Register of Directors' Shareholdings. (Section 307).

3. Particulars of such persons should also be given in the annual list and summary filed with the Registrar. (Section 162).

4. If the Board of a company is accustomed to act in accordance, with the directions or instructions of a particular person, then, all shares in other companies held by such company will be

deemed to be held by such person for the purposes of the Register of Directors' Shareholdings. (Section 307).

5. The previous consent of the Central Government is necessary for making any loan or financial assistance in the following case between two companies: *i.e.*, where the Board of Directors, managing director, managing agent, Secretaries and Treasurers or manager of the borrowing company is accustomed to act in accordance with the directions or instructions of the Board of Directors or of any director or directors of the lending company. This restriction does not, however, apply to loans, etc., by a private company which is not a subsidiary of a public company, by a banking company, by a holding company to its subsidiary, or by a managing agent or Secretaries and Treasurers to the managed company. (Section 295).

6. If the Central Government declares that it is satisfied that the Board of Directors, managing director, managing agent, Secretaries and Treasurers or manager of a particular company is accustomed to act in accordance with the directions or instructions of the managing agent or associate of managing agent of another company, then, the latter company cannot give any loan or other financial assistance to the former company. (Section 369).

CHAPTER 37

Prevention of oppression and mismanagement

The sections dealing with this subject in the new Act are Sections 397 to 409.

The statute permits a certain number of members to apply to the Court for relief on the ground that the company's affairs are being conducted in a manner prejudicial to the public interest, or, in a manner oppressive to any member or members or in a manner prejudicial to the interests of the company or that a material change has taken place in the management or control of the company and that by reason of such change it is likely that the affairs of the company will be conducted in a manner prejudicial to the interests of the company. The number of members necessary to make such applications is, (*a*) in the case of a company having a share capital, one hundred members or 10% of the total number of its members, whichever is less, or members holding 10% of the issued share capital ; (*b*) in the case of a company not having a share capital, 20% of its total number of members. The Central Government has, however, power to authorise any lesser number of persons to make such applications to the Court. If one member has obtained the concurrence of the requisite number of members, he may also make the application

on behalf of them all. On such an application the Court has omnibus powers. For instance, it may frame fresh regulations for the conduct of the company's business, or it may provide for the acquisition of the shares of some members by other members, or it may terminate or modify the agreements with the managing agent, Secretaries and Treasurers, managing director, manager or other directors. The Court may also order interim relief. If a managing agent, etc., is terminated or his agreement is modified, he cannot claim any compensation or damages against the company. Further, the Court may order that the managing agent, etc. or their associates should not be managing agent, Secretaries and Treasurers, or manager of the company for a period up to five years, without the leave of the Court.

Another measure to prevent oppression or mismanagement provided by the statute is that on the application of one hundred members or members holding 10% or more of the total voting power, the Central Government may appoint any two persons as directors: such directors will not be liable to retirement by rotation. Government may also direct the company to arrange for the election of its directors on the basis of proportional representation. If a managing agent, Secretaries and Treasurers, managing director, or other director complains to Government that as a result of a change which has taken place or is likely to take place in regard to the ownership of the company's shares, a change in the Board of Directors is apprehended and that such a change would be prejudicial to the interests of the company, the Central Government may, after making such enquiries as it thinks fit, order that no change in the Board shall take place without Government's concurrence. Government may also make interim orders pending completion of its enquiry.

CHAPTER 38

Advisory Committee

For the purpose of advising the Central Government and the Company Law Board on such matters as may be referred to it by Government or by the Board, the Central Government may constitute an advisory committee of not more than five persons.

The Advisory Commission set up under the 1956 Act has been abolished.

CHAPTER 39

Changes in law in regard to Foreign Companies

In the Companies Act, 1956, Sections 591 to 608 relate to companies incorporated outside India. These sections apply

both to foreign companies which have already established a place of business in India and also to foreign companies which etsablish a place of business in India in future. The following are the principal changes made by the new Act in regard to foreign companies :

(*a*) more particulars than before in regard to the directors and secretary have now to be filed with the Registrar ; (Section 592);

(*b*) if any alterations take place in the documents filed with the Registrar, particulars of any such alteration should be filed with the Registrar : (Section 593) ;

(*c*) the Balance Sheet and Profit and Loss Account of foreign companies should be made out in the same form and contain the same particulars as are applicable to other companies in India : (Section 594);

(*d*) the documents to be filed by foreign companies should be filed with the Registrar in New Delhi and also with the Registrar of the State in which the principal place of business of the company is situate : (Section 597) ;

(*e*) under the Act, the prospectus requirements of foreign companies are much the same as those applicable to other companies in India : (Sections 603 to 608).

CHAPTER 40

Liquidation

In the Companies Act, 1956, the provisions relating to winding up are contained in Sections 425 to 560 and 582 to 590. Among the more important changes effected by the new provisions are that the winding up of companies with a capital of rupees one lakh or more should take place only in the High Courts ; that the Registrar may apply to the Court for winding up a company if it has failed to commence business within one year of its incorporation ; that Government also may on the basis of an inspector's report arrange to petition the Court for winding up a company ; that in a voluntary winding up companies cannot be appointed as liquidators, and the remuneration of a liquidator fixed at the time of his appointment shall not be increased under any circumstances ; that certain arrears of salaries and wages including holiday remuneration and retrenchment and lay-off compensation and also expenses of certain investigations shall rank as preferential payments on a winding up ; and that the provisions in regard to public examina-

tion of promoters, directors, etc., and in regard to the recovery of money or property from promoters, directors, partners of managing agency firms, and directors of managing agency companies have been made more stringent. Further, the penal provisions in connection with liquidation have also been made more severe.

CHAPTER 41

Miscellaneous Provisions

The following is a list of some miscellaneous provisions of the Act :

Section No.	Substance of main change
25	The Central Government is empowered to exempt Chambers of Commerce and other companies licensed under Section 25, from any of the provisions of the Companies Act. During the period when a licence granted under Section 25 is in force, such companies cannot alter their memorandum or articles without the previous approval of the Central Government.
31	Conversion of a public company into a private company cannot be effected without Government's consent.
43-A	Where 25% or more of the paid-up capital of a private company is held by another company or companies, the private company will be deemed to be a public company subject to, certain exceptions. For details please see the section.
78	When shares have been issued at a premium, a sum equal to the aggregate amount of the premium should be transferred to a "share premium account". The moneys from the share premium account can be utilised only for the purposes specified in Section 78.
80	There are some restrictions on the utilisation of the funds of the company for the redemption of Redeemable Preference Shares. Under the Act, Redeemable Preference Shares may be redeemed only out of the profits or out of the proceeds of a fresh issue, but not out of proceeds of the sale of any property of the company.
138	Particulars of part satisfaction of mortgages and charges need not be filed with the Registrar. Only payment or satisfaction in full need be field with the Registrar.

Section No.	Substance of main change
147	All limited companies should have a name board and should have their names on their seals and on their letter-heads, bills, etc.
159	Companies need not file the full particulars of members and debenture-holders past and present along with every annual return. Such particulars need be filed only once in three years. However, along with each annual return changes in regard to membership should be filed annually.
167	If default is made in holding an annual general meeting, the Central Government has power to order the calling of one.
173	In certain cases, the extent of shareholding interest in the company of every director, managing agent, if any, Secretaries and Treasurers, if any, and the manager, if any, should be set out in the statement which is to be annexed to annual general meeting notices.
186	The Court has power to order the calling of a general meeting other than an annual general meeting.
192	This section requires that certified copies of certain resolutions should be filed with the Registrar. In addition to the certified copies a copy of the statement of material facts annexed under Section 173 to the notice of the meeting in which such resolution has been passed should also be filed with the Registrar. Companies are also required to file resolutions appointing sole selling agents ; resolutions authorising Board to sell the undertaking, to borrow beyond paid-up capital and reserves and to contribute to charities beyond Rs. 25,000/- or 5% of average profits.
197-A	A company cannot at the same time have more than one of the following categories of managerial personnel, viz., managing director, managing agent, Secretaries and Treasurers and manager.
204	A firm or body corporate cannot be appointed to an office or place of profit under a company for a period of more than five years at a time, without Central Government consent.
205	A company cannot declare or pay dividend without first providing for depreciation. Government's consent is necessary if a company wishes to declare and pay dividend without providing for depreciation, or after pro-

viding for depreciation at a rate different from what is provided in the Indian Income-tax Act and the Rules made thereunder.

207 The maximum period for posting dividend warrants is within 42 days from the date of declaration.

210 At every Annual General Meeting the Profit and Loss Account should be laid before the company. The period to which the Profit and Loss Account should relate should not exceed the period beginning with the day immediately after the period for which the account was last submitted and the date of the meeting by more than six months. That is to say, the Annual General Meeting should be held within six months from the close of the financial year. Where no extension of time is granted by the Registrar, the Annual General Meeting should be held within six months from the close of the financial year and where extension of time is granted, it should be held within the extended time.

220 A private company also should file with the Registrar in addition to three copies of Balance Sheet, the Profit and Loss Account. The Section, however, provides that in the case of private companies no person other than the member of the company concerned shall be entitled to inspect or obtain copies of the Profit and Loss Account of that company under Section 610.

238 A firm or body corporate or any association cannot be appointed as an inspector to investigate the affairs of companies.

250 Where a transfer of shares in a company has taken place or is likely to take place and as a result thereof a change in the management is apprehended and the Central Government is of opinion that such change would be prejudicial to the public interest, Government may direct that voting rights in respect of those shares shall not be exercisable for a period of up to 3 years, and that the apprehended change in the management shall not have effect unless approved by the Central Government.

Any person feeling aggrieved by an order of the Central Government, imposing any of the above restrictions, may apply to court for relief.

263-A Section 177 which lays down that at any general meeting a resolution put to vote shall be decided on a show of hands in the first instance, Sections 255 and 256 which deal with retirement of directors by rotation and Section 263 which lays down that the appointment of directors

Section No.	Substance of main change

should be voted on individually does not apply to companies which do not carry on business for profit or prohibits the payment of a dividend to its members.

293 For the purpose of the section the expression "temporary loans" has been defined. It means loans repayable on demand or within six months from the date of the loan such as short term cash credit arrangements, discounting of bills, and the issue of other short term loans of a seasonal character. This expression does not include loans raised for the purpose of financing expenditure of a capital nature.

294 Sole selling agents cannot be appointed for a term exceeding five years at a time. The appointment of a sole selling agent should be approved by the company at the next general meeting after appointment. If the general body disapproves, the appointment will cease to be valid.

Government's approval is necessary to appoint a managing agent who has ceased to hold office as such within three years from the date of his ceasing to be a managing agent.

Government have the power to vary at their discretion the terms of any sole selling agency agreement.

297 Board's consent is not necessary for the purchase of goods and materials from the company or the sale of goods and materials to the company by a director, relative, etc., for cash at market price.

299 For the purpose of considering whether a director is interested or not merely 2% shareholding in any other company will not render the director "interested".

396 The Central Government may, if it is satisfied that it is essential to do so in the public interest, order the amalgamation of two or more companies.

418 Provident fund monies may be deposited either in the Post Office Savings Bank or in a separate account with the State Bank of India or a Scheduled Bank.

615 The Central Government may, by order, require companies to furnish such information or statistics regarding their constitution or working and within such time, as may be specified in the order and it is the duty of companies to comply with such order.

Section No.	Substance of main change
616	In the case of banking companies, insurance companies, electricity supply companies and other companies governed by separate enactments, the provisions of the Companies Act, 1956, will apply to the extent they are not inconsistent with the provisions of those other Acts.
617 to 620	Any company in which not less than 51% of the share capital is held by Government, will be deemed to be a Government company. A Government company cannot be managed by a managing agent. The Central Government may modify the provisions of the Companies Act, 1956, in its application to Government companies.
629-A	For the contravention of any provision of the Companies Act for which no punishment is provided a company or every officer of the company in default is liable to be fined up to Rs. 500|- and where the contravention is a continuing one, with a further fine up to Rs. 50|- for every day after the first day during which the contravention continues.

CHAPTER 42

Matters in regard to which consent of the Central Government is necessary

The Companies Act, 1956, requires that consent of the Central Government should be obtained in regard to various matters. (Under Section 637, an application to Government seeking its approval, sanction, consent, confirmation or recognition should be accompanied by such fee not exceeding Rs. 100|- as may be prescribed). A list of these is given below :—

Section No. (1)	Matters for which Central Government's consent is necessary. (2)
21	For changing name of company.
25	To dispense with the word "limited" in the case of non-profit organisations, etc.
31	To alter the articles which has the effect of converting a public company into a private company.

(1)	(2)
43-A	To become a private company again after becoming a public company by virtue of provisions contained in this section.
79	To allow a discount of more than 10% on issue of shares.
81	To offer without special resolution of company, further issues, to any persons whether members or not.
81	To issue debentures or to raise loans if such debentures or loans are to be converted into shares.
89	To continue shares carrying disproportionate voting or other rights (deferred shares) issued before the 1st December, 1949.
115	To issue share warrants.
198	To obtain an increase in the minimum remuneration of Rs. 50,000/- permissible in the absence or inadequacy of profits.
204	Initial appointment for a term exceeding five years, of a firm or company to or in any office or place of profit other than the office of managing agents, Secretaries and Treasurers, etc.
205	To declare and pay dividend without providing for depreciation, or after providing for depreciation at a rate different from what is provided in the Indian Income-tax Act and the Rules made thereunder.
208	To pay interest (on shares) out of capital in certain cases.
211	To obtain exemption in respect of the particulars to be disclosed in the Balance Sheet and Profit and Loss Account as required by Schedule VI.
212.	To exempt any holding company in regard to the particulars to be included in its Balance Sheet (about its subsidiaries).
213	To extend the financial year of a holding company or a subsidiary company so as to enable the two financial years to coincide, or so as to enable the financial year of the holding company to end within six months of the end of the financial year of the subsidiary.

(1)	(2)
235	To have inspectors appointed under certain circumstances.
239	For an inspector to investigate also the affairs of allied or sister concerns.
259	To increase the number of directors in certain cases.
268	To amend certain provisions relating to appointment of managing directors, non-rotational directors and whole-time directors, in the case of public companies and their subsidiaries.
269	The appointment of a person for the first time as a managing or whole-time director unless approved by Government will not have effect. In the case of managing director or whole-time director appointed for the first time after incorporation of the company after the commencement of the amending Act approval should be obtained within three months from the date of incorporation. After the amending Act any reappointment for the first time should also be approved by Government.
294	Appointment of managing agent as sole selling agent where such managing agent has ceased to hold office as such between 1st April, 1956, and the commencement of the amending Act should be approved within a period of six months from the commencement of the amending Act. Otherwise it will become void and inoperative. No managing agent who has ceased to hold office before the commencement of the amending Act can be appointed as a sole selling agent within three years of his ceasing to be a managing agent without the approval of Government. Government's approval is also necessary to appoint a managing agent who has ceased to hold office as such after the commencement of the amending Act within three years from the date of his ceasing to be a managing agent.
295.	To give loan or other financial assistance to directors, etc.
300	To obtain exemption in regard to the provisions relating to quorum for Board meetings.
309	To pay as remuneration to whole-time director or a managing director more than 5% of the net profits if there is one such director ; or if there are more than one such director then more than 10% of the net profits.

(1)	(2)
309	To pay more than 1% or 3% as the case may be, of the net profits as remuneration to a director who is not in the whole-time employment, or the managing director, and whose remuneration does not include any monthly payment.
309	To waive the recovery of any remuneration paid in excess of the permissible limits.
310 & 311	To increase the remuneration of a director, managing director, or whole-time director in the case of public companies and their subsidiaries except in the case of sitting fees up to not more than Rs. 250/- for each meeting.
326	To appoint or re-appoint a managing agent.
328	To re-appoint a managing agent earlier than two years before the expiry of his term of office.
329	To vary the terms of a managing agency agreement.
343	To transfer the office of managing agent.
345	To succeed to a managing agency by inheritance.
346	To effect changes in constitution of managing agency firms and companies.
347	To obtain exemption from the provisions of Schedule VIII in regard to the declarations to be filed by managing agency companies.
352	To pay to managing agents remuneration exceeding 10% of net profits.
360	To a contract between a company and its managing agent for the managing agent supplying or rendering any service other than that of managing agent.
363	To waive the recovery of any sum received by a managing agent in excess of the limits prescribed by the Act.
370	To give loans to companies beyond 30% in the aggregate of the lending companies subscribed capital plus free reserves ; or in the case of loans to companies within the same group, 20%.
372	To invest in other companies more than 30% of the subscribed capital of the investing company.

(1)	(2)
372	To invest in shares and debentures of other companies belonging to the same group in excess of the limits prescribed by this section.
373	To continue to hold existing investments in shares and debentures of companies belonging to the same group made after the 1st April, 1952, in excess of the limits prescribed in Section 372.
384	The appointment of a person for the first time as a manager unless approved by Government will not have effect. In the case of manager appointed for the first time after the incorporation of the company after the commencement of the Amendment Act approval should be obtained within three months from the date of incorporation. After the Amendment Act any reappointment for the first time should also be approved by Government.
386	For the same person to be manager of more than two companies.
387	To pay as remuneration to a manager exceeding in the aggregate 5% of the net profits.
396 A	To dispose of books and papers of an amalgamated company.
399	To apply to the Court for relief on the ground of oppression or mismanagement in certain cases.
408	To have Government directors appointed with a view to prevent oppression or mismanagement.
408	To effect a change in the Board of Directors after a person has been appointed by Government as director during the time such Government director holds office.
409	To prevent such a change in the Board of Directors as is likely to affect the company prejudicially.

CHAPTER 43

Books and Registers to be maintained by companies

(The Act requires companies to keep certain books and registers. These are pointed out below. The figures within brackets are the numbers of the relevant sections).

Every company should maintain a register of its investments not held in its own name. The register should show in respect of each such investment, its nature, value and such other particulars as are necessary to identify it, and the bank or person in whose name it is held. (49).

Public companies should enter in their Register of Members the following particulars, when issuing bearer shares :—

(*a*) the fact of the issue of the bearer share (share warrant);

(*b*) the distinguishing numbers of the shares covered by the warrant ; and

(*c*) the date of the issue of the warrant. (115).

Every company should keep at its Registered Office a Register of Charges and enter in it details of mortgages and charges specifically affecting the company's property and all floating charges on the undertaking or property of the company, giving in each case a short description of the property charged, the amount of the charge, and the names of the persons entitled to the charge. (143).

Every company should keep a Register of Members and enter in it the following particulars :—

(a) name, address and occupation of each member ;

(*b*) where the company has a share capital, the number of shares held by each member, the distinguishing numbers of the shares and the amount paid up on those shares ;

(*c*) the date on which a person was entered as a member ;

(*d*) the date on which a person ceased to be a member ; and

(*e*) where the company has converted any of its shares into stock, the amount of stock held by each member. (150).

Every company having more than fifty members should keep an Index of Members showing the names of its members and containing sufficient entries to indicate the relevant folio in the Register of Members. The Index of Members may be in the form of a card index: but where the Register of Members is itself in the form of an index, the Index of Members need not be maintained. (151).

Every company should keep a Register of Debenture-holders showing in respect of each debenture-holder, his name, address

and occupation, the number of debentures held by him, the distinguishing numbers of each debenture, the amount paid up, the date on which he became debenture-holder and the date on which he ceased to be a debenture-holder. (152).

Every company having more than fifty debenture-holders should maintain an Index of Debenture-holders showing the name of the debenture-holder, and sufficient particulars to indicate his folio in the Register of Debenture-holders. The Index of Debenture-holders may be in the form of a card index: but if the Register of Debenture-holders is itself in the form of an index, then, a separate index is not necessary. (152).

It is permissible for any company which has issued debentures or which has a share capital to keep a Branch Register of Members or Debenture-holders in any country outside India. (157).

Every company should keep minutes books for directors' meetings and general meetings. Each page of each minutes should be initialled and the last page should be dated and signed, in the case of directors' meetings by the Chairman of the meeting or of the next meeting and in the case of general meeting by the Chairman of the meeting or by an authorised director. (193).

Every company should keep at its Registered Office (or at such other place as may be decided by the Board) proper books of account showing (*i*) receipts and expenditure, (*ii*) sales and purchases ; (*iii*) assets and liabilities ; and (*iv*) in the case of a manufacturing company particulars relating to its utilisation of material or labour if so required by Central Government. Where a company has a branch office, the books of the branch may be kept at the branch office but quarterly return should be submitted to the head office. The books of account should be such as to give a "true and fair" view of the state of affairs of the company. The books of account of every company relating to a period of not less than eight years immediately preceding the current year shall be preserved in good order. (209).

Every company should keep a register of "Contracts, Companies and Firms in which Directors are interested". The following particulars should be entered in that register :—

(*i*) the date of the contract or arrangement ;

(*ii*) names of the parties to the contract or arrangement ;

(*iii*) principal terms and conditions of the contract or arrangement ;

(*iv*) the date on which the contract or arrangement was placed before the Board ;

(*v*) the names of the directors voting for and against, as well as those who remained neutral ;

(*vi*) the names of the companies and firms in respect of which notice has been given by any director as being interested.

Entries in the register should be made within seven days of the Board meeting at which the contract or arrangement was approved or the notice of interest was given. (301).

Every company should keep at its Registered Office a register of "directors, managing agents, Secretaries and Treasurers, manager, managing director and secretary". In respect of these persons, the register should contain the particulars required by clauses (*a*), (*b*), (*c*), (*d*) and (*e*) of sub-section (1) of Section 303 of the Act. Attention is particularly invited to the Explanation to sub-section (1) of the section. (303).

Every company should keep a Register of Directors' Shareholdings. The Register should in regard to each director of the company, the number, description and amount of the shares and debentures held by him, or in trust for him, or of which he has the right to become the holder. These particulars should be in respect of the shares and debentures of the company itself and also of all subsidiaries of the company, and where the company is itself a subsidiary, then, of its holding company and of all other subsidiaries of such holding company. Any person in accordance with whose directions or instructions the Board of Directors of the company are accustomed to act will be deemed to be a director of the company for the purposes of this register. Further, shares and debentures held by any other company will be deemed to be held by the director if he controls one-third or more of the voting power of such other company or if the Board of Directors of such other company are accustomed to act in accordance with his directions or instructions.

The above provisions apply also in respect of managing agents, Secretaries and Treasurers and managers similarly as in respect of directors. (307).

When a company appoints its managing agent or his associate as selling agent of the goods produced by it, then, particulars of such appointment should be entered in a separate register maintained for the purpose. (356).

Where the business of a company consists in supplying or rendering any services and it has appointed its managing agent or his associate for procuring such business from outside India, particulars of the appointment should be entered in a separate register maintained for the purpose. (357).

Where a company has appointed its managing agent or his associate as its buying agent, then, particulars of the appointment should be entered in a separate register maintained for the purpose. (358).

Where the managing agent or his associate is buying or selling agent of some other concerns, and in that capacity enters into a contract with the managed company on principal-to-principal basis, particulars of such contracts shoul dbe entered in a separate register maintained for the purpose. (359).

Where a company enters into a contract with its managing agent or his associate on a principal-to-principal basis for the sale, purchase or supply of any property, or for the supply or rendering of any services, or for the under-writing of any shares or debentures, particulars of such contracts should be entered in a separate register maintained for the purpose. (360).

In connection with inter-company loans, every lending company should keep a register showing :—

(*a*) the names of all companies under common management ;

(*b*) the name of every firm in which a partner is a company under common management ;

(*c*) name of the company to which loan, etc. has been given ;

(*d*) amount of the loan ; and

(*e*) date on which loan, etc. was made.

Entries in the register should be made within 3 days of the making of the loan, etc. (370).

Every company should keep a Register of Investments showing the following particulars in respect of all investments made by it in shares and debentures of other companies :—

(*i*) name of the company in which the investment is made ;

(*ii*) date on which the investment is made ;

(*iii*) where the company is within the group, the date on which it came within the group ; and

(*iv*) the name of all companies within the group.

Particulars of the investments should be entered in the Register within seven days of the making of the investment. The section does not apply to banking companies, insurance companies, private companies other than subsidiaries and to investments by any holding company in its subsidiary, or by any managing agent in his managed company. (372).

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CHAPTER 44

To be sent to members etc. on request

The Act requires that copies of certain documents, etc. should be sent to members, debenture-holders, etc., on their request within certain time limits prescribed by the Act. A brief reference to these is given below. The figures within brackets are the numbers of the relevant sections of the Act.

Every company should, on being so required by a member, send to him within seven days of the requirement and subject to the payment of a fee of Re. 1|-, a copy of the following documents as in force for the time being : (*a*) Memorandum and Articles of Association ; (*b*) agreement relating to managing agency or Secretaries and Treasurers ; (*c*) special resolution ; (*d*) resolution of the Board relating to appointment, etc. of managing director ; (*e*) any resolution or agreement which binds all the members or any class of shareholders though not agreed to by all of them ; and (*f*) resolutions for voluntary winding-up. (39).

Every company should, within three months after the allotment of any of its shares, debentures or debenture stock and within three months after the registration of the transfer of any such shares, debentures, or debenture stock, complete and have ready for delivery the relevant certificates. If a company has not done so, and a notice has been served on it requiring it to make good the deftult, it should make good the default within ten days after the serving of the notice. (113).

A copy of any trust deed for securing any issue of debentures should be forwarded to any member or debenture-holder of the company on his request within seven days of such request, on payment of Re. 1|- (in the case of a printed trust deed), and a fee of six annas per hundred words in the case of trust deeds not printed. (118).

Any member, debenture-holder or other person may require a copy of the Register of Members, Index of Members, Register of Debenture-holders, Index of Debenture-holders or Annual Return (and its annexures). On such requirement and on payment at the rate of six annas per hundred words, the company should cause the required copy to be sent to the respective person within a period of ten days. (163).

Any member of a company is entitled to be furnished within seven days, if he has made a request in this behalf to the company, with a copy of the minutes of the proceedings of any general meeting of the company held after 15th January, 1937, provided a fee of six annas per hundred words is paid. (196).

Any member or debenture-holder or a company shall, on

demand, be entitled to be furnished without charge with a copy of the last Balance Sheet of the company including the Profit and Loss Account, Auditor's Report and other annexures. Further, any person from whom the company has accepted a sum of money by way of deposit shall, on demand accompanied by a fee of Re. 1|- be entitled to be furnished with a copy similarly. The said copies, should be furnished within seven days of the demand. In the case of a private company, the above right is confined to Balance Sheets laid before the company after the commencement of the Act (219).

In the case of half-yearly statements of banking companies, insurance companies, deposit, provident or benefit societies, every member and every creditor is entitled, on payment of eight annas to be furnished with a copy of the statement within seven days of such payment. The above provision does not apply to life insurance companies governed by the Insurance Act of 1938. (223).

Any member of a company is entitled to demand copies of or take extracts from the Register of "Contracts, Companies, and Firms in which Directors are interested". The copy should be supplied on payment at the rate of six annas per hundred words, within ten days of the requirement. (301).

Similarly, any member of a company is entitled to ask for and (on payment at six annas per hundred words) be supplied with copies of contracts for the appointment of a manager, managing director, managing agent or Secretaries and Treasurers, and also Board resolutions appointing or varying the terms of contract of a manager, managing director or whole-time director. (302).

Any member of a company is entitled to ask for and be supplied with copies (on payment at six annas per hundred words) of the Registers relating to the appointment of the managing agent or his associate as buying agent, selling agent, etc. (356 to 360 and 362).

Any member of the lending company may require a copy of the register kept under Section 370 showing the names of all companies under the same management as the lending company and containing other particulars as the name of the company to which the loan was made, the amount of loan etc. On such requirement and on payment at the rate of -|6|- per 100 words, the company should cause the required copy to be sent to the member within a period of 10 days. (370).

Any member of the investing company may require a copy of the register kept under section 372 giving particulars of inter-corporate investment and on such application and on payment at the rate of -|6|- per 100 words the company should cause the required copy to be sent to the respective member within a period of 10 days. (372).

CHAPTER 45

To be filed with Registrar.

The Companies Act, 1956, requires that in regard to various matters such as shifting of registered office, alteration of Articles, etc., notice should be given or copy of document should be filed with the Registrar within a prescribed period. The following is a list of the matters in regard to which such filing is required :—

Section No.	Matter.	Period within which notice should be given or document should be filed with Registrar.
18	Court's order confirming alteration of memorandum and altered copy of memorandum.	Certified copy of Court's order and printed copy of memorandum should be filed with Registrar within three months of date of order.
23	Change of name of company	Copy of the resolution should be filed with Registrar within fifteen days of the passing of the resolution.
31	Alteration in the Articles which has the effect of converting a public company into a private company	Printed copy of the Articles as altered should be filed within one month from the date of receipt of order of approval from Government.
43A	Private company becoming a public company.	Within three months from the date of the change Registrar should be informed.

43A	Private companies having a share capital to file a second certificate stating that since the date of last return or date of incorporation no company has or have held more than 25% of its paid-up capital or that such companies as hold more than 25% shares are private companies of the categories specified in sub-sections (6) (*a*) and (*b*)	Along with the annual return.
44	Prospectus or statement in lieu of prospectus to be filed by private company on ceasing to be private	Within thirty days of so ceasing.
60	Prospectus relating to an intended company ..	Certified copy should be filed with Registrar on or before date of publication of the prospectus.
70	Statement in lieu of prospectus to be filed by companies which have not issued a prospectus, or which have issued a prospectus but not made any allotment	Should be filed with Registrar three days before making allotment.
75	Return as to allotments	Within thirty days of the allotment.
75	Allotments of shares otherwise than for cash ..	Particulars of the contract should be filed with Registrar within thirty days of the allotment.
75	Allotment of bonus shares	A copy of the resolution authorising the issue together with the return of allotment should be filed.

Section No.	Matter.	Period within which notice should be given or document should be filed with Registrar.
75	Issue of shares at a discount	A copy of the resolution authorising such issue together with a copy of the order of the Court sanction, and where the rate of discount exceeds 10% also a copy of the order of Government permitting the issue.
76	Commission in respect of shares	A copy for contract for payment of commission should be delivered to Registrar along with the prospectus.
95	Consolidation, division, cancellation, etc. of shares	Notice of consolidation, etc. should be given to Registrar within thirty days.
95	Conversion of shares into stock	Notice of conversion should be given to Registrar within thirty days.
97	Increase of share capital or of members ..	Notice of the increase should be filed with Registrar within thirty days after the passing of the resolution authorising the increase.
103	Order of Court confirming reduction of capital	If not filed with Registrar, the reduction will not take effect.

107	Variation of shareholders' rights	Copy of Court's order in respect of applications by dissentient shareholders should be filed with Registrar within thirty days after the service of the order on the company.
125	Particulars of mortgages and charges ..	If not filed within thirty days of the creation of the mortgage or charge, will be void against liquidator or creditor. The Registrar, for sufficient cause shown may extend the period by seven days.
127	Acquisition by company of property subject to charge	Prescribed particulars of charge together with certified copy of instrument should be delivered to Registrar within thirty days of acquisition.
128	Particulars of series of debentures entitling holders *pari-passu*	Should be filed with Registrar within thirty days of execution of the deed.
135	Modification of mortgages or charges ..	Particulars should be filed with Registrar within twenty-one days of modification.
137	Order for appointment of receiver or of person to manage company's property	Notice should be given to Registrar within thirty days from the date of the order.
138	Payment or satisfaction, in whole of mortgage or charge	Notice should be given to Registrar within thirty days.
146	Situation of registered office	Notice should be given to Registrar within thirty days after incorporation.

Section No.	Matter.	Period within which notice should be given or document should be filed with Registrar.
146	Change of situation of registered office ..	Notice should be given to Registrar within thirty days of change.
149	Declaration that provisions of this section have been complied with	Should be filed with Registrar before commencement of business or exercise of borrowing powers.
157	Notice of situation of office where foreign register is kept	Notice of the situation or change in situation or its discontinuance should be filed with Registrar within thirty days from the opening, change or discontinuance.
159 & 160	Annual Returns	Should be filed with Registrar within sixty days from the date of the annual general meeting. Where the return is filed without holding the Annual General Meeting it should be accompanied by a statement specifying the reasons for not holding the meeting.
165	Statutory report	Certified copy of the statutory report should be filed with Registrar forthwith after copies have been sent to press.

192	Special resolutions ; resolutions agreed to by all the members of a company ; resolutions or agreements relating to appointment, etc. of managing director ; agreement relating to appointment, etc. of managing agent or Secretaries and Treasurers ; resolutions or agreements agreed to by all members of a class of shareholders, resolutions approving appointment of sole selling agents ; resolutions authorising Board to sell undertaking, to borrow beyond paid-up capital and reserves, and to contribute to charities, etc., beyond Rs. 25,000/- or 5% of average profits. ..	Certified copy together with a copy of the statement of material facts annexed under section 173 to the notice should be filed with Registrar within thirty days.
209	Board's decision to keep the books of account at any place in India other than at the registered office	Within seven days of the decision, notice should be filed with the Registrar giving the full address of the other place.
220	Balance Sheet and Profit and Loss Account ..	Three copies should be filed with Registrar within thirty days of the meeting.
224	Appointment of non-retiring auditor	The auditor unless he is a retiring auditor should inform the Registrar within 30 days of receipt of information from company that he has accepted or refused to accept.
264	Consent of candidate for directorship ..	A person other than a director who has served as director in the immediate preceding term. should file his consent with Registrar within 30 days of appointment. If it is not so filed he cannot act as director.

Section No.	Matter.	Period within which notice should be given or document should be filed with Registrar.
266	Consent of first directors	Should be filed with Registrar prior to filing of articles, prospectus, etc.
276	Directorships of more than twenty companies	Excess directorships should be renounced and the choice made should be intimated to the Registrar within two months of commencement of Act.
277	Appointment as director of a person who is already director of twenty companies ..	The director should make his choice and intimate the same to Registrar within fifteen days.
303	Change of particulars in Register of Directors, Managers, etc.	Return in duplicate in prescribed form should be filed with the Registrar within thirty days of first appointment of directors. A notification in duplicate in prescribed form is to be filed if there is a change among directors, managing directors, etc. within thirty days from the date of the change.

391	Sanction by Court of compromise with creditors and members	Certified copy of Court's order should be filed with Registrar if order is to have effect.
394	Order of Court in connection with re-construction and amalgamation of companies ..	Certified copy of Court's order should be filed with Registrar within thirty days of the order.
404	Alteration of company's Memorandum or Articles pursuant to Court's order	Certified copy of order should be filed with Registrar within thirty days after the making of the order.
421	Accounts of receivers	An abstract of the accounts in the prescribed form should be filed with Registrar once every half year and also on ceasing to act as receiver.
592	Documents, etc. to be delivered to Registrar by foreign companies carrying on business in India	Within thirty days of establishment of place of business in India.

Section No.	Matter.	Period within which notice should be given or document should be filed with Registrar.
593	Return to be delivered to Registrar by foreign companies where documents, etc. are altered	The return in the prescribed form should be filed with Registrar in the prescribed time.
594	Balance Sheet, Profit and Loss Account and list of places of business in India to be filed by foreign companies.	No time limit fixed by the statute.
597	Foreign company ceasing to have place of business in India	Notice should be given to Registrar forthwith.
605	Prospectus of foreign companies	Certified copy should be delivered to Registrar before issue in India.

Provisions relating to winding up are omitted ; the relevant sections are, Sections 445, 466, 481, 488, 493, 497, 501, 509, 516, 518, 551 and 559.

CHAPTER 46

Penalties.

In the Companies Act, 1956, stringent penalties are imposed for contravention of various provisions of the Act. Further, in many sections the Act says that the "Officer in default" will be punished. Under Section 5 of the Act "Officer in Default" means any Officer of the company who is knowingly guilty of the default or who knowingly and wilfully authorises or permits the default. "Officer" includes directors, managing agents, Secretaries and Treasurers, manager, secretary, partners of the managing agency firm or firm of Secretaries and Treasurers, directors, etc. of the managing agency company or the company of Secretaries and Treasurers, and also any person in accordance with whose directions the Board or any director is accustomed to act. In many cases it includes also the company's auditor.

The following Tabular Statement shows the various penal provisions of the Act :—

Section No.	Nature of the offence.	Nature of penalty.	Person liable.
11	Being a member of a company, association or partnership formed in contravention of the provisions of this section	Fine up to Rs. 1,000/-	Every person who is a member.
22	Default in complying with any direction of the Central Government to change name of Company	Fine up to Rs. 100/- for every day of default	The company and every officer in default.
25	Omitting to remove from name of Company the words 'chamber of commerce' within three months after revocation of licence ..	Fine up to Rs. 500/- for each day ..	The company.

Section No.	Nature of the offence.	Nature of penalty.	Person liable.
39	Not sending to member on being required by him within seven days of such request, copies of Memorandum, Articles, etc.	Fine up to Rs. 50|- for each offence ..	Company and every officer in default.
40	Issuing copies of Memorandum, Articles without noting therein alterations made ..	Fine up to Rs. 10|- for each copy issued ..	Company and every officer in default.
43-A	Failure to inform the Registrar within three months that private company has become a public company	Fine up to Rs. 500|- for every day during which the default continues ..	Company and every officer in default.
44	Omitting to file with Registrar a statement in lieu of prospectus by a private company ceasing to be a Private Company	Fine up to Rs. 500|- for every day of default	Company and every officer in default.
44	Filing with Registrar prospectus or statement in dieu of prospectus including any untrue statement	Imprisonment up to two years and|or fine up to Rs. 5,000|- ..	Person who authorised the filing.
49	Default in complying with the requirements of the section that investments of company should be held in its own name, etc. ..	Fine up to Rs. 5,000|-	Company and every officer in default.
56	Issuing form of application for shares or debentures without being accompanied by prospectus	Fine up to Rs. 5,000|-	The person issuing.

59	Issuing a prospectus which contravenes the provisions relating to experts	Fine up to Rs. 5,000/-	The company and every person knowingly a party to the issue.
60	Issuing a prospectus without copy being delivered to the Registrar, etc.	Fine up to Rs. 5,000/-	The company and every person knowingly a party to the issue.
63	Issuing a prospectus which includes any untrue statement	Imprisonment up to two years and/or fine up to Rs. 5,000/- ..	Every person who authorised the issue.
68	Fraudulently inducing persons to invest money	Imprisonment up to five years and/or fine up to Rs. 10,000/- ..	Any person who induced or attempted to induce.
68-A	Personation for acquisition, etc. of shares ..	Imprisonment up to five years ..	Any person who applied or induced.
69	Omitting to deposit and keep deposited in a scheduled bank moneys received from applicants for shares	Fine up to Rs. 5,000/-	Every promoter, director or other person knowingly responsible for the contravention.
70	Making allotments without filing statement in lieu of prospectus, etc.	Fine up to Rs. 1,000/-	Company and every director wilfully authorising or permitting the contravention.

Section No.	Nature of the offence.	Nature of penalty.	Person liable.
70	Delivering to Registrar statement in lieu of prospectus which includes any untrue statement	Imprisonment up to two years and or fine up to Rs. 5,000|- ..	Any person who authorised the delivery.
72	Allotting shares or debentures before the beginning of the fifth day after the issue of the prospectus, etc.	Fine up to Rs. 5,000|-	Company and every officer in default.
73	Omitting to keep in a separate bank account with a scheduled bank application moneys for shares and debentures until liability to repay eases	Fine up to Rs. 5,000|-	Company and every officer in default.
75	Default in complying with the provisions of the statute relating to return of allotments ..	Fine up to Rs. 500|- for every day of default	Every officer in default.
	Showing shares as allotted for cash, in the Return of allotments when the allotment has been merely by book adjustment ..	Fine up to Rs. 5,000|-	Every officer in default.
76	Defaults in complying with the provisions of the statute relating to commissions and discounts	Fine up to Rs. 500|-	Company and every officer in default.
77	Contravening restrictions on purchase by company or loans by company for purchase of its own or its holding company's shares ..	Fine up to Rs. 1,000|-	Company and every officer in default.

79	Omitting to include in prospectus certain particulars relating to discounts on shares ..	Fine up to Rs. 50/- ..	Company and every officer in default.
80	Not complying with the provisions of this section relating to redeemable preference shares	Fine up to Rs. 1,000/-	Company and every officer in default.
84	Fraudulent renewal or issue of duplicate share certificates	Fine up to Rs. 10,000/-. Imprisonment up to six months and/or fine up to Rs. 10,000/- ..	Company. Every officer in default.
89	Not complying with the provisions of this section relating to termination of disproportionately excessive voting rights in existing companies	Fine up to Rs. 1,000/-	Company and every officer in default.
95	Not giving to Registrar notice of consolidation, etc., of share capital	Fine up to Rs. 50/- for every day of default	Company and every officer in default.
97	Not filing with Registrar notice of increase of capital or of members within fifteen days of passing of resolution	Fine up to Rs. 50/- for every day of default	Company and every officer in default.
105	Penalty for concealing name of creditor, etc. ..	Imprisonment up to one year and/or fine	The officer concerned of the company.
107	Not forwarding to Registrar copy of order of Court in regard to variation of shareholders' rights	Fine up to Rs. 50/- ..	Company and every officer in default.

Section No.	Nature of the offence.	Nature of penalty.	Person liable.
111	Not complying with the order or direction of Central Government relating to registration of transfer	Fine up to Rs. 1,000|- and a further fine of Rs. 100|- for every day during which the default continues ..	Company and every officer in default.
111	Not sending notice of refusal to register transfer or transmission to transferor, transferee or other person	Fine up to Rs. 50|- for every day of default	Company and every officer in default.
113	Not completing and having ready for delivery share or debenture certificate within two months of allotment, etc.	Fine up to Rs. 500|- for every day of default	Company and every officer in default.
115	Not complying with requirements of this section relating to entries in the register in respect of share warrants	Fine up to Rs. 50|- for every day of default	Company and every officer in default.
116	Penalty for personation of shareholder ..	Imprisonment up to three years and fine	The person personating
118	Not forwarding to members or debenture-holders at their request, within seven days, copy of debenture trust deed	Fine up to Rs. 50|- and further fine up to Rs. 20|- for every day	Company and every officer in default.

127	Not delivering to Registrar for registration particulars of charges on company acquiring property subject to charge	Fine up to Rs. 500|-	Company and every officer in default.
133	Delivering debenture or certificate of debenture stock without endorsing on it certificate of registration	Fine up to Rs. 1,000|-	Any person knowingly delivering or wilfully authorising or permitting the delivery.
137	Not giving notice to Registrar of appointment of receiver or manager or of receiver or manager ceasing to act	Fine up to Rs. 50|- for every day of default	Any person defaulting to give notice.
142	Defaulting to file with Registrar for registration particulars of any charge, etc.	Fine up to Rs. 500|- for every day of default	Company and every officer or other person in default.
142	Not complying with any of the requirements of the Act as to registration with Registrar of any charge, etc.	Fine up to Rs. 1,000|-	Company and every officer in default.
143	Omitting to make the requisite entries in company's Register of Charges	Fine up to Rs. 500|-	Officer knowingly omitting or wilfully authorising or permitting the omission.
144	Refusing to allow inspection of copies of instruments creating charges and of company's Register of Charges	Fine up to Rs. 50|- and further fine up to Rs. 20|- for every day of default ..	Company and every officer in default.

Section No.	Nature of the offence.	Nature of penalty.	Person liable.
146	Not complying with the requirements of this section in regard to registered office ..	Fine up to Rs. 50|- for every day of default	Company and every officer in default.
147	Not complying with the provisions of the Act regarding publication of name by company	Fine up to Rs. 50|- for every day ..	Company and every officer in default.
147	Not complying with the provisions of the Act regarding publication of name in seal, etc.	Fine up to Rs. 500|- ..	The Company.
147	Using seal, business letters, etc. which do not comply with provisions of Act relating to publication of name of company	Fine up to Rs. 500|- ..	Officer or person concerned.
148	Not complying with requirements of this section regarding publication of authorised as well as subscribed and paid-up capital	Fine up to Rs. 1,000|-	Company and every officer in default.
149	Commencement of business or of a new business or exercising borrowing powers in contravention of the section	Fine up to Rs. 500|- for every day during which contravention continues ..	The person responsible for the contravention.
150	Default in complying with the provisions of this section relating to Register of Members ..	Fine up to Rs. 50|- for every day of default	Company and every officer in default.
151	Default in complying with the provisions of this section relating to Index of Members ..	Fine up to Rs. 50|- ..	Company and every officer in default.

152	Default in complying with the requirements of this section regarding Register and Index of Debenture-holders	Fine up to Rs. 50|- ..	Company and every officer in default.
154	Closing Register of Members or Debenture-holders otherwise than in compliance with the provisions of this section	Fine up to Rs. 500|- for every day ..	Company and every officer in default
157	Not filing with Registrar notice of situation of office where foreign register is kept ..	Fine up to Rs. 50|- for every day of default	Company and every officer in default.
158	Not transmitting to registered office in India copies of entries in foreign register and not keeping at registered office in India duplicate of foreign register	Fine up to Rs. 50|- ..	Company and every officer in default.
162	Not complying with the provisions of Sections 159, 160 or 161 regarding annual returns ..	Fine up to Rs. 50|- for every day of default	Company and every officer in default.
163	Refusing inspection, etc. of registers, returns, etc.	Fine up to Rs. 50|- for every day ..	Company and every officer in default.
165	Not complying with the provisions of this section relating to statutory meeting	Fine up to Rs. 500|- ..	Every director or other officer in default.
168	Defaulting to hold annual geneal meeting or to comply with directions of Central Government in regard to annual general meeting ..	Fine up to Rs. 5,000|- and a further fine up to Rs. 250|- for every day during which the default continues ..	Company and every officer in default.

Section No.	Nature of the offence.	Nature of penalty.	Person liable.
176	Omitting to state in notice of meeting that a member is entitled to appoint proxy and that proxy need not be a member.	Fine up to Rs. 500/- ..	Every officer in default.
176	Issuing invitation at company's expense to appoint named person as proxy	Fine up to Rs. 1,000/-	Every officer knowingly issuing the invitation or wilfully authorising or permitting its issue.
188	Not complying with the provisions of the section regarding circulation of members' resolutions	Fine up to Rs. 5,000/-	Every officer in default.
192	Not filing with Registrar certain resolutions and agreements	Fine up to Rs. 20/- for every day of default	Company and every officer in default.
192	Not annexing copies of certain resolutions or agreements to Articles, or not forwarding to member on request copy of certain resolutions or agreements	Fine up to Rs. 10/- for every day of default	Company and every officer in default.
193	Not complying with the provisions of the section regarding minutes of proceedings of general meetings and of Board and other meetings	Fine up to Rs. 50/- ..	Company and every officer in default.

196	Refusing inspection of minutes books of general meetings or not furnishing to member on request, within seven days, copy of minutes	Fine up to Rs. 500/- ..	Company and every officer in default.
197	Circulating or advertising proceedings of general meetings without including certain particulars	Fine up to Rs. 500/- ..	Company and every officer in default.
202	Undischarged insolvents functioning as director, etc.	Imprisonment up to two years and/or fine up to Rs. 5,000/- ..	The person so functioning.
203	Contravening order of Court that certain fraudulent persons shall not act as director, etc. without Court's consent	Imprisonment up to two years and/or fine up to Rs. 5,000/- ..	The person contravening.
207	Failing to distribute dividends within forty-two days of declaration	Simple imprisonment up to seven days and fine ..	Every director, managing agent, Secretaries and Treasurers, partner of managing agency firm or firm of Secretaries and Treasurers, director of company of managing agents or of Secretaries and Treasurers who is knowingly a party to the default.

Section No.	Nature of the offence.	Nature of penalty.	Person liable.
209	Failing to take all reasonable steps to secure compliance by the company with the requirements of the Act relating to books of account	Fine up to Rs. 1,000/- and/or imprisonment up to six months ..	The managing agent, Secretaries and Treasurers, Managing Dirtor, Manager, partners of the managing agency or Secretaries and Treasurers, directors of the managing agency company or company of Secretaries and Treasurers, or every director, officer, employee or agent of the company or the person charged with the duty of ensuring compliance with the section.
210	Failing to take all reasonable steps to comply with the provisions of this section relating to annual accounts and Balance Sheet ..	Imprisonment up to six months and/or fine up to Rs. 1,000/- ..	Any director or person charged with the duty of ensuring compliance with the section.
211	Failing to take all reasonable steps to secure compliance with the provisions of the Act regarding Balance Sheet and Profit and Loss Account	Imprisonment up to six months and/or fine up to Rs. 1,000/- ..	Same as under Section 209.

212	Failing to take all reasonable steps to comply with the provisions of the section regarding the inclusion in holding company's Balance Sheet of certain particulars of subsidiaries ..	Imprisonment up to six months and/or fine up to Rs. 1,000/- ..	Same as under Section 209.
217	Failing to take all reasonable steps to comply with certain provisions relating to Board's report	Imprisonment up to six months and/or fine up to Rs. 2,000/- ..	Any director, chairman, or other person charged with duty of ensuring compliance with section.
218	Penalty for improper issue, circulation or publication of Balance Sheet or Profit and Loss Account	Fine up to Rs. 500/- ..	Company and every officer in default.
219	Not sending to members, etc., copies of Balance sheet, auditor's report, etc. twenty-one days before date of meeting	Fine up to Rs. 500/- ..	Company and every officer in default.
219	Default in complying with certain demands for copies of Balance Sheet, etc., within seven days of such demand	Fine up to Rs. 500/- ..	Company and every officer in default.
220	Not filing with Registrar copies of Balance Sheet, etc.	Same as under Section 162 ..	Company and every officer in default.

Section No.	Nature of the offence.	Nature of penalty.	Person liable.
221	Defaulting to disclose to company certain payments	Imprisonment up to six months and/or fine up to Rs. 2,000/- ..	Every officer of the company, partners of managing agency firm or firm of Secretaries Treasurers, directors of managing agency company or company of Secretaries and Treasurers.
223	Non-compliance by certain companies with the provisions of the section regarding publication of half-yearly statement in Form F ..	Fine up to Rs. 50/- for every day of default	Company and every officer in default.
224	Failure to give notice to Central Government within seven days where no auditors are appointed at an annual general meeting ..	Fine up to Rs. 500/- ..	Company and every officer in default.
232	Failure by company to comply with the provisions of Sections 225 to 231 in regard to auditors	Fine up to Rs. 500/- ..	Company and every officer in default.

233	Failure by auditor to conform to requirements of Sections 227 and 229	Fine up to Rs. 1,000|-	The auditor or other person concerned.
234	Refusing or neglecting to furnish to Registrar information or explanation required by him pursuant to this section	Fine up to Rs. 500|- and an additional fine of Rs. 50|- per day in case of continuing offence ..	The company and all persons who are or have been officers of the company.
240	Disobedience to the order of Court directing the production of books before the Inspector ..	Imprisonment up to six months and|or fine up to two thousand rupees and further fine Rs. 200|- for every day during which the disobedience continues.	Person disobeying.
248	Failure to give to Central Government information required by it regarding persons having interest in company or firm of managing agent or making false statements in giving such information	Imprisonment up to six months and|or fine up to Rs. 5,000|- ..	The person giving the information.
250	Disposing of shares or exercising voting rights in respect of the shares in contravention of the restrictions imposed by Central Government during investigation of ownership of shares and debentures	Imprisonment up to six months and|or fine up to Rs. 5,000|- ..	The person contravening.

Section No.	Nature of the offence.	Nature of penalty.	Person liable.
250	Otherwise contravening the restrictions imposed by Central Government during investigation of ownership of shares and debentures ..	Fine up to Rs. 5,000|-	Company and every officer in default.
272	Acting as director while not holding qualification shares	Fine up to Rs. 50|- for every day ..	The person so acting.
279	Being director of more than twenty companies in contravention of the provisions of the Act	Fine up to Rs. 5,000|- in respect of each additional company	The person so acting.
282	Failing to give notice to company of attainment of age 75 or acting as director after attainment of age 75 under invalid appointment ..	Fine up to Rs. 50|- for every day ..	The person so acting.
283	Functioning as a director when he knows that the office has become vacant on account of disqualifications	Fine up to Rs. 500|- for every day on which the person so functions	The person contravening.
286	Failing to give all directors notice of directors' meeting	Fine up to Rs. 100|- ..	The officer whose duty it is to give notice.

294	Refusal to furnish information required by Central Government, etc.	Fine up to Rs. 5,000|- and further fine of not less than Rs. 50| for every day the refusal continues ..	Company and every officer in default.
295	Being knowingly a party to any contravention of the restrictions in regard to loans and financial assistance to directors, etc.	Simple imprisonment up to six months or fine up to Rs. 5,000|-	The party.
299	Failure of director to disclose interest in contract, arrangement, etc.	Fine up to Rs. 5,000|-	The director concerned.
300	Interested director participating or voting in Board's proceedings	Fine up to Rs. 5,000|-	The director who knowingly does so.
301	Not complying with the provisions of the section in regard to register of contracts, companies and firms in which directors are interested ..	Fine up to Rs. 500|- ..	Company and every officer in default.
302	Failure by company to disclose to members directors' interest in contract appointing manager, managing director, managing agent or Secretaries and Treasurers	Fine up to Rs. 1,000|-	Company and every officer in default.
303	Not keeping Register of Directors or filing with Registrar return of directors and managers, etc.	Fine up to Rs. 50|- for every day default ..	Company and every officer in default.
304	Refusing inspection of Register of Directors, managing agents, etc., kept under Section 303	Fine up to Rs. 50|- ..	Company and every officer in default.

Section No.	Nature of the offence.	Nature of penalty.	Person liable.
305	Not disclosing to company within 20 days of appointment the requisite particulars for the Register of Directors	Fine up to Rs. 500/- ..	Director, managing director, managing agent, Secretaries and Treasurers, manager or secretary.
307	Not producing at annual general meeting Register of Directors' Shareholdings	Fine up to Rs. 500/- ..	Company and every officer in default.
307	Not complying with the provisions of the Act in regard to Register of Directors' Shareholdings	Fine up to Rs. 5,000/- and further fine up to Rs. 20/- for every day of default ..	Company and every officer in default.
308	Not giving to Company notice of the necessary matters for Register of Directors' Shareholdings	Imprisonment up to two years and/or fine up to Rs. 5,000/- ..	The director concerned.
320	Failing to take reasonable steps to comply with the provisions of this section in regard to payments to directors for loss of office, etc.	Fine up to Rs. 250/- ..	The director concerned and any person properly required by the director to comply with this section.
322	Not complying with the provisions of this section by a limited company in which the liability of directors is unlimited	Fine up to Rs. 1,000/-	The director, managing agent, Secretaries and Treasurers, or officer in default, or other person concerned.

332	Acting as Managing Agent of more than ten companies after 15th August, 1960 ..	Fine up to Rs. 1,000/- for each additional company for each day of continuance ..	The person so acting.
343	Transfer of managing agency rights without the approval of general body and Central Government	Imprisonment up to six months and/or fine up to Rs. 5,000/- ..	Transferee and partners where the managing agent is a firm and every director where managing agent is a body corporate or the individual.
347	Not complying with the provisions of the Act in regard to Schedule VIII	Fine up to Rs. 50/- for every day of default	Every partner where the managing agent is a firm, or where the managing agent is a company and every director or other officer in default.
370	Failure to maintain a Register showing the names of companies under the same management and particulars of loans to them and failure to enter the particulars within three days of the making of the loan	Fine up to Rs. 500/- and further fine up to Rs. 50/- for every day during which the offence continues ..	Company and every officer in default.
371	Being a party to contravention of the provisions of the Act in regard to loans to managing agents or loans to companies under the same management	Simple imprisonment up to six months or fine up to Rs. 5,000/- ..	The party.

Section No.	Nature of the offence.	Nature of penalty.	Person liable.
372	Not keeping a Register of Investments made in shares and debentures of companies in the same group	Fine up to Rs. 500|- and also a further fine up to Rs. 50|- for every day during which the default continues ..	Company and every officer in default.
374	Penalty for contravening Sections 372 (excluding sub-sections 6 and 7) or 373 in regard to investments made in shares and debentures of companies in the same group	Fine up to Rs. 5,000|-	The officer in default.
391	Failing to annex to copy of memorandum certified copy of Court's order sanctioning any compromise or arrangement with creditors and members	Fine up to Rs. 10|- for each copy issued ..	Company and every officer in default.
393	Not complying with the requirements of Section 393 in regard to compromises with creditors and members	Fine up to Rs. 5,000|-	Company and every officer in default including trustee for debenture-holders.
393	Not giving notice to company of certain matters in connection with compromises with director and members	Fine up to Rs. 500|- ..	Every director, managing director, managing agent, Secretaries and Treasurers, manager and trustee for debenture-holders

394	Not filing with Registrar copy of order of Court on application for sanctioning compromise, etc.	Fine up to Rs. 50|- ..	Company and every officer in default.
404	Not filing with Registrar certified copy of Memorandum or Articles as altered by Court	Fine up to Rs. 5,000|-	Company and every officer in default.
407	Knowingly acting as managing or other director, managing agent, Secretaries and Treasurers or manager when the concerned agreement has been terminated or set aside by Court	Imprisonment up to one year and|or fine up to Rs. 5,000|- ..	The person so acting and every director knowingly a party to the contravention.
416	Not complying with the requirements of the section in regard to contracts by agents of company in which company is undisclosed principal	Fine up to Rs. 200|- ..	The person who entered into the contract and every officer in default.
420	Knowingly contravening or authorising or permitting the contravention of the provisions of the Act in regard to employees' securities and provident funds	Imprisonment up to 6 months or with fine up to Rs. 1,000|- ..	The officer or trustee concerned.
423	Not complying with the requirements of Sections 421 and 422 in regard to receivers .. .. (Offences relating to liquidation are omitted)	Fine up to Rs. 200|- ..	Company and every officer in default.
598	Failure by foreign company to comply with the requirements of Part XI of the Act ..	Fine up to Rs. 1,000|- and further fine up to Rs. 100|- for every day of default ..	Company and every officer or agent in default.

Section No.	Nature of the offence.	Nature of penalty.	Person liable.
606	Penalty for contravening Sections 603, 604 and 605 relating to prospectuses of foreign companies	Imprisonment up to six months and/or fine up to Rs. 5,000/- ..	Any person knowingly responsible for contravention.
614-A	Failing to comply with the order of Court directing the filing, etc. of return or document with the Registrar	Imprisonment up to six months and/or fine ..	Officer or other employee who contravenes.
615	Failure to furnish information or statistics, etc. required by the Central Government ..	Imprisonment up to three months and/or fine up to Rs. 1,000/-	Company and every officer in default.
628	Penalty for false statements in returns, reports, Balance Sheets, etc.	Imprisonment up to two years and fine ..	The person making the false statement.
629	Penalty for false evidence	Imprisonment up to seven years and fine	The person intentionally giving false evidence.
629-A	Contravention of any provision for which no punishment is provided	Fine up to Rs. 500/- where the contravention is a continuing one with a further fine up to Rs. 50/- per day	Company and every officer of the company or such other person.
630	Wrongfully obtaining or withholding company property	Fine up to Rs. 1,000/-	The officer or employee concerned.
631	Penalty for improper use of the words "limited" and "private limited"	Fine up to Rs. 50/- for every day ..	The person or persons concerned.

CHAPTER 47

Sections of special interest to non-profit making organisations.

Section No.

25 Under this section, Government is empowered to direct that an association which is formed for promoting commerce or science, etc. and which intends to apply its profits in promoting its objects and which prohibits the payment of any dividend to its members may be registered as a company with limited liability. Government may grant a licence to such companies and on the grant of a licence such companies need not use the words "limited" or "private limited" as any part of its name. Government may also by a general or special order direct that such companies be exempt from such of the provisions of the Act as specified in the order. A firm may be a member of any association or company licensed under this section. But on dissolution of the firm, its membership of the association or company will cease. A company to which a licence has been granted under this section cannot alter the provisions of its memorandum without obtaining the previous approval of Government. If for any reason a licence granted under this section is revoked, and the company to which it is granted bore the name "Chamber of Commerce" then within a period of 3 months from the date of revocation the company should change its name so that the words "Chamber of Commerce" do not form part of its name.

210(2) A company which does not carry on business for profit should lay at the annual general meeting income and expenditure account instead of profit and loss account.

263-A Section 177 which lays down that at any general meeting a resolution put to vote shall be decided on a show of hands in the first instance, sections 255 and 256 which deal with retirement of directors by rotation and section 263 which lays down that the appointment of directors should be voted on individually does not apply to companies which do not carry on business for profit or prohibits the payment of a dividend to its members.

The Department of Comany Law Administration have exempted Chambers of Commerce and Trade Associations from certain provisions of the Companies Act. The Department's Notification No. S.O. 1578, dated 1st July, 1961, published in the *Gazette of India,* Part II, Section 3, of 8th July, 1961, at page 1547 is given below—

(DEPARTMENT OF COMPANY LAW ADMINISTRATION)

ORDER

New Delhi, the 1st July, 1961.

S.O. 1578.—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 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

Provisions of the Act	Extent of exemption
Section 147 ..	The whole.
Section 160 (1)(aa) ..	The whole.
Section 166(2) ..	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.
Section 171(1) ..	A General Meeting may be called by giving a notice in writing of not less than 14 days.
Section 209(4A) ..	Books of accounts relating to a period of not less than four years immediately preceding the current year shall be preserved.
Section 257 ..	Shall not apply to companies whose articles provide for election of directors by ballot.
Section 264(1) ..	The whole.
Section 280 ..	The whole.
Section 282 ..	The whole.
Section 285 ..	Shall apply only to the extent that the Board of Directors|Executives, Committee| or Governing Committee of such companies shall hold at least one meeting within every six calendar months.

Provisions of the Act		Extent of exemption
Section 287	..	Shall apply only to the extent that the quorum for the Board meeting shall be either eight members or ¼th of its total strength whichever is less provided the quorum shall not be less than two members in any case.
Section 299	..	Shall apply only to cases to which sub-sections (1) and (3) of Section 297 apply.
Section 301	..	A register shall be maintained only of contracts to which sub-sections (1) and (3) of Section 297 apply.
Section 303(2)	..	The whole.

(Note :—For information regarding registration, licensing, etc., of companies under Section 25, please see Companies Regulations given in Appendix I.).

CHAPTER 48

Sections of special interest to private companies.

4(7), 12, 13, 21, 24, 26, 27, 43, 43-A, 44, 70, 77, 81, 90, 111, 114, 149, 161, 165, 166, 170, 175, 176, 179, 182, 193, 197-A, 198, 204, 205, 209, 219, 220, 226, 233-A, 234-A, 240-A, 250, 252, 255, 256, 257, 259, 261, 262, 263, 264, 266, 268, 269, 273, 274, 278, 280, 283, 284, 285, 293, 294, 295, 300, 309, 310, 311, 315, 316, 317, 325-A, 327, 332, 335, 345, 346, 355, 363, 369, 370-A, 372, 375, 384, 387, 409, 418 and 629-A.

CHAPTER 49

A summary of the more important changes made by the Companies (Amendment) Acts, 1963, 1964 and 1965.

Section No.	Changes made by the Act of 1963.
10-A to 10-D & 388-B to 388-E	The Central Government may constitute a Tribunal. Powers exercisable by Courts in regard to rectification of Register of Members (Section 155), granting permission to certain persons to be directors, managers, etc. of companies (Section 203), compelling production of docu-

Section No.	Changes made by the Act of 1963.
	ments before inspectors (Section 240), and in regard to prevention of oppression and mismanagement (Sections 397 to 407) may be vested in the Tribunal by the Central Government by notification. The Central Government may also under certain circumstances (please see Section 388-B) refer to the Tribunal the question whether a particular person is fit to be a director or other officer of a company and on a finding by the Tribunal the Central Government may debar such person from holding such office for a period up to five years. In all the above cases an appeal shall lie to the High Court having jurisdiction over the place where the company's registered office is situate.
10-E & 637	The Department of Company Law Administration is superseded by the Company Law Board and some powers of the Central Government have been delegated to it.
81	Government have taken the power, where in the public interest it is necessary to do so, to convert into share capital debentures held by it or loans given by it. An appeal shall lie to the Court against the terms and conditions of such conversion.
153-A & 153-B	Government may appoint a Public Trustee. Where shares|debentures are held in trust the trustee shall declare the same to the Public Trustee. The above provisions do not apply where it is not a written trust, or, even in the case of a written trust, where the trust money invested in shares|debentures does not exceed Rs. 1 lakh, or twenty-five per cent of the paid-up capital but subject to a ceiling of Rs. 5 lakhs, whichever is higher.
187-B	Subject to the above exemption, when shares are held in trust, the voting power shall be exercisable only by the public Trustee or his proxy.
397 & 398	Application to Court for relief in cases of oppression or mismanagement may be made also in cases where the affairs of the company are being conducted in a manner prejudicial to public interest.

Section No.	Changes made by the Act of 1964.
635-B	During the course of any investigation a company cannot punish any employee without intimation to the Company Law Board and within thirty days thereafter.

Section	Changes made by the Act of 1965.
13	In the Memorandum of Association the objects clause should divide the objects into objects to be pursued on incorporation and objects to be pursued subsequently. In the case of existing companies this provision does not apply.
21	Central Government's consent is not required for including or omitting the word 'private' on conversion of a public company into a private company or *vice versa.*
43-A	Central Government may exempt from the provisions of Section 43-A any private company in which shares are held by a foreign company whose constitution is such as to be a private company under the Indian Law.
69	Until such time as the minimum subscription is collected, the amounts paid by applicants for shares should be kept deposited in a scheduled Bank.
75	In the return of allotments shares shall not be shown as allotted for cash if the allotment is merely by book adjustments and no cash or other valuable assets have passed.
108	Share transfers should be made on the prescribed form. Before it is signed by or on behalf of the transferor it should be presented to the prescribed authority who will endorse on it the date of such presentation. Thereafter the completed transfer deed should be delivered to the company (a) in the case of quoted shares, before the first closure of the Register of Members after that date ; and (b) in other cases, within two months. The Central Government may extend these periods on application. None of these restrictions apply where shares are pledged with banks under blank transfer.
149	The existing companies, if they want to commence any new business which is not germane to the business which it is carrying on at the commencement of Companies (Amendment) Act, 1965, should, before doing so get it approved by a special resolution of the shareholders in a general meeting and file with the Registrar the declaration in the prescribed form that the provisions of Section 149(2A) have been complied with: the declaration should be verified by a Director or the Secretary. In the case of companies formed after the commencement of the Companies (Amendment) Act, 1965, a similar procedure as above, will have to be followed before commencing any object other than the objects pursued on incorporation.

Section No.	Changes made by the Act of 1965.
	Both in the case of existing companies and new companies, if it has not been possible to pass a special resolution as required above and the resolution has been passed by a simple majority, the Company Law Board may allow the company to commence such business on application by the Board of Directors.
209	Managing companies if so required by the Central Government should include in their books of account particulars relating to utilisation of material or labour.
259	For increasing the number of directors Central Government's consent is not needed where the strength of the Board will not be more than twelve.
279	This section requiring filling of declaration of share qualification by director has been deleted.
280	Directors who have attained the age of 75, shall vacate office at the immediately following annual general meeting. Directors who are beyond 75 years of age at commencement of Companies (Amendment) Act, 1965, shall vacate office at the first annual general meeting after such commencement.
294-A	With regard to compensation to sole selling agents for the unexpired period of their agreement in certain cases no compensation should be paid at all and in others compensation should be paid only for the unexpired period of the agreed term but not exceeding three years.
309	Remuneration to any director for other services will be deemed to be part of director's remuneration except where such other remuneration is for professional services, and the director concerned is professionally qualified to render such services.
310	For increasing the sitting fees of the Directors up to not more than Rs. 250|- per month Central Government's consent is not needed.
314	For holding office of profit by directors|relatives, etc. company's consent by special resolution may be obtained at the next general meeting after the appointment.
370	The Board of Directors of a company may give loans to other companies not under the same management, up to 10% in the aggregate, of the lending company's subscribed capital *plus* free reserves.

Section No.	Changes made by the Act of 1965.

The Board of Directors may give loans in the aggregate,

(i) up to 30% of the lending company's subscribed capital *plus* free reserves, or

(ii) up to 20% in the aggregate of the lending company's subscribed capital *plus* free reserves in the case of loans to companies within the group,

provided the giving of loans within these limits is authorised by a special resolution of the lending company.

For loans beyond the above limits Central Government's consent is also necessary.

Loans in excess of the above limits, outstanding at the commencement of Companies (Amendment) Act, 1965 should be enforced within six months from such commencement : but the period may be extended by the Company Law Board on application.

396-A — The books and papers of an amalgamated company cannot be disposed of without prior permission of Central Government.

397 & 398 — Application to court for relief in cases of oppression or mismanagement may be made also in cases where the affairs of the company are being conducted in a manner prejudicial to public interest.

410 to 415 — The Advisory Commission has been abolished. Instead there will be an Advisory Committee of five to advise Central Government or Company Law Board on such matters as may be referred to it by Government or the Board. Sections 411 to 415 have been deleted.

CHAPTER 50

Companies (Amendment) Act, 1965.

What existing companies have to do.

So as to conform to the provisions of the amending Act existing companies have to do certain things. In this Chapter an attempt is made to draw attention to the more important among them.

Section No.	Requirements under the Section.
108	According to the Amendment Act of 1965, share transfers should be made on the prescribed form. Before they are signed by or on behalf of the transferor, they should be presented to the prescribed authority who should endorse thereon the date of presentation. Thereafter, the completed transfer deed should be delivered to the company within the following period :—(a) in the case of quoted shares, before the first closure of the Register of Members after the date of presentation mentioned above ; and (b) in other cases, within two months from such date of presentation. Transfer deeds which are not in conformity with the above provisions are not to be accepted by a company (a) in the case of quoted shares, after the expiry of six months of the commencement of the Amendment Act of 1965, or after the date on which the Register of Members is closed for the first time after the commencement of the Amendment Act, whichever is later ; and (b) in other cases, after the expiry of six months of the commencement of the Amendment Act.
149	The existing companies, if they want to commence any new business which is not germane to the business which it is carrying on at the commencement of Companies (Amendment) Act, 1965, should, before doing so get it approved by a special resolution of the shareholders in a general meeting and file with the Registrar the declaration in the prescribed form that the provisions of Section 149(2A) have been complied with: the declaration should be verified by a Director or the Secretary. In the case of companies formed after the commencement of the Companies (Amendment) Act, 1965, a similar procedure as above, will have to be followed before commencing any object other than the objects pursued on incorporation. Both in the case of existing companies and new companies, if it has not been possible to pass a special resolution as required above and the resolution has been passed by a simple majority, the Company Law Board may allow the company to commence such business on application by the Board of Directors.
209	In the case of a company pertaining to any class of companies engaged in production, processing manufacturing or mining activities books of account showing particulars relating to utilisation of material or labour should also be maintained if so required by the Central Government.

Section No.	Requirements under the Section.

370 The Board of Director of a company may give loans to other companies not under the same management, up to 10% in the aggregate, of the lending company's subscribed capital *plus* free reserves.

The Board of Directors may give loans in the aggregate,

(i) up to 30% of the lending company's subscribed capital *plus* free reserves, or

(ii) up to 20% on the aggregate of the lending company's subscribed capital *plus* free reserves in the case of loans to companies within the same group,

provided the giving of loans within these limits is authorised by a special resolution of the lending company.

For loans beyond the above limits Central Government's consent is also necessary.

Loans in excess of the above limits, outstanding at the commencement of Companies (Amendment) Act, 1965 should be enforced within six months from such commencement : but the period may be extended by the Company Law Board on application.

Every lending company should keep a register showing—

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

(b) the name of the body corporate to which the loan, etc. has been made and whether such loan, etc. has been made before or after that body corporate came under the same management as the lending company ;

(c) the amount of the loan, etc. ; and

(d) the date on which the loan, etc. was made.

The entries should be made in the register within 3 days of the making of such loans, etc.

APPENDIX—I

MINISTRY OF FINANCE

(Department of Company Law Administration)

NOTIFICATIONS

New Delhi, the 18th February 1956

THE COMPANIES (CENTRAL GOVERNMENT'S) GENERAL RULES AND FORMS, 1956

S.R.O. 432A.—In exercise of the powers conferred by clauses (*a*) and (*b*) of sub-section (1) of section 642 of the Companies Act, 1956 (I of 1956) and all other powers hereunto enabling, the Central Government hereby makes the following rules, namely :—

1. **Short title, commencement and interpretation.**—(*i*) These rules may be called the Companies (Central Government's General Rules and Forms, 1956.

(*ii*) They shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

(*iii*) The General Clauses Act, 1897 (X of 1897), shall apply to the interpretation of these rules as it applies to the interpretation of a Central Act.

2. **Definitions.**—(1) In these rules—

(*i*) 'Act' means the Companies Act, 1956 (I of 1956) ;

(*ii*) 'Annexure' means an Annexure to these Rules ;

(*iii*) 'Charge' includes a mortgage ;

(*iv*) 'Form' means a Form in Annexure A ;

(*v*) 'responsible officer' in relation to a company, means any one of the following :—

(*a*) a director of the company ;

(*b*) the managing agent, secretaries and treasurers, manager or secretary of the company ;

(*c*) any other officer or employee of the company, who may from time to time be recognised or declared by the Central Government to be a responsible officer of the company within the meaning and for the purposes of these rules ;

(*vi*) 'the seal' means the common seal of the company ; and

(*vii*) 'Section' means a section of the Companies Act, 1956 (I of 1956) ;

(2) Words or expressions occurring in these rules and not defined in sub-rule (1) shall bear the same meaning as in the Act.

3. **Forms.***—The Forms set forth in Annexure A, or Forms as near thereto as circumstances admit, shall be used in all matters to which the Forms relate.

3. (2) Every company using the Forms set forth in Annexure A or Forms as near thereto as circumstances admit should specify therein—

(*i*) its registration number ; and
(*ii*) its nominal share capital.

3A. **Copies of documents to accompany certain applications.**—In respect of every application to the Central Government under the sections specified in clause (*b*) of section 411, seven copies of the application together with seven copies of all the documents specified in the application shall be forwarded to the Central Government.

Provided that a company need forward two copies only of the audited accounts and directors' reports of the companies referred to in item 13 of Form No. 25 :

Provided further that where a company has already submitted the required number of copies of the documents in connection with any application made after the 1st April, 1956, under any of the sections enumerated in clause (*b*) of Section 411, the company need only specify the date(s) on which it has submitted the copies and need not forward copies of the same documents along with any application made subsequently under any of these sections, unless any of the documents submitted previously have undergone any material change.

4. **Prescribed Particulars.**—The particulars contained in a Form are hereby prescribed as the particulars, if any, required under the relevant provision or provisions of the Act.

4A. **Sections 20 and 21.**—(1) A company seeking to change its name or the promoters of a company under a proposed name may make application to the Registrar of Companies of the State in which the registered office of the company or of the proposed company is or is to be situate, for information as to whether the changed name or the name with which the proposed company is to be registered, as the case may be, is undesirable within the meaning of section 20. Every such application shall be accompanied by a fee of Rs. 10 and the Registrar of Companies shall furnish the required information ordinarily within fourteen days of the receipt of the application.

(2) Where the Registrar of Companies informs the company or the promoters of the company that the changed name or the name with which the proposed company is to be registered, as the case may be, is not undesirable, such name shall be available for adoption by the said company or the promoters only for a

* The Forms are frequently changed, and further they are usually available locally, and hence it has been considered unnecessary to reproduce them in this Handbook.

period of three months from the date of intimation by the Registrar.

4B. **Alteration of articles.**—Where the alteration of the articles of association of any company has the effect of converting a public company into a private company, the company shall make, within three months from the date when the special resolution for the alteration of the articles of the company was passed, an application in writing in Form No. 1A or in a form as near thereto as the circumstances of the case admit, to the Central Government for its approval of the alteration of the articles of the company.

5. **Section 75.**—Copies of contract required to be filed by a company with the Registrar in pursuance of Section 75, sub-section (1), clause (*b*), shall be verified by an affidavit of a responsible officer of the company stating that they are true copies.

6. **Sections 125, 127 and 128.**—A copy of every instrument or deed creating or evidencing any charge and required to be filed with the Registrar in pursuance of sections 125, 127 or 128 shall be verified as follows :—

(*i*) Where the instrument or deed relates solely to property situate outside India, the copy shall be verified by a certificate either under the seal of the company, or under the hand of a responsible officer of the company, or under the hand of some person interested in the mortgage or charge on behalf of any person other than the company, stating that it is a true copy.

(*ii*) Where the instrument or deed relates, whether wholly or partly, to property situate in India, the copy shall be verified by a certificate of a responsible officer of the company stating that it is a true copy or by a certificate of a public officer given under and in accordance with the provisions of section 76 of the Indian Evidence Act, 1872 (I of 1872).

7. **Section 170.**—Sections 171 to 186 shall apply :—

(*a*) with respect to meetings of any class of members of a company, as adapted and modified in the form set out in Annexure B ;

(*b*) with respect to meetings of debenture-holders of a company, as adapted and modified in the form set out in Annexure C ; and

(*c*) with respect to meetings of any class of debenture-holders of a company, as adapted and modified in the form set out in Annexure D :

Provided that the application of sections 171 to 175 and section 177 to 186 as in Annexure B, C or D, as the case may require, shall be subject to such other provision as may be made either in the Articles of the company or in a contract binding on the persons concerned.

8. **Section 235.**—(1) Every application for investigation into the affairs of a company under clause (*a*) or (*b*) of section 235 shall specify :—

(*a*) the names and addresses of the applicants ;

(*b*) if the company has a share capital, the voting power held by each applicant ;

(*c*) the total number of applicants ;

(*d*) their total voting power ; and

(*e*) the reasons for requiring the investigation.

(2) The reasons given in pursuance of clause (*e*) of sub-rule (1) shall be precise and specific.

(3) Every such application shall be accompanied by such documentary evidence in support of the statements made therein as are reasonably open to the applicants.

(4) Every such application shall be signed by the applicants and shall be verified by their affidavit stating that paragraphs .....thereof are true to their knowledge and paragraphs .....to the best of their information and belief.

(5) The Central Government may, before passing orders on the application, require the applicants or any one or more of them, to produce such further documentary or other evidence as the Central Government may consider necessary :—

(*a*) for the purpose of satisfying itself as to the truth of the allegations made in the application ; or

(*b*) for ascertaining any information which, in the opinion of the Central Government, is necessary for the purpose of enabling it to pass orders on the application.

9. **Section 241.**—The fee payable for furnishing a copy of the Inspector's report in pursuance of section 241, sub-section (2), clause (*b*), shall be six annas for every one hundred words or fractional part thereof.

10. **Section 246.**—A copy of the report of any inspector or inspectors shall, for the purposes of section 246, be authenticated either :—

(*a*) by the seal of the company whose affairs have been investigated : or

(*b*) by a certificate of a public officer having the custody of the report, under and in accordance with the provisions of section 76 of the Indian Evidence Act, 1872 (1 of 1872).

11. **Section 324.**—(1) (a) For the purpose of making an inquiry into the desirability of applying the provisions of sub-section (2) of section 324 to companies engaged in any class or description of industry or business, the Central Government may, by notification in the Official Gazette, appoint a Committee of Inquiry consisting of one or more members, to report on the matter in writing to the Central Government, within such time as may be specified in the notification.

(*b*) Where the Committee consists of more than one member, one of them may be appointed as the Chairman thereof.

(2) (*a*) The Committee shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Committee, may be useful for, or relevant to, the subject-matter of the inquiry.

(*b*) Without prejudice to the generality of the power conferred under sub-rule (*a*), the Committee may, for the purposes of its inquiry, examine any person connected or associated with the class or description of industry or business in respect of which the inquiry is being made and shall examine such representatives of the management, investors and other interests concerned with the working of the units engaged in the industry or business concerned as the Committee may in its discretion select for the purpose.

(3) Without prejudice to the generality of the power of the Committee to inquire into any matter which it considers relevant for the furtherance of the inquiry entrusted to it, it shall be the duty of the Committee to make specific inquiries in regard to the following matters :—

(*a*) the importance of the class or description of industry or business in respect of which the inquiry is made, to the national economy ;

(*b*) the number of companies engaged wholly or in part in such industry or business and the performance of such companies as judged by their production figures, relations between the shareholders and the management, dividends declared, utilisation of reserves, bonus paid to shareholders in the form of new shares or to the workers, relations between the workers and the management and such other matters as the committee may deem relevant ;

(*c*) the capital structure and the forms of management of such companies, *i.e.*, whether they are managed by boards of directors, managing directors or managing agents or otherwise ;

(*d*) the capital structure of the managing agencies, if they are companies, the extent of the control of the managing agents in the companies they manage and their interest, if any, in companies engaged in other classes or descriptions of industry or business ;

(*e*) the remuneration earned by the managing agents, whether by way of a commission on profits or selling and buying agencies, either by holding these agencies themselves or through their associates, or otherwise ;

(*f*) if they are managed by managing agents, the extent to which managing agents have been responsible for the promotion and development of the companies, with particular reference to their services in rendering financial assistance to them ;

(*g*) whether having regard to the nature of the industry or business concerned, its present state of development and its future prospects and needs in the context of the working of the private sector, the promotional, managerial, financial and other developmental activities required for the efficient conduct and management of the companies engaged in that industry or business could not be carried out adequately with greater advantage to the shareholders and the general public.

(4) It shall be within the discretion of the Central Government whether to publish or not the report submitted by the Committee.

(5) The provisions of the Commissions of Inquiry Act, 1952 (LX of 1952), shall apply to the Committee in so far as the Central Government may by notification in the Official Gazette, direct in exercise of the power conferred on it by section 11 of that Act.

11A. **Sections 346 and 412.**—Notices issued in pursuance of sub-section (2) of section 412 in respect of charges in the constitution of the managing agent or of Secretaries and Treasurers within the meaning of section 346 shall if issued by the managing agent or the Secretaries and Treasurers to its|their own members, also be addressed to the members of the companies managed by them.

12. **Section 395.**—The notice required to be given by a transferee company—

(*a*) to any dissenting shareholder of the transferor company in pursuance of section 395, sub-section (1) ; or

(*b*) to any shareholder of the transferor company who has not assented to the scheme or contract in pursuance of section 395, sub-section (2), clause (*a*),

shall be given in the manner provided in section 53 for the service of a document by a company on a member thereof.

13. **Section 399 (4).**—(1) Every application under clause (4) of section 399 to the Central Government by any members of a company who wish to be authorised to apply to the Court shall specify—

(*a*) the names and address of the applicants ;

(*b*) if the company has a share capital, the voting power held by each applicant ;

(*c*) the total number of applicants ;

(*d*) their total voting power ; and

(*e*) the reasons for making the application.

(2) The reasons given in pursuance of clause (*e*) of sub-rule (1) shall be precise and specific.

(3) Every such application shall be accompanied by such documentary evidence in support of the statements made therein as are reasonably open to the applicants.

(4) Every such application shall be signed by the applicants and shall be verified by their affidavit stating that paragraphs

.....thereof are true to their knowledge and paragraphs .....to the best of their information and belief.

(5) The Central Government may, before passing orders on the application require the applicants or any one or more of them, to produce such further documentary or other evidence as the Central Government may consider necessary—

(*a*) for the purpose of satisfying itself as to the truth of the allegations made in the application ; or

(*b*) for ascertaining any information which, in the opinion of the Central Government, is necessary for the purpose of enabling it to pass orders on the application.

13A. **Section 412.**—A copy of the notice published in an English newspaper in pursuance of section 412 (2)(*b*) shall be forwarded by the company to the Registrar of Companies concerned along with all material particulars of the application proposed to be made to the Central Government.

13B. **General.**—(1) Any person having any objection to a proposal contained in a notice issued in pursuance of section 412 shall, if he so desires, communicate his objection in writing duly substantiated to the Secretary, Department of Company Law Administration, Ministry of Commerce and Industry, New Delhi, as early as possible after the publication of the notice in the newspapers. No objection received by the Central Government after thirty days of the publication of such a notice would be considered.

(2) Every application made to the Central Government under section 408 or section 409 shall clearly indicate the eligibility of the applicant to make such an application and shall also be accompanied by an affidavit in support of the statements made in the application.

14. **Section 503.**—(1) Sub-sections (2), (3), (4), (5), (6) and (10) of section 465 shall apply with respect to a committee of inspection appointed in a creditor's voluntary winding up under section 503.

(2) Sub-sections (7), (8) and (9) of section 465 shall not apply with respect to the committee, and sub-rules (3) to (5) shall apply instead.

(3) If a member of the committee is adjudged an insolvent, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who, together with himself represent the creditors or the company, as the case may be, his office shall become vacant.

(4) A member of the committee may be removed at a meeting of the creditors if he represents the creditors, or by the company in general meeting, if he represents the company, by an ordinary resolution of which seven days' notice has been given stating the object of the meeting.

(5) On a vacancy occurring in a committee, the liquidator shall forthwith, summon a meeting of the creditors or a general

meeting of the company, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same, or appoint another person to fill the vacancy.

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled, he may apply to the Court ; and the Court may make an order that the vacancy shall not be filled except in such circumstances as may be specified in the order.

14A. **Section 549.**—(1) Any creditor or contributory of a company may apply to the liquidator, for inspection, during office hours, of the books and papers of the company in respect of which an order is made for winding up by or subject to the supervision of the Court and which are in his custody, and the liquidator may, by order, permit inspection of such books and papers in his possession as he thinks just.

Provided that where the winding up is for the purpose of reconstruction or amalgamation of the company, inspection of the books and papers of the company shall be subject to orders of the Court to be made on application for the purpose on notice to the liquidator.

Provided further that where a proceeding is pending in the winding up between a contributory or creditor, or a person claiming to be a contributory or a creditor and the liquidator, inspection of the books and papers of the company shall be subject to the orders of the Court in the proceedings as to discovery and inspection.

(2) Every application to the liquidator for permission under sub-rule (1) shall specify :—

(*a*) the name and address of the applicant ;

(*b*) description and particulars of the books and papers of which inspection is required ;

(*c*) the reasons for requiring the inspection of the books and papers referred to in clause (*b*) ; and

(*d*) the name of the company in respect of which such inspection is required and, if possible, the date of its winding up order.

(3) Every such application shall be in writing and signed by the applicant in such form, if any, as may be specified by the Central Government, specifying the capacity in which such application is made and giving the particulars of the share-holding or debt, and shall be supported by such evidence as may be required by the liquidator concerned.

(4) Where the liquidator refuses to grant inspection of the books and papers or any portion thereof, the applicant may apply to the Court and shall give notice of the application to the liquidator ; and the Court may pass such orders on the application as it thinks fit, and the inspection, if granted, shall be in accordance with such orders.

15. **Section 550 (3) (a) & (b).**—(1) Except as provided in this rule or in an order of the Court made in pursuance of section 550, sub-section (1), clause (*a*), the books and papers of a company which has been wound up and of its liquidator shall not be destroyed for a period of five years from the date of its dissolution.

(2) (*a*) Any creditor or contributory of any such company may make representations to the Central Government in writing, with regard to the desirability of destroying all or any of the books and papers of the company and of its liquidator, at an earlier time than that specified in sub-rule (1).

(*b*) The liquidator of any such company may also make representations to the Central Government in writing with regard to the desirability of destroying all or any of his books and papers and those of the company at an earlier time than that specified in sub-rule (1).

(3) After considering the representations made to it under clause (*a*) or clause (*b*) of sub-rule (2), as the case may be, and giving to all persons concerned in the matter, such opportunity, if any, as may, in the opinion of the Central Government, be reasonable in the circumstances, to make their representations, if any, to it in writing, the Central Government may direct either :—

(*a*) that the period of five years specified in sub-rule (1) shall be reduced to such extent as it may deem just and proper ; or

(*b*) that period shall remain unaltered.

(4) Any creditor or contributory of the company may appeal to the Court from any direction given by the Central Government under sub-rule (3).

(5) (*a*) After giving such opportunity, if any, as may, in the opinion of the Central Government, be reasonable in the circumstances, to all persons concerned in the matter, to make representations, if any, to it in writing, the Central Government may for reasons to be recorded by it in writing, vary or rescind any direction made by it under these rules.

(*b*) Any creditor or contributory of the company may appeal to the Court from any direction given by the Central Government under clause (*a*).

(6) Every appeal under sub-rule (4) or clause (*b*) of sub-rule (5) from any direction of the Central Government shall be preferred within ninety days of the making of the direction.

Provided that an appeal may be admitted after the period aforesaid, if the appellant satisfies the Court that he had sufficient cause for not preferring the appeal within that period.

(7) No direction given by the Central Government under sub-rule (3) or clause (*a*) of sub-rule (5) shall be inconsistent with any order made by the Court on an appeal preferred to it under these

rules or on an application made to it under clause (*a*) of sub-section (1) of section 550.

(8) Any special or other resolution passed, by any such company or such other authority as may be competent in this behalf, for the destruction of all or any of the books and papers of the company and of its liquidator before the expiry of the period of five years specified in sub-rule (1) or of such shorter period as may be fixed by the Central Government or the Court in pursuance of these rules shall have effect as if the period mentioned in the resolution, the period of five years or the shorter period aforesaid had been substituted.

(9) Where any application or appeal is made to the Court for the destruction of all or any of the books and papers of a company and of its liquidator before the expiry of the period of five years referred to in sub-rule (1) or of such shorter period, if any, as may have been fixed by the Central Government under sub-rule (3) or clause (*a*) of sub-rule (5), as the case may be, the application or appeal shall not be heard unless a copy thereof has been served on the Central Government by the applicant or appellant and not less than one month has expired from the date on which the copy is so served.

16. **Section 592 (1) (a).**—(1) A copy of any charter, statutes, memorandum and articles, or other instrument constituting or defining the constitution of a company shall be duly certified to be a true copy as provided in sub-rules (2), (3) and (4) or as provided in sub-rule (5) as the case may require.

(2) *If the company be incorporated in a country outside the Commonwealth, the copy aforesaid shall be certified—*

(a) by an official of the Government to whose custody the original is committed ; or

(*b*) by a Notary (Public) of such country ; or

(*c*) by an officer of the company.

(3) The signature or seal of the official referred to in clause (*a*) of sub-rule (2) or the certificate of the Notary (Public) referred to in clause (*b*) of that sub-rule shall be authenticated by a diplomatic or consular officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (XL of 1948), or, where there is no such officer, by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52-53 Vic. C. 10), or in any Act amending the same.

(4) The certificate of the officer of the company referred to in clause (*c*) of sub-clause (2) shall be signed before a person having authority to administer an oath as provided under section 3 of the Diplomatic & Consular Officers (Oaths and Fees) Act, 1948 (XL of 1948), or, as the case may be, by section 3 of the Commissioners

of Oaths Act, 1889 (52 and 53 Vic. C. 10), the status of the person administering the oath in the latter case being authenticated by any official specified in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic. C. 10) or in any Act amending the same.

(5) *If the company be incorporated in any Part of the Commonwealth,* the copy of the document referred to in sub-rule (1) shall be certified as a true copy :

(*a*) by an official of the Government to whose custody the original of the document is committed ; or

(*b*) by a Notary (Public) in that Part of the Commonwealth ; or

(*c*) by an officer of the company, on oath, before a person having authority to administer an oath *in that Part* of the Commonwealth.

17. **Sections 592, 593 and 605.**—(1) Translations into English of documents required to be filled with the Registrar in pursuance of section 592, 593 or 605 shall be certified to be correct as provided in sub-rule (2) or sub-rule (3), as the case may require.

(2) Where any such translation is made outside India, it shall be authenticated by the signature and the seal, if any—

(*a*) of the official having custody of the original ; or

(*b*) *of a Notary (Public)* of the country (or part of the country) where the company is incorporated :

Provided that where the company is incorporated in a country outside the Commonwealth, the signature *or seal* of the person so certifying shall be authenticated by a diplomatic or consular officer empowered in this behalf under section 3 of the Diplomatic and Consular Officer (Oaths and Fees) Act, 1948 (XLI of 1948), or, where there is no such officer, by any of the Officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic., C. 10) or in any Act amending the same.

(3) Where such translation is made within India, it shall be authenticated—

(*a*) by an advocate, attorney or pleader entitled to appear before any High Court, or

(*b*) by an affidavit of some person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

18. **Section 593.**—(1) Notice of any alteration in any instrument, referred to in clause (*a*) of section 593 or in any particulars referred to in clause (*b*) or (*c*) of that section, shall be delivered to the Registrar within two months from the date on which the alteration was made or occurred.

(2) Notice of any alteration in the particulars referred to in clause (*d*) or (*e*) of that section shall be delivered to the Registrar within one month from the date on which the alteration was made or occurred.

18A. **Section 594.**—The documents referred to in clause (*a*) of sub-section (1) and in sub-section (3) of section 594 shall be delivered to the Registrar within a period of nine months of the close of the financial year of the foreign company to which the documents relate :

Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months.

19. **Translation of documents other than those under Part X of the Act.**—If any document, or any portion of any document, required to be filed by, or registered with, the Registrar, or containing any fact required to be recorded by him, in pursuance of *any* provision of the Act contained in any Part of the Act (except Part XI) is not in the English language, a translation of that document or portion into English certified by a responsible officer of the company to be correct, shall be attached to *each copy* of the document which is furnished to the Registrar.

20. **Section 601.**—The fee to be paid to the Registrar in pursuance of section 601 for registering any document relating to a foreign company shall be Rs. 30.

21. **Power of Central Government to relax rules 16, 17 and 19.**—Where the Central Government is satisfied that, it is not practicable to certify a copy or translation as provided in Rules 16, 17 or 19 as the case may be, the Central Government may, after recording its reasons in writing, permit the copy or translation to be treated as a certified copy, if such conditions, if any, as may be imposed by the Central Government in that behalf, are (duly) fulfilled.

22. **Payment of fees.**—Except as otherwise provided elsewhere—

(1) Fees payable to the Registrar in pursuance of the Act or any rule or regulation made or notification issued thereunder shall be paid either to the Registrar in cash or into the Public Account of India at any Treasury or into the Reserve Bank of India or any office of the State Bank of India or any subsidiary thereof acting as the agent of the Reserve Bank of India for credit under the head 'XXI—Miscellaneous Departments—Miscellaneous—Registration of Joint Stock Companies' ; and

(2) Fees payable to the Central Government in pursuance of the Act or any rule or regulation made or notification issued thereunder shall be paid into the Public Account of India at any

Government Treasury, or into the Reserve Bank of India or any office of the State Bank of India or any subsidiary thereof acting as the agent of the Reserve Bank of Inida for credit under the head 'XXI—Miscellaneous Departments—Miscellaneous—Registration of Joint Stock Companies' :

[Provided that the fees payable to the Registrar may be paid also through cheques or bank drafts drawn on and payable at banks located at the same city or town as the office of the Registrar :

Provided further that, where a fee payable to the Registrar is paid through cheques or bank drafts as aforesaid, it shall not be deemed to have been paid unless and until the relevant cheques or drafts are cashed and the amount realised.]

ANNEXURE B

(*See* rule 7)

Form in which Sections 171—186 of the Act are to apply with respect to meetings of any class of members of the company.

171. **Length of notice for calling meeting.**—(1) A meeting of any class of members of company may be called by giving not less than twenty-one days' notice in writing.

(2) A meeting may be called after giving shorter notice than that specified in sub-section (1), if consent is accorded thereto by members belonging to the class, and holding not less than 95 per cent of the total voting power exercisable at the meeting of the class.

172. **Contents and manner of service of notice and persons on whom it is to be served.**—(1) Every notice of a meeting shall specify the place and the day and hour of the meeting, and shall contain a statement of the business to be transacted thereat.

(2) Notice of every meeting shall be given—

(*i*) to every member belonging to the class, in any manner authorised by sub-sections (1) to (4) of section 53

(*ii*) to the persons entitled to a share in consequence of the death or insolvency of a member, by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignees of the insolvent or by any like description, at the address, if any, in India supplied for the purpose by the persons claiming to be so entitled, or until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred ; and

(*iii*) to the auditor or auditors for the time being of the company in any manner authorised by section 53 in the case of any member or members of the class.

Provided that where the notice of a meeting is given by advertising the same in a newspaper circulating in the neighbourhood of the registered office of the company under sub-section (3) of section 53, the statement of material facts referred to in section 173 need not be annexed to the notice as required by that section but it shall be mentioned in the advertisement that the statement has been forwarded to the members of the company.

(3) The accidental omission to give notice to, or the non-receipt of notice by, any member or other person to whom it should be given shall not invalidate the proceedings at the meeting.

173. **Explanatory statement to be annexed to notice.**—

(1) There shall be annexed to the notice of the meeting a statement setting out all material facts concerning each such item of business, including in particular the nature of the concern or interest, if any, therein, of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any.

Provided that where any item of special business as aforesaid to be transacted at a meeting of the company relates to, or affects, any other company, the extent of shareholding interest in that other company of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any, of the first-mentioned company shall also be set out in the statement if the extent of such shareholding interest is not less than twenty per cent of the paid-up share capital of that other company.

(2) Where any item of business consists of the according of approval to any document by the meeting, the time and place where the document can be inspected shall be specified in the statement aforesaid.

174. **Quorum for meeting**—(1) Unless the articles of the company provide otherwise, five members belonging to the class present in person or by proxy in the case of a public company, and two members belonging to the class and present in person or by proxy in the case of a private company, shall be the quorum for a meeting of the class and the provisions of sub-sections (2), (3) and (4) shall apply with respect thereto.

(2) If within half an hour from the time appointed for holding the meeting a quorum is not present, the meeting, if called upon the requisition of members, of the class shall stand dissolved.

(3) In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board of Directors may determine.

(4) If at the adjourned meeting also, a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

175. **Chairman of Meeting.**—(1) Unless the articles of the company otherwise provide, members of the class personally present at the meeting shall elect one of themselves to be the chairman thereof on a show of hands.

(2) If a poll is demanded on the election of the chairman, it shall be taken forthwith in accordance with the provisions of this Act, the chairman elected on a show of hands, exercising all the powers of the Chairman under the said provisions.

(3) If some other person is elected chairman as a result of the poll, he shall be chairman for the rest of the meeting.

176. **Proxies.**—(1) Any member of the class entitled to attend and vote at the meeting shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself ; and a proxy so appointed shall not have any right to speak at the meeting :

Provided that, unless the articles otherwise provide—

(*a*) this sub-section shall not apply in the case of a company not having a share capital ;

(*b*) a member, in the case of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion ; and

(*c*) a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of any class of members of a company the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member of the company.

If default is made in complying with this sub-section as respects any meeting, every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees.

(3) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public company, which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person, any instrument appointing a proxy or any other person, any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

(4) If for the purpose of any meeting, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member of the class entitled to have a notice of the meeting sent to him and to vote

thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one thousand rupees :

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member of the class at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) The instrument appointing a proxy shall—

(*a*) be in writing ; and

(*b*) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(6) An instrument appointing a proxy, if in any of the forms set out below, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles.

(7) Every member entitled to vote at a meeting or on any resolution to be moved thereat shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

177. **Voting to be by show of hands in the first instance.**—At any meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 179, be decided on a show of hands.

178. **Chairman's declaration of result of voting on show of hands to be conclusive.**—A declaration by the chairman in pursuance of section 177 that on a show of hands, a resolution has or has not been carried either unanimously or by a particular majority, and an entry to that effect in the books containing the minutes of the proceedings of the meeting, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes cast in favour of or against such resolution.

179. **Demand for poll.**—(1) Before or on the declaration of the result of the voting on any resolution on a show of hands, a poll may be ordered to be taken by the chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the persons or person specified below, that is to say,—

(*a*) in the case of a meeting of any class of members of a public company, by at least five members of the class

having the right to vote on the resolution and present in person or by proxy.

(*b*) in the case of a private company, by one member of the class having the right to vote on the resolution and present in person or by proxy if not more than seven such members are personally present, and by two such members present in person or by proxy if more than seven such members are personally present.

(*c*) by any member or members of the class present in person or by proxy and having not less than one-tenth of the total voting power in respect of the resolution, or

(*d*) by any member or members of the class present in person or by proxy and holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up which is not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) The demand for a poll may be withdrawn at any time by the person or persons who made the demand.

180. **Time of taking poll.**—A poll demanded on a question of adjournment shall be taken forthwith.

(2) A poll demanded on any other question (not being a question relating to the election of a chairman which is provided for in section 175) shall be taken at such time not being later than forty-eight hours from the time when the demand was made, as the chairman may direct.

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

182. **Restrictions on the exercise of voting right in other cases to be void.**—A public company or a private company, which is a subsidiary of a public company, shall not prohibit any member of the class from exercising his voting right, on the ground that he has not held his share or other interest in the company for any specified period preceding the date on which the vote is taken or on any other ground not being a ground set out in section 180.

183. **Right of member to use his votes differently.**—On a poll taken at a meeting of a class of members of the company, a member of the class entitled to more than one vote, or his proxy or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

184. **Scrutineers at poll.**—(1) Where a poll is to be taken, the

chairman of the meeting shall appoint two scrutineers to scrutinise the votes given on the poll and to report thereon to him.

(2) The chairman shall have power, at any time before the result of the poll is declared, to remove a scrutineer from office and to fill vacancies in the office of scrutineer arising from such removal or from any other cause.

(3) Of the two scrutineers appointed under this section, one shall always be a member of the class (not being an officer or employee of the company) present at the meeting provided such a member is available and willing to be appointed.

185. **Manner of taking poll and result thereof.**—(1) Subject to the provisions of this Act, the chairman of the meeting shall have power to regulate the manner in which a poll shall be taken.

(2) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

186. **Power of Court to order meeting to be called.**—(1) If for any reason it is impracticable to call a meeting of a class of members of a company in any manner in which such meeting may be called, or to hold or conduct the meeting in the manner prescribed by this Act or the articles, the Court may, either of its own motion or on the application of any director of the company or of any member of the class who would be entitled to vote at the meeting,

(*a*) order such a meeting to be called, held and conducted in such manner as the Court thinks fit ; and

(*b*) give such ancillary or consequential directions as the Court thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of the Act and of the company's articles.

Explanation.—The directions that may be given under this sub-section may include a direction that one member of the class present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any such order shall, for all purposes, be deemed to be a meeting of the class of members of the company duly called, held and conducted.

FORM OF PROXY

[*See* section 176 (6)]

I

" Name of Company,

I|We of in the district of being a member|members of the above-named Company hereby appoint of in the district of or failing him, of in the district of as my|our proxy to vote for me|us on my|our

behalf at the meeting of the class of members of the company to which I|we belong to be held on the day of 19 , and at any adjournment thereof.

Signed this day of 19 "

†II

" Name of Company,

I|We of in the district of being a member|members of the above-named Company hereby appoint of in the district of or failing him, of in the district of as my|our proxy to vote for me|us on my|our behalf at the meeting of the class of members of the company to which I|we belong to be held on the day of 19 , and at any adjournment thereof.

Signed this day of 19 ."

ANNEXURE C

(*See* rule 7)

Form in which sections 171—186 of the Act are to apply with respect to meetings of the debenture holders of a company.

171. **Length of notice for calling meeting.**—(1) A meeting of the debenture holders of a company may be called by giving not less than twenty-one days' notice in writing.

(2) A meeting may be called after giving shorter notice than that specified in sub-section (1), if consent is accorded thereto by debenture holders holding not less than 95 per cent in value of the debentures issued by the company.

172. **Contents and manner of service of notice and persons on whom it is to be served.**—(1) Every notice of a meeting of the debenture holders of a company shall specify the place and the day and hour of the meeting, and shall contain a statement of the business to be transacted thereat.

(2) Notice of every meeting shall be given :—

(*i*) to every debenture holder in any manner authorised by sub-sections (1) to (4) of section 53 in the case of any member or members of the company ;

(*ii*) to the persons entitled to a debenture in consequence of the death or insolvency of a debenture holder, by sending it through the post in a prepaid letter, addressed to them by name, or by the title or representatives of the deceased, or assignees of the insol-

† This form is to be used *in favour of|*against the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

* Strike out whichever is not desired.

vent, or by any like description, at the address, if any, in India supplied for the purpose by the persons claiming to be so entitled, or until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred ; and

(*iii*) to the auditor or auditors for the time being of the company in any manner authorised by section 53 in the case of any member or members of the company.

Provided that where the notice of a meeting is given by advertising the same in a newspaper circulating in the neighbourhood of the registered office of the company under sub-section (3) of section 53, the statement of material facts referred to in section 173 need not be annexed to the notice as required by that section but it shall be mentioned in the advertisement that the statement has been forwarded to the members of the company.

(3) The accidental omission to give notice to, or the non-receipt of notice by, any debenture holder or other person to whom it should be given, shall not invalidate the proceedings at the meeting.

173. **Explanatory statement to be annexed to notice.**—(1) There shall be annexed to the notice of the meeting a statement setting out all material facts concerning each item of business, including in particular the nature of the concern or interest, if any, therein, of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any.

Provided that where any item of special business as aforesaid to be transacted at a meeting of the company relates to, or affects, any other company, the extent of shareholding interest in that other company of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any, of the first-mentioned company shall also be set out in the statement if the extent of such shareholding interest is not less than twenty per cent of the paid-up share capital of that other company.

(2) Where any item of business consists of the according of approval to any document by the meeting, the time and place where the document can be inspected shall be specified in the statement aforesaid.

174. **Quorum for meeting.**—(1) Unless the articles of the company provide otherwise, five debenture holders personally present shall be the quorum for a meeting of the debenture holders of the company ; and the provisions of sub-sections (2), (3) and (4) shall apply with respect thereto.

(2) If within half an hour from the time appointed for holding a meeting of the debenture holders, a quorum is not present, the meeting, if called upon the requisition of debenture holders, shall stand dissolved.

(3) In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place, as the Board of Directors may determine.

(4) If at the adjourned meeting also, a quorum is not present within half an hour from the time appointed for holding the meeting, the debenture holders present shall be a quorum.

175. **Chairman of meeting.**—(1) Unless the articles of the company otherwise provide, the debenture holders personally present at the meeting shall elect one of themselves to be the chairman thereof on a show of hands.

(2) If a poll is demanded on the election of the chairman, it shall be taken forthwith in accordance with the provisions of this Act, the chairman elected on a show of hands exercising all the powers of the chairman under the said provisions.

(3) If some other person is elected chairman as a result of the poll, he shall be the chairman for the rest of the meeting.

176. **Proxies.**—(1) Any debenture holder of a company entitled to attend and vote at a meeting of the debenture holders of the company shall be entitled to appoint another person (whether a debenture holder or not) as his proxy to attend and vote instead of himself.

Provided that, unless the articles otherwise provide, a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of the debenture holders of a company the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a debenture holder entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a debenture holder.

If default is made in complying with this sub-section as respects any meeting, every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees.

(3) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public company, which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person, any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

(4) If, for the purpose of any meeting of the debenture-holders of a company, invitations to appoint as proxy a person

or one of a number of persons specified in the invitations, are issued at the company's expense to any debenture holder entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one thousand rupees :

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a debenture holder at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every debenture holder entitled to vote at the meeting by proxy.

(5) The instrument appointing a proxy shall—

(*a*) be in writing ; and

(*b*) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or any attorney duly authorised by it.

(6) An instrument appointing a proxy, if in any of the forms set out below, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles.

(7) Every debenture holder entitled to vote at a meeting of the debenture holders of the company or on any resolution to be moved thereat shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

177. **Voting to be by show of hands in the first instance.**— At any meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 179, be decided on a show of hands.

178. **Chairman's declaration of result of voting on show of hands to be conclusive.**—A declaration by the chairman in pursuance of section 177 that, on a show of hands, a resolution has or has not been carried, or has or has not been carried either unanimously or by a particular majority, and an entry to that effect in the books containing the minutes of the proceedings of the meeting, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes cast in favour of or against such resolution.

179. **Demand for poll.**—(1) Before or on the declaration of the result of the voting on any resolution on a show of hands, a poll may be ordered to be taken by the chairman of the meeting on his own motion, and shall be ordered to be taken by him on a

demand made in that behalf by at least five debenture holders having the right to vote on the resolution and present in person or by proxies.

(2) The demand for a poll may be withdrawn at any time by the person or persons who made the demand.

180. **Time of taking poll.**—(1) A poll demanded on a question of adjournment shall be taken forthwith.

(2) A poll demanded on any other question (not being a question relating to the election of a chairman which is provided for in section 175) shall be taken at such time not being later than forty-eight hours from the time when the demand was made, as the chairman may direct.

181. Provisions of this section shall not apply to meetings of debenture holders of the company.

182. **Restrictions on the exercise of voting right to be void.**—A public company, or a private company which is a subsidiary of a public company, shall not prohibit any debenture holder from exercising his voting right on the ground that he has not held his interest in the company for any specified period preceding the date on which the vote is taken or on any other ground.

183. **Right of debenture holder to use his vote differently.**—On a poll taken at a meeting, a debenture holder entitled to more than one vote, or his proxy or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

184. **Scrutineers at poll.**—(1) Where a poll is to be taken, the chairman of the meeting shall appoint two scrutineers to scrutinise the votes given on the poll and to report thereon to him.

(2) The chairman shall have power, at any time before the result of the poll is declared, to remove a scrutineer from office and to fill vacancies in the office of scrutineer arising from such removal or from any other cause.

(3) Of the two scrutineers appointed under this section, one shall always be a debenture holder (not being an officer or employee of the company) present at the meeting, provided such a debenture holder is available and willing to be appointed.

185. **Manner of taking poll and result thereof.**—(1) Subject to the provisions of this Act, the chairman of the meeting shall have power to regulate the manner in which a poll shall be taken.

(2) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

186. **Power of Court to order meeting to be called.**—(1) If for any reason it is impracticable to call a meeting in any manner in which meetings of debenture holders of the company may be called, or to hold or conduct the meeting in the manner prescribed

by this Act, or the articles, the Court may, either of its own motion or on the application of any director of the company or of any debenture holder of the company who would be entitled to vote at the meeting,—

(*a*) order a meeting of the debenture holders of the company to be called, held and conducted in such manner as the Court thinks fit ; and

(*b*) give such ancillary or consequential directions as the Court thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act and of the company's articles.

Explanation.—The directions that may be given under this sub-section may include a direction that one debenture holder of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any such order shall, for all purposes, be deemed to be a meeting of debenture holders of the company duly called, held and conducted.

FORM OF PROXY

[*See* Section 176(6) above]

I

" Name of Company,

I|We of in the district of being a debenture holder|debenture holders of the above-named Company hereby appoint of in the district of or failing him, of in the district of as my|our proxy to vote for me|us on my|our behalf at the meeting of the debenture holders of the company to be held on the day of 19 , and at any adjournment thereof.

Signed this day of 19 ."

†II

" Name of Company,

I|We of in the district of being a debenture holder|debenture holders of the above-named Company hereby appoint of in the district of or failing him, of in the district of as my|our proxy to vote for me|us on my|our behalf at

† This form is to be used *in favour of|*against the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

* Strike out whichever is not desired.

the meeting of the debenture holders of the company to be held on the day of 19 , and at any adjournment thereof.

Signed this day of 19 ."

ANNEXURE D

(*See* rule 7)

Form in which Sections 171-186 of the Act are to apply with respect to meetings of any class of debenture holders of the company.

171. **Length of notice for calling meeting.**—(1) A meeting of any class of debenture-holders of a company may be called by giving not less than twenty-one days' notice in writing.

(2) A meeting may be called after giving shorter notice than that specified in sub-section (1), if consent is accorded thereto by debenture holders holding not less than 95 per cent. of the debentures of that class issued by the company.

172. **Contents and manner of service of notice and persons on whom it is to be served.**—(1) Every notice of a meeting shall specify the place and the day and hour of the meeting, and shall contain a statement of the business to be transacted thereat.

(2) Notice of every meeting shall be given—

(*i*) to every debenture holder of that class in any manner authorised by sub-sections (1) to (4) of section 53 in the case of any member or members of the company ;

(*ii*) to the persons entitled to a debenture of that class in consequence of the death or insolvency of a debenture holder, by sending it through the post in a prepaid letter addressed to them by name, or by the title or representatives of the deceased, or assignees of the insolvent, or by any like description, at the address, if any, in India supplied for the purpose by the persons claiming to be so entitled, or until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred ; and

(*iii*) to the auditor or auditors for the time being of the company in any manner authorised by section 53 in the case of any member or members of the company.

Provided that where the notice of a meeting is given by advertising the same in a newspaper circulating in the neighbourhood of the registered office of the company under sub-section (3) of section 53, the statement of material facts referred to in section

173 need not be annexed to the notice as required by that section but it shall be mentioned in the advertisement that the statement has been forwarded to the members of the company.

(3) The accidental omission to give notice to, or the non-receipt of notice by, any debenture holder or other person to whom it should be given shall not invalidate the proceedings at the meeting.

173. **Explanatory statement to be annexed to notice.**—(1) There shall be annexed to the notice of the meeting a statement setting out all material facts concerning each such item of business, including in particular the nature of the concern or interest, if any, therein, of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any.

Provided that where any item of special business as aforesaid to be transacted at a meeting of the company relates to, or affects, any other company, the extent of shareholding interest in that other company of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any, of the first-mentioned company shall also be set out in the statement if the extent of such shareholding interest is not less than twenty per cent of the paid-up share capital of that other company.

(2) Where any item of business consists of the according of approval to any document by the meeting, the time and place where the document can be inspected shall be specified in the statement aforesaid.

174. **Quorum for Meeting.**—(1) Unless the articles of the company provide otherwise, five debenture holders of that class personally present shall be the quorum for the meeting of that class of debenture holders and the provisions of sub-sections (2), (3) and (4) shall apply with respect thereto.

(2) If within half an hour from the time appointed for holding a meeting of the class of debenture holders, a quorum is not present, the meeting, if called upon the requisition of debenture holders of that class shall stand dissolved.

(3) In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board of Directors may determine.

(4) If at the adjourned meeting also, a quorum is not present within half an hour from the time appointed for holding the meeting, the debenture holders of that class present shall be a quorum.

175. **Chairman of meeting.**—(1) Unless the articles of the company otherwise provide, the debenture holders of that class personally present at the meeting shall elect one of themselves to be the chairman thereof on a show of hands.

(2) If a poll is demanded on the election of the chairman, it shall be taken forthwith in accordance with the provisions of this Act, the chairman elected on a show of hands exercising all the powers of the chairman under the said provisions.

(3) If some other person is elected chairman as a result of the poll, he shall be chairman for the rest of the meeting.

176. **Proxies.**—(1) Any debenture holder entitled to attend and vote at the meeting shall be entitled to appoint another person (whether a debenture holder of that class or not) as his proxy to attend and vote instead of himself ;

Provided that, unless the articles otherwise provide a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling the meeting, if the articles of the company provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a debenture holder entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself and that a proxy need not be a debenture holder of that class.

If default is made in complying with this sub-section as respects any meeting, every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees.

(3) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public company, which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person, any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.

(4) If for the purpose of the meeting, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any debenture holder entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one thousand rupees :

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a debenture holder at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every debenture holder entitled to vote at the meeting by proxy.

(5) The instrument appointing a proxy shall—

(*a*) be in writing ; and

(*b*) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(6) An instrument appointing a proxy, if in any of the forms set out below shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles.

(7) Every debenture holder entitled to vote at the meeting or on any resolution to be moved thereat shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

177. **Voting to be by show of hands in the first instance.**—At any meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 179, be decided on a show of hands.

178. **Chairman's declaration of result of voting on show of hands to be conclusive.**—A declaration by the chairman in pursuance of section 177 that on a show of hands, a resolution has or has not been carried, or has or has not been carried either unanimously or by a particular majority, and an entry to that effect in the books containing the minutes of the proceedings of the meeting, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes cast in favour of or against such resolution.

179. **Demand for poll.**—(1) Before or on the declaration of the result of the voting on any resolution on a show of hands, a poll may be ordered to be taken by the chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf by at least five debenture holders having the right to vote on the resolution and present in person or by proxy.

(2) The demand for a poll may be withdrawn at any time by the person or persons who made the demand.

180. **Time of taking poll.**—(1) A poll demanded on a question of adjournment shall be taken forthwith.

(2) A poll demanded on any other question (not being a question relating to the election of a chairman which is provided for in section 175), shall be taken at such time not being later than forty-eight hours from the time when the demand was made, as the chairman may direct.

181. The provisions of this section shall not apply to meetings of any class of debenture holders of a company.

182. **Restrictions on the exercise of voting right to be void.**—A public company, or a private company which is a subsidiary of a public company, shall not prohibit any debenture holder of that class from exercising his voting right on the ground that he has not held his interest in the company for any specified period preceding the date on which the vote is taken or on any other ground

183. **Right of debenture holder of that class to use his vote differently.**—On a poll taken at a meeting, a debenture holder entitled to more than one vote, or his proxy or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

184. **Scrutineers at poll.**—(1) Where a poll is to be taken, the chairman of the meeting shall appoint two scrutineers to scrutinise the votes given on the poll and to report thereon to him.

(2) The chairman shall have power, at any time before the result of the poll is declared, to remove a scrutineer from office and to fill vacancies in the office of scrutineer arising from such removal or from any other cause.

(3) Of the two scrutineers appointed under this section, one shall always be a debenture holder of that class (not being an officer or employee of the company) present at the meeting, provided such a debenture holder is available and willing to be appointed.

185. **Manner of taking poll and result thereof.**—(1) Subject to the provisions of this Act, the chairman of the meeting shall have power to regulate the manner in which a poll shall be taken.

(2) The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.

186. **Power of Court to order meeting to be called.**—(1) If for any reason, it is impracticable to call a meeting in any manner in which it may be called, or to hold or conduct the meeting in the manner prescribed by this Act or the articles, the Court may, either of its own motion or on the application of any director of the company or of any debenture holder of the company who would be entitled to vote at the meeting :—

(*a*) Order a meeting to be called, held and conducted in such manner as the Court thinks fit ; and

(*b*) give such ancillary or consequential directions as the Court thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act and of the company's articles.

Explanation. The directions that may be given under this sub-section may include a direction that one debenture holder of that class present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance within any such order shall, for all purposes, be deemed to be a meeting of debenture holders of that class duly called, held and conduced.

FORM OF PROXY

[*See* Section 176(6) above]

".....Name of Company
I|We.....of.....in the district of..... being a debenture holder|debenture holders of the above-named company hereby appoint.....of.....in the district of.....or failing him.....of..... .....in the district of.....as my|our proxy to vote for me|us on my|our behalf at the meeting of the class of debenture holders of the company to which I|we belong to be held on the.....day of.....and at any adjournment thereof.

Signed this.....day of....."

† II

".....Name of Company.....
I|We.....of.....in the district of..... ....., being a debenture holder|debenture holders of the above-named Company, here appoint..... ..... of.....or in the district of..... failing him.....of.....in the district of..... .....as my|our proxy to vote for me|us on my|our behalf at the.....meeting of the class of debenture holders of the company to which I|we belong to be held on the..... day of.....19.....

Signed this.....day of.....19 .

† This form is to be used *in favour of|*against the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

* Strike out whichever is not desired.

THE COMPANIES REGULATIONS, 1956.

S.R.O. 432B.—In exercise of the powers conferred by section 25, sub-sections (1), (2), (3), (5) and (8), and section 609, sub-section (2), of the Companies Act, 1956 (I of 1956) the Central Government hereby makes the following regulations, namely :—

PART A.—PRELIMINARY

1. **Short title, commencement and interpretation.**—(*i*) These regulations may be called the Companies Regulations, 1956

(*ii*) They shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

(*iii*) The General Clauses Act, 1897 (X of 1897), applies to the interpretation of these regulations as it applies to the interpretation of a Central Act.

2. **Definitions.**—In these regulations :—

(*a*) "Act" means the Companies Act, 1956 (I of 1956).

(*b*) "Annexure" means an Annexure to these Regulations.

(*c*) "Section" means a section of the Companies Act, 1956.

PART B.—LICENCES UNDER SECTION 25 TO NEW ASSOCIATIONS.

3. Any association (hereinafter referred to either as "the association" or as "the proposed company") which is desirous of being incorporated as a company with limited liability, without the addition to its name of the word "Limited" or the words "Private Limited", shall make an application in writing to the Secretary to the Government of India in the Ministry of Commerce and Industry, Department of Company Law Administration for a licence under section 25.

4. The application shall be accompanied by the following documents, namely :—

(*i*) Three printed or typewritten copies of the Memorandum and Articles of Association of the proposed company ;

(*ii*) A declaration by an Advocate of the Supreme Court or of a High Court, an attorney or a pleader entitled to appear before a High Court or a chartered accountant practising in India that the memorandum and articles of association have been drawn up in conformity with the provisions of the Act and that all the requirements of the Act and the Rules made thereunder have been duly complied with in respect of registration and matters incidental or supplementary thereto.

(*iii*) Three copies of a list of the names, descriptions, addresses and occupations of the promoters (and where a firm is a promoter, of each partner in the

firm), as well as of the members of the proposed Board of Directors, together with the names of companies, associations and other institutions, in which such promoters, partners and members of the proposed Board of Directors are directors or hold responsible positions, if any, with descriptions of the positions so held.

(*iv*) If the association is one which is already in existence, three copies of the following documents submitted by the management thereof to its members, for each of the two complete financial years immediately preceding the date of the application, or where the association has functioned only for one such financial year for such year :—

(*a*) the accounts ;

(*b*) the balance sheets ; and

(*c*) the reports on the working of the association.

(*v*) A statement showing in detail the assets (with the estimated values thereof) and the liabilities of the association, as on the date of the application or within seven days of that date.

(*vi*) An estimate of the future annual income and expenditure of the proposed company, specifying the sources of the income and the objects of the expenditure.

(*vii*) A statement giving a brief description of the work, if any, already done by the association and of the work proposed to be done by it after registration in pursuance of section 25

(*viii*) A statement specifying briefly the grounds on which the application is made.

5. If any document specified in regulation 4 is not in English, a translation of that document into English, certified to be correct by any promoter or proposed director, or in the case of an association which is already in existence, by any member of its executive or governing body, shall be furnished to the Central Government together with the document.

6. The Memorandum of Association of the proposed company shall be in the form specified in Annexure I, or in a form as near thereto as circumstances admit.

PART C.—LICENCES UNDER SECTION 25 TO COMPANIES ALREADY REGISTERED.

7. Any company registered under the Act as a limited company, which is desirous of being incorporated without the addition to its name of the word "Limited" or the words "Private Limited", shall make an application in writing to the Secretary to the

Government of India in the Ministry of Commerce and Industry, Department of Company Law Administration, for a licence under section 25.

8. The application shall be accompanied by the following documents, namely :—

(*i*) Three printed or type-written copies of the Memorandum and Articles of Association of the company ;

(*ii*) Three copies of a list of the names, addresses, descriptions and occupations of its directors, and of its managing agent, secretaries and treasurers, manager or secretary, if any, together with the names of companies, associations and other institutions, in which the directors of the applicant company are directors or hold responsible positions, if any, with descriptions of the positions so held.

(*iii*) Three copies of the following documents submitted to the company in general meeting for each of the two financial years immediately preceding the date of the application, or when the company has functioned only for such financial year, for such year :—

(*a*) the profit and loss account ;

(*b*) the balance sheet ;

(*c*) the annual report of the Board of Directors ; and

(*d*) the audit report ;

(*iv*) A statement showing in detail the assets (with the estimated values thereof), and the liabilities of the company, as on the date of the application or within seven days of that date ;

(*v*) An estimate of the future annual income and expenditure of the company, specifying the sources of the income and the objects of the expenditure ;

(*vi*) A statement giving a brief description of the work, if any, already done by the company, and of the work proposed to be done by it after registration in pursuance of section 25 ; and

(*vii*) A statement specifying briefly the grounds on which the application is made.

9. If any document specified in regulation 8 is not in English, a translation of that document into English certified to be correct by any director of the company or by its managing agent, secretaries and treasurers or manager, if any, shall be furnished to the Central Government together with the documents.

PART D.—GENERAL.

10. Simultaneously with the application made under Part B or C, as the case may be, the applicants shall furnish to the Registrar of Companies of the State in which the registered office of the proposed company or company is to be or is situate, a copy of the application, and of each of the documents and translations referred to in regulations 4 and 5, or in regulations 8 and 9, as the case may be.

11. The applicants shall, within a week from the date of making the application to the Central Government in accordance with regulation 4 or 8 publish in the manner specified below and at their own expense, a notice of the application made to the Central Government, and a certified copy of that notice, as published, shall be sent forthwith to that Government.

The said notice—

(*a*) shall be in the form set out in Annexure II or in a form as near thereto as circumstances admit ; and

(*b*) shall be published at least once in a newspaper in a principal language of the district in which the registered office of the company proposed is to be situate or is situate and circulating in that district, and at least once in an English newspaper circulating in that district.

12. The Central Government shall, after considering the objections, if any, received by it within the time fixed therefor in the notice aforesaid, and after consulting any authority, Department or Ministry, as it may, in its discretion, decide, determine whether the licence should or should not be granted.

13. The licence shall be in the form specified in Annexure III or IV, as the case may be, or in a form as near thereto as circumstances admit.

14 The Central Government may direct the company to insert in its memorandum or in its articles, or partly in the one and partly in the other, such conditions of the licence as may be specified by the Central Government in this behalf.

PART E.—REGULATIONS UNDER SECTION 609

15. The office of the Registrar shall observe such normal working hours as may be approved by the Central Government and shall be open for the transaction of business with the public on all days (except Sundays and other public holidays declared as such by the Registrar), between the hours specified below :—

(*i*) On days other than Saturdays—10-30 A.M. and 3-30 P.M.

(*ii*) On Saturdays—10-30 A.M. and 1-30 P.M.

16. (1) The certificate of incorporation granted to a company in pursuance of section 34 shall be in Form I.

(2) The Registrar shall cause a copy of such certificate to be entered on the memorandum of association of the company, and where the copy cannot be conveniently so entered, he shall cause a copy to be attached to the memorandum of association, a note regarding such attachment being made on the memorandum of association and signed by the Registrar.

17. (1) The Registrar shall examine, or cause to be examined, every document received in his office which is required or authorised by or under the Act to be registered, recorded or filed by or with the Registrar.

(2) If any such document is found to be defective or incomplete in any respect, the Registrar shall direct the company to rectify the defect or complete the document and no such document shall be registered, recorded or filed until the defect has been so rectified or the document has been completed, as the case may be.

18. (1) No document required or authorised by or under the Act to be registered, recorded or filed by or with the Registrar shall be registered, recorded or taken on file until the fee, if any, payable in respect thereof under Schedule X to the Act and any additional fee imposed by the Registrar under section 611(2) are paid.

(2) Until the fee payable in respect of a document is paid, the document shall not be regarded as having been sent to or received by the Registrar for any purpose specified in or under the Act.

19. (1) The following particulars shall be endorsed on every document registered, recorded or filed by the Registrar :—

(*i*) the No. assigned to the company in the Register of Companies maintained by the Registrar in pursuance of regulation 21(1) ;

(*ii*) the name of the company ;

(*iii*) the nature of the document ;

(*iv*) its serial number ; and

(*v*) the date on which it is registered, recorded or filed.

(2) Every endorsement referred to in sub-regulation (1) shall be signed by the Registrar and shall bear his official seal.

(3) If the endrosement aforesaid cannot be conveniently entered on the document itself, it shall be made on a separate sheet which shall be attached to the document, a note regarding such attachment being made on the document and signed by the Registrar.

20. When a document is received by the Registrar for being registered, recorded or filed, the Registrar shall acknowledge receipt of the same to the company in Form II.

21. (1) In the office of each Registrar, there shall be maintained a "Register of Companies" in Form III in which the names of the companies shall be entered in the order in which they are registered.

(2) Every company so registered shall be assigned a number in one consecutive series.

(3) In the pages allotted to each company in the Register, a note shall be made of every document or fact relating to the company which is registered, recorded or filed or with the Registrar ; and the Registrar shall affix his signature to each such note.

(4) The Registrar shall also cause an alphabetical index to be maintained of the companies in the Register.

22. (1) In the office of the *Registrar having jurisdiction over New Delhi, there shall be maintained a "Register of Foreign Companies" in Form III, in which the names of the foreign companies shall be entered in the order in which the documents referred to in section 592 which relate to those companies are delivered to the Registrar.

(2) Sub-regulation (2), (3) and (4) of Regulation 21 shall apply in respect of the Register of Foreign Companies as they apply in respect of the Register of Companies.

23. (1) Documents delivered in pursuance of sub-section (2) of section 597 to the Registrar of any State (other than the Registrar having jurisdiction over New Delhi) in which the principal places of business of foreign companies are situate, shall be kept in the manner specified in sub-rules (2) and (3).

(2) Documents relating to any one company shall be kept together and separately from those relating to the others.

(3) Documents relating to each company shall be kept in chronological order, that is to say, in the order of the dates on which they are received by the Registrar.

24. Every certificate or copy granted under the provisions of the Act shall be signed and dated by the Registrar, and shall bear his official seal.

25. (1) Any person who wishes to inspect a document registered, recorded or filed by or with the Registrar in pursuance of the Act, shall apply to him for the purpose and the application

*The Registrar at Delhi has jurisdiction over New Delhi.

shall be accompanied by the fee specified in that behalf in section 610, sub-section (1), clause (*a*).

(2) The applicant shall be allowed to inspect the document, only in the presence of the Registrar or of a person authorised by him in this behalf, and only during office hours.

(3) The applicant shall not be permitted to make a *verbatim* copy of the document inspected. He may, however, take any notes in respect of the contents of the document inspected.

26. The documents of each company shall be kept together, distinct and separate from those of other companies.

ANNEXURE I

(*See* Regulation 6)

Memorandum of Association

1. The name of the company is "..... ....."

2. The registered office of the Company will be situated in the state of.....

3. The objects for which the company is established are :—

the doing of all such other lawful things as are incidental or conducive to the attainment of the above objects.

Provided that the company shall not support with its funds, or endeavour to impose on, or procure to be observed by, its members or others, any regulation or restriction which, if an object of the company, would make it a Trade Union.

4. The objects of the company extend to the..... (here enter the name of the State or States, and country or countries).

5. (1) The income and property of the company, whencesoever derived, shall be applied solely for the promotion of its objects as set forth in this Memorandum.

(2) No portion of the income or property aforesaid shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to persons who at any time are, or have been, members of the company or to any one or more of them or to any persons claiming through any one or more of them.

(3) No remuneration or other benefit in money or money's worth shall be given by the company to any of its members, whether officers or servants of the company or not, except payment of out-of-pocket expenses, reasonable and proper interest on money lent, or reasonable and proper rent on premises lent to the Company.

(4) No member shall be appointed to any office under the company which is remunerated by salary, fees or in any other manner not excepted by clause (3).

(5) Nothing in this clause shall prevent the payment by the company in good faith of reasonable remuneration to any of its officers or servants (not being members) or to any other person (not being a member), in return for any services actually rendered to the company.

6. No alteration shall be made to this Memorandum of Association or to the Articles of Association of the company which are for the time being in force, unless the alteration has been previously submitted to and approved by the Central Government.

7. The liability of the members is limited.

8. (For companies limited by guarantee) :—

Each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards, for payment of the debts or liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a sum of Rs.....

(For companies limited by shares) :—

The share capital of the company will consist of Rs.....
.....divided into.....
.....shares of.....
.....rupees each.

9. True accounts shall be kept of all sums of money received and expended by the company and the matters in respect of which such receipt and expenditure take place, and of the property, credits and liabilities of the company ; and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations of the company for the time being in force, the accounts shall be open to the inspection of the members. Once at least in every year, the accounts of the company shall be examined and the correctness of the Balance Sheet and the income and expenditure account ascertained by one or more properly qualified auditor or auditors.

10. If upon a winding up or dissolution of the company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be distributed amongst the members of the company but shall be given or transferred to such other company having objects similar to the objects of this company, to be determined by the members of the company at or before the time of dissolution or in default thereof, by the High Court of Judicature that has or may require jurisdiction in the matter.

11. We, the several persons whose names, addresses, descriptions and occupations are hereunto subscribed are desirous of being formed into a company not for profit, in pursuance of this Memorandum of Association :—

Names, addresses, descriptions and occupations of subscribers.

1..... of .....@
2..... of .....@
3..... of .....@
4..... of .....@
5..... of .....@
6..... of .....@
7..... of .....@

Dated the day of 19 .

Witness to the above signatures

of

ANNEXURE II

[*See* Regulation 11(*a*)]

NOTICE

Notice is hereby given that in pursuance of Section 25 of the Companies Act, 1956, an application has been made to the Government of India for a licence directing that *a body about to be formed under the name of The (*Here enter the name of the body*) being a company registered under the Companies Act, 1956 may change its name by omitting the (*Here enter the name of the company*) may be registered as a company with limited liability without the addition of the word "Limited" or the words "Private Limited" to its name from

2. The principal objects of the company are, as follows :—

@ If, the association is a company limited by shares, here enter "number of shares" taken by each subscriber.

* Strike out whichever is not required.

2A. A copy of the draft memorandum and articles of association of the proposed company may be seen at..... (give the address here).

3. Notice is hereby given that any person, firm, company, or corporation, objecting to this application may communicate such objection to the Central Government within thirty days from the date of publication of this notice, by a letter addressed to the Secretary to the Government of India in the Ministry of Finance, Department of Company Law Administration, New Delhi.

Dated this day of 19 .

Names of Applicants.

ANNEXURE III

(*See* Regulation 13)

Licence under section 25 *of the Companies Act,* 1956.

Whereas it has been proved to the satisfaction of the Central Government that the....., an association is to be registered as a company under the Companies Act, 1956, for promoting objects of the nature specified in section 25, sub-section (1), clause (*a*), of the said Act, and that it intends to apply its profits, if any, or other income in promoting its objects and to prohibit the payment of any dividend to its members.

Now, therefore, in exercise of the powers conferred by section 25 aforesaid, the Central Government hereby grants this licence, directing that the said association be registered as a company with limited liability without the addition of the word "Limited" or the words "Private Limited" to its name, subject to the following conditions, namely :—

(1) that the said company shall in all respects be subject to and governed by the conditions and provisions contained in its Memorandum of Association ;

(2) that the income and property of the said company, whencesoever derived, shall be applied solely for the promotion of the objects as set forth in its Memorandum of Association and that no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise by way of profit, to persons who at any time are or have been members of the said company or to any of them or to any person claiming through any one or more of them.

(3) that no remuneration or other benefit in money or money's worth shall be given by the company to any of its members, whether officers or servants of the company or not, except payment of out-of-pocket expenses, reasonable and proper interest on money lent, or reasonable and proper rent on premises lent to the company ;

(4) that no member shall be appointed to any office under the company which is remunerated by salary, fees or in any other manner not excepted by clause (3) ;

(5) that nothing in this clause shall prevent the payment by the company in good faith of reasonable and proper remuneration to any of its officers or servants (not being members) or to any other person (not being a member), in return for any services actually rendered to the company ;

(6) that no alteration shall be made to the Memorandum of Association or to the Articles of Association of the company which are for the time being in force, unless the alteration has been previously submitted to and approved by the Central Government ;

(7) that this licence shall be liable to be revoked in the event of violation of any of the aforesaid conditions or any of the conditions and provisions contained in the Memorandum of Association of the said company in accordance with the provisions of section 25 of the Companies Act, 1956.

Dated this day of 19 .

By order and in the name of the President of India.

Secretary to the Governmest of India,

Ministry of Commerce and Industry,

Department of Company Law Administration.

ANNEXURE IV

(*See* Regulation 13)

Whereas it has been proved to the satisfaction of the Central Government that the objects of.....company Limited|Private Limited, being a company registered under the Cimpanies Act, 1956, as a limited company are restricted to those specified in section 25, sub-section (1), clause (*a*) of the said Act and that it intends to apply its profit, if any, or other income in promoting its objects and to prohibit the payment of any dividend to its members.

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 25 aforesaid, the Central Government hereby grants this licence authorising the company by a special resolution to change its name by omitting the word "Limited" or the words "Private Limited" from such name subject to the following conditions, namely :—

(1) that the said company shall in all respects be subject to and governed by the conditions and provisions contained in its Memorandum of Association ;

(2) that the income and property of the said company, whencesoever derived shall be applied solely for the promotion of the objects as set forth in its Memorandum of Association and that no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise by way of profit, to persons who at any time are or have been members of the said company or to any of them or to any person claiming through any one or more of them ;

(3) that no remuneration or other profit in money or money's worth shall be given by the company to any of its members, whether officers or servants of the company or not, except payment of out-of-pocket expenses, reasonable and proper interest on money lent, or reasonable and proper rent on premises lent to the company ;

(4) that no member shall be appointed to any office under the company which is remunerated by salary, fees or in any other manner not excepted by clause (3) ;

(5) that nothing in this clause shall prevent the payment by the company in good faith of reasonable and proper remuneration to any of its officers or servants (not being members) or to any other person (not being a member), in return for any services actually rendered to the company ;

(6) that no alteration shall be made to the Memorandum of Association or in the Articles of Association of the company, which are for the time being in force, unless the alteration has been previously submitted to and approved by the Central Government ;

(7) that this licence and the registration of the said company pursuant hereto shall cease to have any force or effect on violation of any of the aforesaid conditions or any of the conditions and provisions contained in its Memorandum of Association and thereupon this licence shall be revoked in accordance with the provisions of the said section 25 of the Companies Act, 1956.

Dated this day of 19. .

By order and in the name of the President of India.

Secretary to the Government of India.

Ministry of Commerce and Industry,

Department of Company Law Administration.

FORM I

[*See* Regulation 16(1)]

Certificate of Incorporation

No. of 19 .

I hereby certify that is this day incorporated under the Companies Act, 1956 (*and that the company is limited).

Given under my hand at this day of One thousand nine hundred and

SEAL Registrar of Companies State.

FORM II

(*See* Regulation 20)

No.

Memorandum acknowledging receipt of documents.

Office of the Registrar of Joint Stock Companies.

The Registrar of Companies, acknowledges the receipt of the undermentioned documents.

(Here enter brief description of document.)

Station :

Registrar of Companies State.

Dated

FORM III

[*See* Regulation 21(1)]

Register of Companies

Name of Company.

No.	Standing details	Date of registration or filing or recording or entry of minute	Serial number	Name of document or entry of minute	Whether registered, filed or recorded	Signature of Registrar
1	Date of Registration ..					
2	Registered Office ..					
3	Classification and object ..					
4	Public or Private ..					
5	If registered under section 25 reference to the Government Order granting					

*To be omitted in respect of unlimited companies.

APPENDIX II

CAPITAL ISSUES (EXEMPTION) ORDER, 1961

Notification No. S.O. 1234, dated May 23, 1961

In exercise of the powers conferred by sub-section (1) of section 6 of the Capital Issues (Control) Act, 1947 (29 of 1947), and in supersession of the Capital Issues (Exemption) Order, 1949, published with the notification of the Government of India in the Ministry of Finance, No. F.14(1)-CCI|49, dated the 20th January, 1949, the Central Government hereby makes the following orders, namely :—

1. This Order may be called the Capital Issues (Exemption) Order, 1961.

2. In this Order, unless the context otherwise requires—

(*a*) "Act" means the Capital Issues (Control) Act, 1947 (29 of 1947) ;

(*b*) "banking institution" means any institution carrying on the business of banking to which the Banking Companies Act, 1949 (10 of 1949), applies whether wholly or in part ;

(*c*) "consideration involved" means—

(*i*) in relation to the issue of securities without a nominal value, the amount to be raised by the issue of securities and, in the case of securities with a nominal value, the sum of the total nominal value and of any premium, entrance fee or other payment which the person subscribing to the securities may be called upon to pay ; and

(*ii*) in relation to the borrowing of money, the amount of money to be borrowed ;

(*d*) "insurance company" means any insurer being a company which may be wound up under the Companies Act, 1956 (1 of 1956) ;

(*e*) "banking company", "insurer" and "provident society" shall have the meanings respectively assigned to them in clause (*c*) of sub-section (1) of section 5 of the Banking Companies Act, 1949 (10 of 1949), and in clause (9) of section 2 and sub-section (1) of section 65 of the Insurance Act, 1938 (4 of 1938).

3. The following shall be exempt from all the provisions of sections 3, 4 and 5 of the Act—

(*a*) the issue of securities by any company, not being a banking company or an insurance company or a

provident society incorporated as a company, and all transactions relating to such securities issued by any such company if the value of the consideration involved in such issue together with the value of the consideration involved in any previous issue of securities, made by such company within the twelve months immediately preceding such issue, does not exceed twenty-five lakhs of rupees :

Provided that the above exemption shall not apply the capitalisation of profits or reserves for the purpose of issuing additional capital or converting partly paid-up shares into fully paid-up shares, or for increasing the par value of the shares already issued ;

Explanation—The aforesaid limit of twenty-five lakhs of rupees shall have reference to the total value of all the issues and transactions during any period of twelve months and not to the value of each individual issue or transaction or to any part thereof, or to the value of consideration received from any single party ;

(*b*) the issue by any company of securities for the purpose of sub-dividing any securities into securities of any smaller denomination, or consolidating any securities into securities of any larger denomination :

Provided that in either case, the transaction does not involve any increase in the total value of the paid-up capital of the company and that the securities sub-divided or consolidated are of the same kind ;

(*c*) the issue of shares in a case where,

(*i*) an amalgamation of two or more companies other than banking companies has been notified by the Central Government by an order under section 396 of the Companies Act, 1956 (1 of 1956) ; or

(*ii*) an amalgamation of two or more banking companies has been approved by the Reserve Bank of India under section 44A of the Banking Companies Act, 1959 (10 of 1949) ; and the total paid-up capital of the amalgamated company or the amalgamated banking company after the issue of shares under this provision is not greater than the total paid-up capital of the amalgamating companies or the amalgamating banking companies, as the case may be ;

(*d*) the loans granted, or debentures taken up, by the Industrial Finance Corporation constituted under the Industrial Finance Corporation Act, 1948 (15 of 1948), the Industrial Development Bank of India constituted under the Industrial Development Bank of India Act, 1964 (18 of 1964), any State Financial Corporation constituted under the State Financial

Corporation Act, 1951 (63 of 1951), the Madras Industrial Investment Corporation Limited, the Industrial Credit and Investment Corporation of India Limited, or the National Industrial Development Corporation of India Limited ;

(*e*) the guarantees given by the Industrial Finance Corporation under section 23(1)(*b*) or by the said Industrial Development Bank of India under clause (*e*) or clause (*f*) or clause (*g*) of sub-section (1) of section 9 of the said Industrial Development Bank of India Act, 1964 or by the Central Government or a State Government under section 23(2) of the Industrial Finance Corporation Act, 1948 (15 of 1948), or any other guarantees given or furnished by any of the Institutions specified in clause (*d*) ;

(*f*) the issue and acceptance of securities, other than debentures, being an issue made by a company in the ordinary course of its business and solely for the purpose of that business, to a banking institution or its nominee, in respect of advances or overdrafts or guarantees from time to time granted or furnished, or to be granted or furnished by such banking institution ;

(*g*) instruments executed by the Central Government or a State Government guaranteeing advances or overdrafts referred to in sub-clause (*f*), or guaranteeing the payments due to a banking institution arising out of or any guarantee furnished by that banking institution ;

(*h*) the issue and acceptance of debentures, being an issue made by a company in the ordinary course of its business and for the purposes of that business to a banking institution or its nominee, if the total value of such debentures made by such company within the twelve months immediately preceding such issue does not exceed ten lakhs of rupees ;

(*i*) charges made under mining leases by the lessees in favour of the lessors charging the assets of a company for the due payment of rents and royalties reserved by the instrument of lease.

4. The following shall be exempt from the provisions of section 4 of the Act in so far as such provision relate to any document publicly offering for sale :

(*a*) any security issued in the States before the 17th May, 1943 ; and

(*b*) any security issued outside the States before that date, being a security of a class of which no further issue

has been made after that date by or on behalf of the same company without the consent or recognition of the Central Government.

5. The following shall be exempt from the provisions of sub-section (2) of section 5 of the Act—

(*a*) securities the issue of which has involved a contravention of sub-sections (1), (2) and (3) of section 3 or section 4 of the Act if such contravention has been condoned under the provisions of sub-section (2) of section 6 of the Act ; and

(*b*) any security transferred by the operation of the law of inheritance or succession or by the decree of a competent court.

Capital Issues (Applications for Consent) Rules.

The procedure relating to applications for consent to Issue of Capital is laid down in the Capital Issues (Applications for Consent) Rules, 1954. A copy of the Rules is reproduced below.

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 9th March, 1954.

S.R.O. 828 :—In exercise of the powers conferred by section 12 of the Capital Issues (Continuance of Control) Act, 1947 (XXIX of 1947), the Central Government hereby makes the following rules, namely :—

1. (1) These rules may be called the Capital Issues (Applications for Consent) Rules, 1954.

(2) The rules shall come into force on the 1st April, 1954.

2. In these rules, unless the context otherwise requires, "the Act" means the Capital Issues (Continuance of Control) Act, 1947 (XXIX of 1947).

3. All applications for the issue of capital under the Act, other than the securities exempted from the provision of sections 3, 4 and 5 of the Act by the Capital Issues (Exemption) Order, 1961, published with the Order of the Government of India, Ministry of Finance No. F14(2)-CCI|58-2129, dated the 23rd May, 1961 as amended by the Capital Issues (Exemption) Amendment Order, 1963, published with the Order of the Government of India, Ministry of Finance No. R.534-CCI|62, dated the 9th January, 1963, shall be made, in quintuplicate, to the Controller of Capital Issues, Ministry of Finance, Department of Economic Affairs, New Delhi, in conformity with the requirements laid down in the questionnaire specified in the Scheduled annexed to these rules.

4. "Every application under these rules shall be accompanied by a treasury receipt for Rs. 50 which shall, at Bombay, Calcutta, Delhi, Madras and Bangalore, be deposited in the Reserve Bank of India, and at other places in the nearest Government Treasury or in the nearest Branch or an agency of the Reserve Bank. The amount shall be credited to the head "LII—Miscellaneous—Miscellaneous—Receipts towards Issue of Capital under the Capital Issues (Control), Act, 1947".

5. An application made under rule 4 shall include a request asking for :—

(*i*) the consent of the Central Government to the issue of Capital under the provisions of the Act ;

(*ii*) any alteration in the terms and conditions of consent previously given by the Central Government or any extension of the period of validity for which such consent was given ;

(*iii*) the regularisation of the issue of any capital made without the prior consent of the central Government ; and

(*iv*) the consent of the Central Government under the Act in respect of any matter not specifically mentioned in any of the foregoing clauses of the rule.

6. No application under these rules shall be entertained unless it is accompanied by sufficient proof or the payment of the fee mentioned in rule 4.

NOTICE

Control of Capital Issues

Capital Issues (Control) Act) 1947.

Applications for consent to the issue of capital by companies should be addressed to the Controller of Capital Issues, Ministry of Finance, Government of India, New Delhi, and should be made in the form of a letter which should include answers to the questions shown below.

NOTE :—(1) The answers should follow the order of these questions and the short title of each question should be quoted against the corresponding answer. The answer should be so worded that the letter can be read independently of the form. The letter (with enclosures) should be accompanied by two additional copies in the case of banking and insurance companies and five additional copies in the case of other companies. In the case of bonus issues, only two copies need be sent.

(2) Where the capital proposed to be issued is in respect of an industrial undertaking for which a licence has to be obtained

under the Industries (Development and Regulation) Act, 1951 an application for the licence should be made simultaneously in the form prescribed for that purpose in the Registration and Licensing of Industrial Undertaking Rules, 1952, to the Secretary, Ministry of Commerce and Industries, Government of India, New Delhi.

1. Name :—Present or proposed.

2. Corporate Status :—Public or private and date of incorporation in the case of an existing company. Is it intended to alter its status?

3. Registration :—Place of Registration and location of Head Office.

4. Existing Capital :—State the authorised, subscribed and paid-up capital, if the company is an existing one. A copy each of the latest balance sheet and profit and loss account with certified translation in English, if not in that language, may be forwarded. The reasons for not using for the purpose in view any liquid or invested funds which may be, or become available, as an alternative to issue new securities, may be further explained.

5. Previous applications :—Give particulars of any application previously made to the Government of India since the 17th May, 1943 or to any former State Government in this connection by or on behalf of the same parties. In case of a previous application having been made to a former Indian State Government, indicate the concessions, if any, given by that Government, and whether these concessions are still valid.

6. Business :—Describe fully the company's present business, if in operation, and the proposed business for which the capital issue is requested. If a licence has been obtained under the Industries (Development and Regulation) Act, 1951, quote its number and date. Mere reference to the objectives stated in the Memorandum of Association will not be acceptable. Information with regard to the proposed business, should include the location of the plant, availability of raw materials, transport facilities and power. A copy of the Memorandum and Articles of Association may also be enclosed.

7. Directors :—Give name, qualification, occupation, nationality and business addresses of directors. Also give names of companies, if any, with which the directors are associated either as Managing Agents or Directors. Say whether the proposed directors have agreed in writing to serve.

In the case of a new company, state who are (*a*) the promoters, (*b*) the proposed directors of the company, what are their business addresses, and what is their experience in business.

8. Managing Agents :—Give name and address of Managing Agents, if any, appointed or to be appointed, enclosing copies of Managing Agency agreements entered into, if any, and of Treasurers and Secretaries. Give also the names of companies for which the Managing Agents, or any partner of the Managing Agents are also acting in a similar capacity. If the Managing Agents is a company, give the names of Companies on which a Director of the Managing Agent company is also a Director or a Managing Director. Also state the interest of the Managing Agents in the company particularly with regard to the shares held and otherwise.

9. Interest of Directors :—State the extent of interest of the Directors (existing or proposed).

10. Foreign Controlled Companies :—Is the company one which is controlled either directly or indirectly, by non-residents and is any part of the share capital held by non-residents? If so, please give particulars.

11. Total amount of issue :—Indicate the total amount to be issued and state whether it is for cash or not for cash.

12. Capital Issue :

(*a*) General provisions :—

(*i*) Describe in detail the proposed capital issue (indicating the exact amount) in shares, stocks and bonds, debentures and other instruments creating a charge or lien on the assets of the company, or which acknowledges a loan or indebtedness of the company, and are guaranteed by or entered into jointly with a third party.

(*ii*) Differentiate between equity and preference shares. Give the nominal value and the issue price of each also stating the premium and entrance fee to be included in the issue price. The reasons for the issue of shares at a premium, if any, may be stated. The rate of dividend and the terms and conditions of the preference shares may also be given, e.g., whether these are tax-free, cumulative, redeemable, etc. Describe the voting rights of each class. Indicate the proposed method of payment including cash or other consideration. If for other consideration, give details and the names of the parties concerned.

(*iii*) In case of issue of bonus shares, a proforma up-to-date statement of accounts should be added stating what appropriations are to be made from the profit and loss account balance and net balance to be carried forward to next year. Please state whether reserves have been created out of genuine profits (i.e. profits actually earned by a company. Profits arising out of a revaluation of fixed assets are not to be taken into account). Also please state the reasons for the proposed capitalisation of profits or reserves.

(*iv*) If the capital issue is to include the sale of debentures or bonds, indicate the security offered and the rate of interest and state if these are to be issued at par, premium, or discount, and the period of redemption.

(*v*) For existing companies, whose shares are not quoted on any stock exchange state the rates at which shares of the same class as that proposed to be issued have recently been transferred ; also state the rate of dividend paid on the shares for the preceding five years. In the case of companies whose shares are quoted, the latest quotations of the shares may be given specifying the date and the name of the stock exchange where the shares are listed.

(*vi*) If consent is required for borrowing, please state :—

(1) the exact amount of the loan ;

(2) from what source(s) the loan will be raised ;

(3) particulars of the terms on which the loan will be advanced, e.g., rate of interest, period, how repayable, etc., what document of security (e.g. mortgage) will be executed, brief particulars of the property or other assets which will be included in the security.

(*b*) Nature of Issue :—

(*i*) State the degree to which the subscription for the capital issue will be public and private. If public, explain the terms of issue, and the names of under-writers, their commission and the method of payment. Indicate brokerage payable, if any.

(*ii*) If a prospectus is to be issued, three copies of the draft prospectus may also be sent along with the application.

(*iii*) State the amount and arrangements which the promoters have made for the subscription of capital privately by them or their friends.

(*c*) Issue to non-residents :—

(*i*) State whether the company has any existing non-resident shareholders. If so, a list of non-resident shareholders showing their nationality and the number of shares held by each may be enclosed.

(*ii*) State the number and total value of shares out of the proposed issue which will be allotted to non-resident shareholders.

(*iii*) In case of Technical Assistance Agreements, a statement should be made covering the nature of technical assistance, agreed royalty payments and provision for training of the Indian technicians. Copies of the agreement for supply of technical assistance may be enclosed.

13. Cash Expenditure :—

(*a*) State the proposed stages of development and immediate and ultimate capital requirements.

(*b*) Explain how the proceeds received from the capital issue will be allocated for the acquisition of land, buildings, machinery, equipment, raw materials and working capital. Buildings, machinery and equipment to be purchased shall be described in detail, showing local and foreign purchase and cost. If one of the objects of the issue is to repay a loan, state the purposes of the borrowing and whether consent was obtained for that borrowing.

(*c*) If an existing concern or its assets are to be acquired, give the name, location, ownership and the purchase price. Furnish a set of balance sheets of vendor for the last five years, accompanied by a valuation report, by an independent authority, of the assets proposed to be acquired, and justify amount charged for goodwill, if any.

14. Miscellaneous Information :—The application should contain any additional material which will strengthen or substantiate the request for Government's approval of the capital issue.

15. New Insurance Companies :—In the case of new insurance companies, give the following information :—

(*i*) Copies of agreements, if any, that have been entered into or proposed to be entered into, between the company and any of its officers, including its Managing Director or Manager.

(*ii*) Amount of insurance business that is expected to be available to the company in the area of its operation, and the number and names of companies already operating in that area.

(*iii*) Reasons, if any, for considering the existing facilities for insurance as inadequate.

(*iv*) The experience and technical qualifications of the members of the Board of Directors or promoters or other officers of the Company.

16. Enclosures :—The application should be accompanied by the following enclosures :—

(*a*) A Treasury Receipt for the application fee of Rs. 50|-.

(*b*) Memorandum and Articles of Association.

(*c*) Managing Agency Agreement.

(*d*) Latest audited balance sheet and profit and loss account, and auditors' report to the shareholders, if an existing company.

(*e*) Draft prospectus, if issue is through a prospectus.

(*f*) Copy of technical assistance agreement, if any.

(*g*) Other documents, as required.

N. R. Reddy,

Controller of Capital Issues.

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APPENDIX II-A

Principles followed in considering applications for issue of capital

Where capital is proposed to be issued to the public by prospectus, it will be advisable for applicants to send the prospectus in draft form to the Controller of Capital Issues for comments and suggestions. The following is a resume of the more important aspects, which, it is understood are kept in view in considering applications for consent to capital issues.

(*i*) *General considerations :* (*a*) The objects of the issue should not be inconsistent with the policies of Government ; (*b*) the scheme should be technically sound ; and (*c*) the amount of capital proposed should be reasonable and adequate.

(*ii*) *Reasonableness of the size of capital :* Gross over-capitalisation or under-capitalisation should be avoided. With a view to determine this factor applicants should state in reasonable detail and with a fair degree of precision what are the full capital needs of the company for the successful completion of the project, and how these needs are proposed to be met. It is also advisable for applicants to indicate precisely the foreign exchange component of the project and the source of financing of the foreign exchange component. Copies of industrial licences secured by the applicant, if any, and also letters of approval by Government of the foreign collaboration terms or of the terms of any foreign loan should be sent along with the application so as to facilitate speedy disposal.

(*iii*) *Ratio between equity and debt :* It is considered important that a company should have a proper balance between its paid-up equity capital and debts, and should not have a capital structure unduly geared in favour of debt. Preponderance of equity is unobjectionable. But a higher ratio than 2:1 as between debt and enquity is generally not favoured, i.e., a position where the debts exceed double the equity capital is considered undesirable. In working out the debt|equity ratio in a company, debts are deemed to include all fixed interest bearing securities, e.g. debentures ; loans from institutions or parties, except purely short-term loans ; and redeemable preference shares with less than 12 years outstanding. Equity is deemed to include ordinary shares, free reserves, share premium, irredeemable preference shares, and redeemable prefernce shares with 12 years or more to run.

(*iv*) *Ratio between equity and preference shares :* The ratio of the preference capital to the equity capital is also considered important. A preference equity ratio is of 1:4 is considered reasonable. A higher preference ratio of 2:5 may be permitted in special cases, if there are special reasons to warrant the same.

(*v*) *Dividend on preference shares and interest on debentures :* The rates of dividend on preference shares and of interest on debentures should not be higher than what is necessary and should be fair to the equity holders. There is no rigid and uniform rate fixed for all companies : individual applications for issue of preference shares and debentures are examined on merits. The factors usually kept in mind are : the prevalent commercial rates ; the current price of, and yield on, comparable securities already in the market ; the size of the preference capital|debenture in relation to the paid-up equity capital ; the terms and the period of redemeption ; the reputation in the market of the particular concern, and the entrepreneurs behind it ; and the nature and profitability of its business. Generally interest on debentures is not allowed to exceed 7½% per annum.

(*vi*) *Price of further issue of equity capital :* Where a further issue of equity capital is sought to be made the issue price should be fixed in such a manner that the price of the rights do not go unduly high and invite unhealthy speculation. The market trends of the share, the break-up value of the share, the value of the share on the basis of the company's profit-earning capacity, the future prospects of the company, and the ratio of the rights issue are some of the factors taken into account in determining the issue price. The rights price should be reasonably smaller than the premium element in the issue price, so that the company gets the larger proportion of the extra money for productive use in its business, and the shares do not attract unhealthy speculation. In the case of rights issue, a condition is usually stipulated that while making the offer of rights, the company should simultaneously offer to all the holders of rights an opportunity to apply for additional shares, and that if the rights are not fully taken up, the balance left over should be distributed equitably among the applicants for additional shares.

(*vii*) *Stake of promoters, directors and friends in share capital :* In the case of the floatation of a public limited company, the following two factors are important : (*a*) a wide dispersal of share-holding is

considered desirable as a matter of economy policy, and hence a reasonable share of the capital should be open for subscription to the public. so that the shares are eligible for listing on the Stock Exchanges ; (*b*) the promoters and directors should accept a reasonable minimum stake in the capital of the company. The minimum stake considered reasonable is on a sliding scale and is 15% for an issue of capital up to Rs. 1 crore ; 12% for an issue of capital up to Rs. 2 crores ; and 10% for an issue of capital up to Rs. 5 crores. For issues above 5 crores it will be fixed on merits. In respect of the issue proposed to be reserved for promoters, directors, their friends, etc., an assurance is usually to be given that allotment out of this quota will be made only to bona fide investors who will keep the share as genuine investment for a reasonable period, and will not transfer the promise of allotment or the share when allotted, for immediate capital gain. This 'reasonable period', i.e., restriction on transfer of firm allotment of shares, is one year in the case of public limited companies issuing shares to the public, and three years in the case of public limited companies which do not issue shares to the public.

(*viii*) *Expeditious allotment, and return of application money in case of over-subscription :* After the issue is made the allotment should be effected expeditiously and the money sent in by unsuccessful applicants should be refunded within about two months. In the event of over-subscription the method of allotment to be followed should be decided in consultation with the Stock Exchanges where the shares are to be listed.

(*ix*) *Price of issue fixed : no entrance fee :* The issue of capital consented to should be made at the price indicated and not at a higher or a lower price. Further, companies should not charge any entrance fee or any other fee from the subscribers.

(*x*) *Underwriting commission and brokerage :* Underwriting commission and brokerage are permitted up to 2½% and 1% respectively on the issue of shares, and 1½% and 1% on the issue of debentures.

(*xi*) *Promotion expenses :* Promoters are generally permitted to reimburse themselves with the expenditure incurred on promoting a new company to the extent of 2% of the project cost if the company is managed by a Board of directors ; 1¼% if the company is managed by a managing director ; and 1½% if the company is managed by a managing agent. Actual expenditure should be certified by the auditors as

having been solely incurred on promoting the company. Expenditure incurred in foreign exchange, if any, should be limited to what has been permitted by the Exchange Control Department.

(*xii*) *Tests for Bonus Issues :* In considering applications for the issue of bonus shares, the principles given below are generally followed :

(*a*) Care should be taken to see that the company does not get over-capitalised in the process ; (for the purpose of bonus issues, the test of over-capitalisation is that the paid-up capital should not exceed the aggregate of (1) the written-down value of the fixed assets ; (2) half of the value of spares and stores ; and (3) the value of the average stock level of raw materials, to the extent of one-third in the case of engineering concerns and one-fifth in the case of others. No allowance will be made for finished goods) ;

(*b*) the issue should be made only out of free reserves built out of genuine profits and|or share premium collected in cash ; the issue may also be in lieu of dividends. The development rebate reserve will not be deemed to be a free reserve for this purpose ;

(*c*) reserves created by revaluation upwards of fixed assets are not permitted to be capitalised ;

(*d*) after the bonus issue, adequate residual reserves of not less than 20% of the increased paid-up capital should be left in the reserves. The development rebate reserve will be included in counting the 20% residual reserve ;

(*e*) the issue of preference shares as bonus shares is not generally permitted ;

(*f*) not more than one application for consent to the issue of bonus shares is generally entertained from a company in one accounting year.

(*xiii*) *Tests for debenture issues :* Applications for issue of debentures are generally subject to the following tests : (*a*) the purpose of the issue ; (*b*) whether the debentures bear a reasonable proportion to the paid-up equity capital and reserves ; (*c*) whether the security offered is adequate ; and (*d*) whether the company would be able to service the debentures without difficulty. The issue of bearer debentures is not permitted. Where a company applies for post-

ponement of the date of redemption of debentures already issued, and a consent is given, then, a condition is usually stipulated that those debentureholders who do not agree to the postponement should be repaid in cash without delay.

(*xiv*) *Diversion into unconnected lines :* In the matter of diversification of a company's business into unconnected lines, the policy is understood to be that where it is practicable new companies should be formed for new lines of business.

(*xv*) *Period of validity of consent :* Consent orders unless otherwise specified are valid for a period of 12 months from the date of issue of consent. Extensions of time are however freely given if valid reasons are advanced.

(*xvi*) *Exemption limit :* The exemption limit, i.e., the limit up to which capital may be issued without Controller's consent is Rs. 25 lakhs within any period of twelve months.

APPENDIX III

The Companies (Issue of Share Certificates) Rules, 1960.

G.S.R. 333.—In exercise of the powers conferred by clause (*b*) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956) and in supersession of the Companies (Issue of Share Certificates) Rules 1959, published with the notification of the Government of India in the Ministry of Commerce and Industry (Department of Company Law Administration) No. G.S.R. 798, dated the 30th June, 1959, the Central Government hereby makes the following rules, namely :—

1. Short Title.—These rules may be called the Companies (Issue of Share Certificates) Rules, 1960.

1. Effect of rules.—These rules shall have effect notwithstanding anything to the contrary contained in the Articles of Association of a company.

3. Definitions.—In these rules, unless the context otherwise requires,—

(*a*) "Act" means the Companies Act, 1956 (1 of 1956) ;

(*b*) "Board" means the Board of Directors of a company or a Committee thereof consisting of not less than three directors where the total number of directors exceeds six, and not less than two directors where the total number does not exceed six :

Provided that, to the extent that the composition of the Board of directors permits of it, at least half of the number of members of the Committee shall consist of directors other than (*i*) a managing or whole-time director or, (*ii*) where the company has a managing agent, the director appointed by the managing agent in pursuance of section 377 of the Act, or a director to whom section 261 of the Act applies ; and

(*c*) "seal" means the common seal of a company.

4. Issue of Share Certificate.—(1) when a company issues any capital, no certificate of any share or shares in the company shall be issued except :

(*i*) in pursuance of a resolution passed by the Board ; and

(*ii*) on surrender to the company of its letter of allotment or of its fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares :

Provided that if the letter of allotment is lost or destroyed the Board may impose such reasonable terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as the Board thinks fit.

(2) No certificate of any share or shares shall be issued either in exchange for those which are sub divided or consolidated or in replacement of those which are defaced, torn or old, decrepit, worn-out, or where the cages on the reverse for recording transfers have been duly utilized, unless the certificate in lieu of which it is issued is surrendered to the Company :

Provided that the company may charge such fee, if any, not exceeding Rs. 2 : per certificate issued on splitting or consolidation of share certificates or in replacement of share certificates that are defaced or torn, as the Board thinks fit.

(3) No duplicate share certificate shall be issued in lieu of those that are lost or destroyed without the prior consent of the Board or without payment of such fees, if any not exceeding Rs. 2, and on such resonable terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence as the Board thinks fit.

5. Form of Certificates.—(1) Every certificate shall specify the name(s) of the person(s) in whose favour the certificate is issued, the shares to which it relates and the amount paid up thereon.

(2) When any certificate is issued in any of the circumstances specified in rule 4, sub-rule (2), it shall state on the face of it and

against the stub of counterfoil to the effect that it is "Issued in lieu of share certificate No.....sub-divided|replaced|on consolidation of share".

(3) When any certificate is issued in any of the circumstances specified in rule 4, sub-rule (3), it shall state on the face of it and against the stub of counterfoil to the effect that it is a "duplicate issued in lieu of share certificate No....." Further, the word "duplicate" shall be stamped or punched in bold letters across the face of the share certificate...

6. Sealing and Signing of Certificate.—Every share certificate shall be issued under the seal of the company which shall be affixed in the presence of (*i*) two directors or persons acting on behalf of the directors under a duly registered power of attorney ; and (*ii*) the Secretary or some other person appointed by the Board for the purpose. The two directors or their attorneys and the secretary or other person shall sign the share certificate :

Provided that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than a managing or whole-time director or, where the company has a managing agent, a director appointed by the managing agent in pursuance of section 377 of the Act or a director to whom section 261 of the Act applies.

Explanation :—For the purpose of this rule, a director may sign a share certificate by affixing his signature thereon means of any machine, equipment or other mechanical means such as engraving in metal or lithography, but not by means of a rubber stamp provided that the director shall be responsible for the safe custody of such machine, equipment of other material used for the purpose.

7. Records of Certificates issued.—(1) Particulars of every share certificate issued in accordance with rule 4, sub-rule (1) shall be entered in the Register of Members maintained in the form set out in the appendix annexed hereto or in a form as near thereto as circumstances admit against the name(s) of person(s) to whom it has been issued indicating the date of issue.

(2) Particulars of every share certificate issued in accordance with rule 4, sub-rules (2) and (3) shall be entered in a Register of Renewed and Duplicate Certificates indicating against the name(s) of the person(s) to whom the certificate is issued, the number and date of issue of the share certificate in lieu of which the new certificate is issued and the necessary changes indicated in the Register of Members by suitable cross-references in the "Remarks" column.

(3) All entries made in the Register of Members or the Register of Renewed and Duplicate Certificates shall be authenticated by the secretary or such other person as may be appointed by the Board for purposes of sealing and signing the share certificate under the provisions of rule 6.

8. Printing of Forms.—All blank forms to be used for issue of share certificates shall be printed and the printing shall be done only on the authority of a resolution of the Board. The blank form shall be consecutively machine-numbered and the forms and the blocks, engravings, fascimiles and hues relating to the printing of such forms shall be kept in the custody of the secretary or such other person as the Board may appoint for the purpose ; and the secretary or other person aforesaid shall be responsible for rendering an account of these forms to the Board.

9. Custody of Books and Documents.—(1) The following persons shall be responsible for the maintenance, preservation and safe-custody of all books and documents relating to the issue of share certificates except the blank forms of share certificates referred to in rule 8, namely :—

(*a*) Where the company has a managing agent or secretaries and treasurers, such managing agent or secretaries and treasurers ;

(*b*) Where the managing agent or secretaries and treasurers are a firm, every partner in the firm ;

(*c*) Where such managing agent or secretaries and treasurers are a body corporate, every director of such body corporate ;

(*d*) Where the company has no managing agent or secretaries and treasurers but has a managing director, the managing director ; and

(*e*) Where the company has no managing agent, secretaries and treasurers or managing director, every director of the company.

(2) All books referred to in sub-rule (1) shall be preserved in good order permanently, and all certificates surrendered to a company shall immediately be defaced by the word "cancelled" being stamped or punched in bold letters and may be destroyed after the expiry of three years from the date on which they are surrendered, under the authority of a resolution of the Board and in the presence of a person duly appointed by the Board in this behalf.

APPENDIX

(See rule 7)

REGISTER OF MEMBERS

Name
Address
Occupation

Folio No.....

Date at which entered as a Member

Date at which ceased to be a Member.

No. of allotment or transfer	Shares acquired: Date of allotment or entry of transfer	Shares acquired: No. of shares allotted or transferred	Shares acquired: Distinctive number of shares inclusive: From	Shares acquired: Distinctive number of shares inclusive: To	Shares acquired: Number and date of issue of certificate	Shares acquired: Transferor's folio	Cash payable on Shares: Nominal value of shares acquired	Cash payable on Shares: Amounts due and on what accounts (allotment or call, etc.)	Cash payable on Shares:	Cash paid on Shares: Date of payment	Cash paid on Shares: Cash Book folio	Cash paid on Shares: Amount paid	Cash paid on Shares: No. of transfer	Cash paid on Shares: Date of entry of transfer	Shares transferred: No. of shares transferred	Shares transferred: Distinctive number of shares inclusive: From	Shares transferred: Distinctive number of shares inclusive: To	Shares transferred: No. and date of issue of the certificate	Shares transferred: Transferee's folio	Shares transferred: Total nominal value of shares transferred	Balance of shares held	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23

Note: All entries in the Register should be authenticated by the Secretary or the person appointed by the Board to sign share certific

(No. 12|17|58-PR. Vol. 11)
K. M. HANVARHATTY, Deputy Secy.

APPENDIX IV

Companies (Appeals to the Central Government) Rules 1957

S.R.O. 1380.—In exercise of the powers conferred by clause (*b*) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following Rules, namely :—

1. These Rules may be called the Companies (Appeals to the Central Government) Rules, 1957.

2. In these Rules, 'Act' means the Companies Act, 1956 (1 of 1956).

3. Every appeal to the Central Government under sub-section (3) of section 111 of the Act shall be by a petition in writing and shall specify—

(*a*) the full name and address of the appellant ;

(*b*) the full name and address of the company against which the appeal has been presented ;

(*c*) the numbers of share certificates and debentures ;

(*d*) the date of application for transfer of shares, of the date of application for transmission of the right to any shares or interest in debentures or the company as the case may be together with the date on which the instrument of transfer or the intimation of such transmission as the case may be was delivered to the company ;

(*e*) the date of refusal of the company as well as the date of receipt of notice of refusal ;

(*f*) whether the share certificates together with the transfer form duly executed both by the transfer as well as the transferee were lodged with the company ;

(*g*) the grounds of appeal, which shall be precise and specific; and

(*h*) the reliefs sought.

4. Every memorandum of appeal, shall be accompanied by an affidavit documentary evidence, if any, in support of the statements made therein, including a copy of the letter written by the appellant to the company for the purpose of registering the transfer of or the transmission of the right to, any shares or interest in, or debentures as also a copy of the letter of refusal of the company.

4A. (*a*) Every memorandum of appeal shall be accompanied by a fee as specified in the Table below :—

TABLE

Where the nominal value of the shares involved in the transfer or transmission—	Fees to be paid
Does not exceed Rs. 250|-	Nil
Exceeds Rs. 250|- but does not exceed Rs. 500|-	Rs. 2|-
Exceeds Rs. 500|- but does not exceed Rs. 1,000|-	Rs. 5|-
Exceeds Rs. 1,000|- but does not exceed Rs. 2,500|-	Rs. 7.50 P.
Exceeds Rs. 2,500|- but does not exceed Rs. 5,000|-	Rs. 10|-
Exceeds Rs. 5,000|- but does not exceed Rs. 10,000|-	Rs. 20|-
Exceeds Rs. 10,000|- but does not exceed Rs. 15,000|-	Rs. 30|-
Exceeds Rs. 15,000|- but does not exceed Rs. 20,000|-	Rs. 40|-
Exceeds Rs. 20,000|- but does not exceed Rs. 25,000|-	Rs. 45|-
Exceeds Rs. 25,000|-	Rs. 50|-

(*b*) The fee referred to in clause (*a*) shall be paid into a Government treasury for credit under the Head "XXI—Miscellaneous Departments—Miscellaneous—Registration of Joint Stock Companies" and the relevant treasury receipt or challan shall be attached to the memorandum of appeal.

5. On the appeal being admitted, notice thereof shall be served by registered post acknowledgment due on the company and the transferor or the person giving intimation of the transmission, in the Form appended to these Rules.

6. The Central Government may, before considering the appeal, require the appellant or the company against which the appeal has been presented, to produce within a specified period such further documentary or other evidence as it considers necessary.

7. Parties concerned shall within such time as may in the opinion of the Central Government, be reasonable in the circumstances, make their representations, if any, in writing accompanied by affidavits and documentary evidence, if any, in support.

8. The Central Government shall, after considering the representations made to it under Rule 7, and making such further inquiry as it considers necessary, pass such orders as it thinks fit under subsection (5) of section 111 of the Act, and communicate the said order to the parties concerned and the Registrar.

APPENDIX

FORM OF NOTICE

(See Rule 5)

Subject :—Appeal No.

Under Section 111 of the Companies

Act, 1956.

Shri

Shrimati Appellant

Versus

Messrs. Respondent

To

I am directed to say that an appeal, a copy of which is enclosed, has been made to the Central Government under section 111 of the Companies Act, 1956, by Shri|Shrimati.

* against the refusal of M|s..... to register the transfer|transmission of the shares|debentures bearing Nos.....in his|her name.

* against the failure on the part of M|s..... to register the transfer|transmission of the shares|debentures bearing Nos.....in his|her name within the period referred to in sub-section (2) of section 111 of the said Act.

* against the failure on the part of M|s..... to send notice of its refusal to register the transfer|transmission of the shares|debentures, bearing Nos.....in his|her name within the period referred to in sub-section (2) of section 111 of the said Act.

2. You are hereby informed that should you wish to make any representation in writing against the aforesaid appeal, you may do so on or before.....The representation shall be submitted in triplicate and shall be accompanied by affidavits and documentary evidence, if any, in support. If no representation is received from you by the date aforesaid, the appeal shall be determined according to Law.

* strike out whichever is inapplicable.

APPENDIX V

Specimens of Certain Registers

Section 301.—The Register to be kept pursuant to this section may be called "Register of Contracts, Companies and Firms in which Directors, etc., are interested". The register will consist of two parts. The first part will consist of a few pages only —as many pages as there are directors—preferably a separate page for each director. The following is a specimen page of this part :

A B Company Limited

Register of Contracts, Companies and Firms in which directors, etc., are interested

See section 301(3).

Name of Director : .....

Names of Bodies Corporate in respect of which notice has been given by him (of being member or director thereof).	Names of Firms in respe of which notice has been give by him (of being memb thereof).
.....	
.....	
.....	
.....	
.....	
.....	
.....	

The Second part of this register will give the particulars required by sub-section (1) of section 391. This part may contain as many pages as desired, this being dependent on the number of contracts or arrangements entered into by the company each year in which there is directors' interest. The following is a specimen page of this part :

A B Company Limited.

Register of Contracts, Companies and Firms in which directors, etc. are interested.

See Section 301(1)

(*a*) Date of the contract or arrangement.....

(*b*) Names of the parties to the contract or arrangement :—

Name of Party of the First Part.....

Name of Party|Parties of the Second Part

(*i*) .....

(*ii*) .....

(*iii*) .....

Name of the Director interested.....

Details of how Director is interested :

(*See* Section 293 of the Act) :.....

.....

.....

(*c*) Short particulars of the principal terms and conditions the contract or arrangement :

(*d*) Date on which contract or arrangement was placed before the Board :.....

(*e*) Names of Directors voting :

"For"	"Against"	"Neutral"
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

(*f*) Date of entry in register of above details :.....

(Signature of "Officer").

Section 307 : The following is a specimen of a page of the register to be kept pursuant to this section :—

A B Company Limited.

Register of Directors' Share and Debenture Holdings.
(*See* Section 307).

Name of Director.....

Name	Number of Shares or Debentures held	Description of Shares or Debentures	Amount	Date of Acquisition	Price or other Consideration	Date of Disposal	Remarks (Including Nature and Extent of Interest)

Section 356.—The following is a specimen of a page of the register to be kept pursuant to this section :

A B Company Limited.

Register of Appointment of Managing Agent or Associate as Selling Agent of goods produced by the Company

(*See* Section 356).

Name of Individual, Firm or Company appointed as Selling Agent ..	.....
	.....
Date from which appointment is to be effective ..	.....
Period for which appointment is to be effective ..	.....
Material terms subject to which the appointment is made : (i.e., the obligations undertaken by the Company, the obligations undertaken by the person appointed, and the remuneration payable). ..	.....

Date of passing of the Special Resolution : .....

.....

Date : .....

.....
(Signature of Secretary or other Officer).

Section 357.—The following is a specimen of a page of the register to be kept pursuant to this section :

A B Company Limited

Register of Appointment of Managing Agent or Associate as procuring agent for supply or rendering of any services.

(*See* Section 357).

Name of Individual, Firm or Company appointed as procuring agent ..	.....
Date from which the appointment is to be effective ..	.....
Period for which the appointment is to be effective ..	.....
Material terms subject to which the appointment is made: (i.e., the obligations undertaken by the company, the obligations undertaken by the person appointed, and the remuneration payable). ..	.....

Date of passing of the Special Resolution : .....

Date : ....

(Signature of Secretary or other Officer).

Section 358.—The following is a specimen of a page of the register to be kept pursuant to this section :

A B Company Limited.

Register of Appointment of Managing Agent or Associate as Buying Agent for Company.
(*See* Section 358).

Name of Individual, Firm or Company appointed as Buying Agent : .. ..

Text of the Special Resolution :

Date on which the Special Resolution was passed.....

.....

Date : ..... ; .....
(Signature of Secretary or other Officer).

Section 359.—The following is a specimen of a page of the register to be kept pursuant to this section :

A B Company Limited.

Register of Contracts where Managing Agent or Associate is buying agent or selling agent of other concerns.

(*See* Section 359).

Name of Firm, body corporate or other concern with which the contract has been or is about to be entered into. .. } .....

Capacity in which Managing Agent|Associate is connected with such firm, body corporate or other concern. .. } .....

Date of resolution authorising Managing Agent|Associate to retain the commission or other remuneration. .. } .....

Material particulars of the contract :

Date :..... .....

(Signature of Secretary or other Officer).

Section 360.—The following is a specimen of a page of the register to be kept pursuant to this section :

A B Company Limited.

Register of contracts between Managing Agent or Associate and company for the sale or purchase of goods or supply of service, etc.

(*See* Section 360).

Name of Individual, Firm or company with whom contract is entered into. .. } .....

Material terms of the contract :

Date of passing of special resolution approving of the contract being entered into. .. } .....

Date : ....

(Signature of Secretary or other Officer).

Section 372.—The following is a specimen of a page of the register to be kept pursuant to this section :

A B Company Limited.

Register of investments in other companies of same group.

(*See* Section 372).

Name of the body corporate in which the investment is made.	Date on which the investment is made.	Nature of the investment (i.e., Ordinary Shares, Preference Shares, Debentures, etc.)	Face value of each share of debenture.	Amount paid up on each share or debenture.	Total number of shares or debentures (subscribed for by investing company).	Book value of the investment.	Date of making of this entry in this register.	Remarks.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

The following is a specimen of the list to be annexed to Balance Sheets pursuant to sub-section (9) of Section 372 : (the list may be given as a separate schedule attached to the Balance Sheet).

"Annexure pursuant to sub-section (9) of Section 372."

Name of body corporate.	Nature of the investment.	Total number of shares| debentures.	Face value of each share|debenture.	Paid up value of each share|debenture.	Value of the extent of investment at cost.
(1)	(2)	(3)	(4)	(5)	(6)
A B Co. Limited.	Ordinary Shares	20	Rs. 10|- each	Rs. 5|- per share	Rs. 100|-
C D Co. Limited.	4% Preference Shares.	20	Rs. 100|- each	Rs. 100|- per share	Rs. 2,000|-
E F Co. Limited.	6% Preference Shares.	20	Rs. 100|- each	Rs. 50|- per share	Rs. 1,000|-
E F Co. Limited.	6% first mortgage debentures.	30	Rs. 1,000|- each	Rs. 1,000|- each	Rs. 30,000|-

APPENDIX VI

Some important Press Notes and Notifications

Ministry of Finance, New Delhi.

February 18, 1956.

Press Note

Seeking Government's Approval. Procedure to be followed by Companies

Under the Companies Act, 1956, it is necessary for companies to continue to apply to the Central Government for approval in respect of various matters in which such approval was necessary under the provisions of the Indian Companies (Amendment) Act, 1951, relating to the appointment or reappointment of managing directors or managing agents, increase in the remuneration of directors or managing directors, appointment of directors who are not liable to retire by rotation, changes in the constitution of managing agents, etc.

The Companies (Central Government's) General Rules and Forms, 1956, which have been published in a Gazette of India Extraordinary dated February 18, 1956, and copies of which are now on sale with the Manager of Government of India Publications specify the forms in which such applications are to be submitted to Central Government. The procedure and the forms do not materially differ from those hitherto prescribed. Companies will also have to continue to address their applications to the Secretary to the Government of India, Ministry of Finance, Department of Company Law Administration, New Delhi, in the prescribed forms, along with certified copies of notices published in newspapers in accordance with section 412(2) of the new Act and the required number of copies of all other relevant documents such as the Memorandum and Articles of Associations, Reports and Audited Accounts, managing Agency Agreements, etc. It will expedite consideration of the application relating to increase in the remuneration of managing agents, directors, etc., or to the appointment or reappointment of managing agents, directors, etc., if the companies would submit, along with the above documents, brief statements showing the financial effect of their proposals in terms of the provisions of Section 198 of the new Companies Act, i.e., whether the overall managerial remuneration of the Companies concerned exceeds the percentage mentioned in this Section.

PRESS NOTE

Companies Act, 1956.

Applicability of Section 314 Explained

An erroneous impression may have been created in the mind of the public by certain news item appearing in some sections of the press to the effect that section 314 of the Companies Act, 1956, restricting the holding of a place or office of profit in a company by any of its directors or any of his relatives does not apply to private limited companies. It is notified for general information that the provisions of section 314 apply as much to Private Companies as to Public Companies.

PRESS NOTE

Change in name of Companies. Provision of New Act Explained

Some doubt seems to be felt by a section of the public as to the effect of the compliance by an existing private company of the statutory requirements of section 24, read with section 147, of the companies Act, 1956, on its rights and obligations under contracts in force on the date of commencement of the Act. Under the provisions of those sections, it is incumbent upon all existing private companies to insert, from and after April 1, 1956 (the date on which the new law came into force), the word 'private' before the word 'Limited' in their names and also to use the names as so altered in all their bills, Letter heads, cheques and other negotiable instruments, etc. It is desired to make it clear, that the addition of the word 'private' does not in any way affect the identity, rights or obligations of the Companies as such under any contracts entered into before the date of such addition. Section 23(3) of the Companies Act which is applicable to a change of name under section 24 lays down that the change of name shall not affect any right or obligations of the company or render defective any Legal proceedings by or against the company concerned ; and any Legal proceedings which might have been continued or commenced by or against the company by its former name may be continued or commenced by or against it by its new name. The net result of these provisions is that, for all purposes, including the grant of licences, fulfilment of contracts, etc. a company retains its original character and identity and is entitled to continue to be treated as such even after the addition of the word 'private' before the word 'Limited' in its name, provided there has been no change in the constitution of the company.

New Delhi, June 7, 1956.

PRESS NOTE

Payment of fees to Directors. Company Law Provisions Explained

It has been observed that a number of companies have, soon before and after the commencement of the new Companies Act, on April 1, 1956, passed resolutions amending relevant provisions in the Articles of Associations or otherwise increasing the fees payable to Directors for meetings of the Board attended by them. While for the purposes of determining the overall maximum managerial remuneration in terms of section 198 of the Companies Act, such fees are to be excluded, any amendment of any provisions relating to remuneration of any Director including the managing or whole-time Director, which purports to increase or has the effect of increasing, whether directly or indirectly, is hit by section 310, which lays down that the same shall not have effect unless approved by the Central Government and the amendment, in so far as it is disapproved by that Government, becomes void. Section 310 applies whether increase takes place as a result of amendment of the provisions contained in the Company's Memorandum or Articles or in any agreement entered into by it, or in any resolution passed by the company in a general meeting or by its Board of Directors.

New Delhi, June 27, 1956.

PRESS NOTE

Special Resolutions By Companies All Material Facts To Be Disclosed

Under section 173 of the Indian Companies Act, 1956, all business transacted at an annual general meeting save :

(*i*) the consideration of the accounts, balance sheet and the reports of the Board of Directors and auditors ;

(*ii*) the declaration of a dividend ;

(*iii*) the appointment of directors in the place of those retiring ; and

(*iv*) the appointment of and fixing of remuneration of auditors ;

and any business conducted at any other meeting by a company is deemed to be special.

Where any items of business to be transacted at the meeting are to be deemed to be special, there has to be annexed to the notice of the meeting, a statement setting out all material facts concerning each such item of business, including in particular, the nature and extent of interest, if any, therein of every director, managing agent, if any, the secretaries and treasurers, if any and the manager, if any.

All resolutions required to be passed in accordance with sections 314, 356, 357, 358, 360, 370, and 375 fall within the latter category. It is therefore, necessary that a statement setting out all material facts concerning such items should accompany the notice calling the meeting. Complaints have been received that not all companies are complying with the requirements of law in this behalf. It is possible that this is arising out of a misunderstanding of the provisions of law. The attention of all companies is invited to the necessity of due compliance with these provisions of law [section 173(2)] failing which the resolutions falling within the category of those which are required to be registered under section 192 will run the risk of not being accepted by the Registrars concerned for registration.

Where a special resolution does not on the face of it, disclose all material facts relating thereto, the Registrars have been instructed to obtain, in exercise of the powers conferred on them by section 234 of the Act, copies of the statement prescribed by section 173(2), and any other information necessary to see that the resolution is in complete accordance with the law.

New Delhi, July 25, 1956.

PRESS NOTE

Loans to Directors, etc. and Investments in Shares of Companies in the Same Group

Procedure for Seeking Governments' Approval Explained

The Ministry of Finance (Department of Company Law Administration) have been receiving applications from companies seeking approval of Government under Sections 295 and 372-373 of the Companies Act, 1956 respectively to their granting loans to their Directors, etc. and to their investments in other companies belonging to the same group. The applications do not always contain all the information required by Government and consequently their disposal is often delayed. The Companies are accordingly advised, in their own interest, to ensure that their applications are accompanied by as full information as possible, on the lines broadly indicated below.

In respect of a loan which attracts the disabilities specified in sub-section (1) of Section 295 of the Act, the lending company should furnish full details as to the purpose for which the loan was or is to be granted, the terms of the loan, including agreements relating thereto, if any, specifying the rate of interest chargeable on the loan, the period within which it is to be recovered and the security on the basis of which the loan was granted, the balance sheet and Profit and Loss Accounts of the lending and the borrow-

ing company for the latest three financial years together with the Memoranda and the Articles of Association of the companies, and any other information having a bearing on the loan transaction. The applicant company should also indicate whether the transaction attracts the provisions of Section 370 of the Act and if it does, a certified copy of the special resolution of the lending company authorising the grant of the loan should invariably accompany the application. A statement to the effect that all the remaining requirements of the Act in so far as they have a bearing on the loan transaction have been complied with, should also be furnished.

Applications for fresh investments under Section 372 or for the continuance of investments under Section 373 of the Act should furnish information regarding the subscribed capital of the investing company and the subscribed capital of the company in shares of which the investments have been, or are to be, made. The nominal value of all investments made in the other companies and in the companies belonging to the same group should also be clearly stated. In the case of application for the continuance of investments made after 1-4-52 and prior to 1-4-56 particulars of the investments made before 1-4-52 and those made after that date should be separately furnished showing the exact date on which each such investment was made. A certified copy of the resolution of the investing company authorising the investment, the balance sheets and the profit and loss accounts for the latest three financial years of each of the companies concerned including the investing company, their Memoranda and Articles of Association and the rates at which the shares were acquired should also be furnished stating whether the shares are quoted on the Stock Exchange.

It should be noted that under the provisions of Sub-Section (3) of the Section 295 of the Act, approval of the Central Government to all the loans outstanding at the commencement of the Act is to be obtained by the 30th September, 1956 ; otherwise, recovery of the loans will have to be enforced within the stipulated period. Approval to the continuance of investments under Section 373 of the Act has also to be obtained by the 30th September, 1956 at the latest, failing which the investing company will have to dispose of such investments before the 1st April, 1958.

The Companies are therefore advised to take stock of their position urgently. If the facts warrant their applying for Government's approval to the loans granted by them or the investments made by them, they should send up their applications, without delay, addressing them to the Secretary to the Government of India, Ministry of Finance, Department of Company Law Administration, New Delhi.

New Delhi, September 2, 1956.

PRESS NOTE

Payment of Remuneration to Directors without Government Approval

Companies Asked to Comply with Provision of Act

Cases have come to the notice of Government where Directors of Companies were paid substantial amounts of remuneration besides their reasonable expenses, for services rendered to the companies concerned, without obtaining the approval of the Central Government in terms of section 310 of the Companies Act, 1956.

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 places 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 term 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 re-imbursing 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.

Press Note.

Remuneration for Managing Agents
Government Fix Sliding Scales

On the advice of the Company Law Advisory Commission, Government of India have decided that the remuneration of Managing Agents and Secretaries and Treasurers should ordinarily be fixed according to a sliding scale of commission on net profits of the managed companies.

Under the Companies Act, 1956, Government of India have to satisfy themselves that the conditions of the agreement to be entered into between the managed company and the Managing Agents or Secretaries and Treasurers are fair and reasonable. While considering applications in this behalf, therefore, Government have to determine what would be a fair and reasonable remuneration and tenure within the maxima permissible under the Act in the circumstances of each case. This matter was recently given very careful consideration and the Government have fixed remuneration and tenure for Managing Agents or Secretaries and Treasurers.

The scale of commission for Managing Agents will be 10 per cent on the first Rs. 10 Lakhs or fraction thereof,
9 per cent on the next Rs. 10 Lakhs or fraction thereof,
8 per cent on the next Rs. 10 Lakhs or fraction thereof,
7 per cent on the next Rs. 10 Lakhs or fraction thereof,
6 per cent on the next Rs. 10 Lakhs or fraction thereof,
5½ per cent on the next Rs. 10 Lakhs or fraction thereof,
5 per cent on the next Rs. 25 Lakhs or fraction thereof, and
4 per cent on any sum over one crore of rupees.

The scale of commission for Secretaries and Treasurers will be
7½ per cent on the first Rs. 10 Lakhs or fraction thereof,
6¾ per cent on the next Rs. 10 Lakhs or fraction thereof,
6 per cent on the next Rs. 10 Lakhs or fraction thereof,
5¼ per cent on the next Rs. 10 Lakhs or fraction thereof,
4½ per cent on the next Rs. 10 Lakhs or fraction thereof,
4⅛ per cent on the next Rs. 25 Lakhs or fraction thereof,
3¾ per cent on the next Rs. 25 Lakhs or fraction thereof, and
3 per cent on any sum over one crore of rupees.

The Government have also decided, on the advice of the Commission, that the term of office should ordinarily be 10 years when a company appoints Managing Agents or Secretaries and Treasurers for the first time and five years on reappointment or successive appointments.

These decisions have since been enforced and the Department of Company Law Administration have already decided as many as 70 applications on this basis.

New Delhi, 23rd October, 1959.

PRESS NOTE

Appointment of Managing Directors and Managing Agents

Rules for Government Approval Amended

Under the Companies Act, companies seeking Government approval to the appointment or re-appointment of managing directors, managing Agents and secretaries and treasurers, have to furnish particulars as prescribed in the Companies (Central Government's) General Rules and Forms. Government of India have now revised the form of application to be filled by companies for such approval and asked them to furnish additional information in certain respect to provide the Government with complete particulars of the persons or bodies proposed for appointment as managing director, managing agents, etc.

Under the revised procedure, companies have to furnish details regarding the nature of services, managerial or otherwise, rendered or proposed to be rendered by the managing agents and others who are sought to be appointed. Details of any loans advanced by the managing agents to the company and the interest charged on them are also *inter alia* to be furnished.

Companies are also required to send to the Registrar of Companies copies of the notice published by them in the newspapers regarding their applications along with all the material particulars. Such notices when concerning changes in the constitution of the managing agents or of the secretaries and treasurers if issued to members of the agency companies have to be addressed to the members of the managed companies as well. Persons having any objection to the company's proposal may communicate the same in writing to the Central Government within 30 days of the publication of the notice.

Companies are also required to forward to Government seven copies of their applications and of all the domuments accompanying it.

New Delhi, 25th October, 1959.

PRESS NOTE

New Companies Act Becomes Law. Important Changes Explained

The Companies (Amendment) Act, having received the assent of the President on December 28, 1960, has come into force. The Department of Company Law Administration has called upon companies and other concerned bodies to duly comply with the amended provisions.

The Department has drawn attention to the more important changes introduced in the recent legislation.

Under the amended Act, a public company can be converted into a private company in future only with the approval of the Central Government. Again, the Act now provides that where not less than 25 per cent of the paid-up capital of a private company is held by one or more corporate bodies, the private company shall subject to certain specified exceptions become a public company.

Another change now effected is that if a company at the time of issuing further shares, wants to exclude the existing equity shareholders, this can be done only if a special resolution to that effect is passed by the company in general meeting. If the resolution is passed only by a simple majority, the shares can be offered to any outsider only with the sanction of the Central Government.

The act further lays down that, in future, a company shall not employ simultaneously more than one of the following categories of mangerial personnel, viz., Secretary and Treasurer, Managing Agent, Managing Director or Manager.

In future, no dividend shall be paid, without first providing for depreciation for that year as well as for arrears of depreciation. This provision will have no retrospective effect and may, in any particular case, be relaxed by the Government in the public interest. The Act stipulates that dividend shall always be paid in cash except where bonus shares are issued.

The balance-sheet and the profit and loss accounts will have to be placed before the shareholders in annual general meeting within six months of the close of the financial year instead of 9 months as before. In exceptional cases, the Registrar will have the power to extend this time for a further period not exceeding three months.

Books and accounts of a company will now have to be preserved in a good order for a period of not less than 8 years. The modifications made to the form of the balance-sheets and the requirements of disclosure in the profit and loss account will be applicable to the accounts for the current financial year also.

In future, the Board of Directors would be required to state in their report attached to the balance-sheet material changes and commitments affecting the financial position of the compay, which have occurred between the date of the balance-sheet and the date of the Board's report. It will be incumbent, in future, to hold an annual general meeting once every calendar year.

Branch Audit

Every branch of a company will have to be audited by its auditor or by a person who is qualified to act as an auditor, unless the branch is exempted from such audit under the rules to be framed by the Government.

Managing or Whole-Time Directors and Managers

The Act stipulates that Central Government's approval would, in future, be necessary for the appointment of a person as manager

in a public company or its subsidiary for the first time, the re-appointment of a manager of such company for the first time after the commencement of the Amendment Act, if the company was in existence on April 1, 1956 ; similarly the reappointment of an existing managing director for the first time after the commencement of the Amendment Act, even on existing terms and conditions will require Government's approval, if the company was in existence on April 1, 1956. The approval of the Government would be necessary even in cases where the existing term of managing director expires on March 31, 1961 by virtue of section 317.

No person will, in future, be allowed to be manager of more than two companies, public or private, unless specifically permitted by the Central Government. Similarly, in the cases of persons who are acting as managing directors of companies, of which one is a public company, they will have to resign their managing directorship in excess of two within one year of the commencement of Amendment Act.

In calculating the "net profit" for payment of managerial remuneration, it will now be necessary to deduct any loss in previous financial years. In case of public companies or their subsidiaries, where minimum managerial remuneration under section 198(4) of the Act is being paid without having obtained the specific approval of the Central Government in the past, it will not be competent for the companies to continue such payment without obtaining the approval of the Central Government, unless approval has been obtained under any other provision of the Act.

Where the articles of association of companies provide for recurring paymens of fixed amounts to directors, the companies should, with the approval of the Central Government, amend their articles of association and provide for sitting fees for each meeting of the board or any committee attended by the directors. Where a monthly amount was being paid, the present position may be continued for a period of two years, unless the term of the director expires earlier.

Salaries paid to directors, who are not whole-time or managing directors, will have to be either discontinued or replaced by payment on commission basis.

The total remuneration paid to a managing or whole-time director should henceforth be restricted to an amount not exceeding 5 per cent of the net profits of the company, unless the approval of the Central Government is obtained to exceed this limit. Salaries which have been specifically approved as minimum remuneration shall not, however, be affected.

In future, a person will be deemed to be a managing agent, if he holds 10 per cent of the shares in a managing agency company, which is public, or 5% of the shares in a managing agency company, which is private. Those connected with managing agency companies should immediately review the position and ensure that they

are not deemed to be managing agents of more than 10 companies, which is prohibited.

In future, the transfer of office by a managing agent in any form whatever will require the approval of the Central Government as also of the managed company.

If the managing agent being a corporate body is a subsidiary of another corporate body, any change in the constitution of the holding company will also require the approval of the Central Government. Otherwise, the managing agency will terminate.

In future, payments made by way of remuneration to any partner of a managing agency firm or to a director of any managing agency company or to a member of a private company acting as managing agent shall be included in the remuneration of the managing agent. No contract for the rendering of any service between a company and its managing agent or an associate of the managing agent shall be valid in future, unless such contract is approved by the company by a special resolution and also by the Central Government.

The definition of 'same management' group as given in section 370 has been enlarged. It will be necessary for a company to maintain a register in respect of loans, etc. made to companies under the same management.

The provisions relating to inter-company investments have also been extensively amended. In future, subject to certain limits and exceptions, Government approval will be required for investments made outside the 'same management' group as well.
New Delhi, 29th December, 1960.

PRESS NOTE

PROVISIONS RELATING TO ANNUAL GENERAL MEETINGS AND ACCOUNTS OF COMPANIES CONSEQUENT UPON THE COMING INTO FORCE OF THE COMPANIES (AMENDMENT) ACT, 1960.

The Department of Company Law Amendment has clarified that companies would now be granted extension of time up to three months for holding their annual general meetings and present the accounts relating to a financial year ending prior to December 28, 1960 when the Companies (Amendment) Act came into force.

This step has been taken to avoid any undue hardship that may be caused to companies by a strict enforcement of the provision in the Amendment Act that the accounts to be laid in any annual general meeting, held after December 28, 1960, should relate to a period not later than six months. Companies, which find difficulty in complying with the amended provision in this respect may apply to the Registrar of Companies for extension of time.

The Department has also notified that the balance sheets and the profit and loss accounts of companies for financial years ending on a date prior to December 28, 1960, may be drawn up in the old form. In respect of financial years ending on or after December 28, 1960, the accounts must, however, be in accordance with the amended Schedule.

Under the Amendment Act, private companies are required, in future, to file their profit and loss accounts, along with their balance sheets. The annual accounts filed by a private company after December 28, 1960, must accordingly include its audited profit and loss account. In order to ensure that only the balance sheet of a private company and, not the profit and loss accounts is accessible to members of the public for inspection, private companies are required to file the profit and loss accounts separately from the balance sheets.

It has also been decided that companies which had failed to file their documents with the Registrar of Companies within the prescribed period may now request the Registrar to accept these documents. The Registrars are being advised about the additional fee that would have to be paid for such late filing of documents.

New Delhi, 13th January, 1961.

PRESS NOTE

Branch Accounts—Audit

One of the important amendments in the Companies (Amendment) Act, 1960, 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 note 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 requirement, 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 subscribed 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.

New Delhi, 19th January, 1961.

G.S.R. 556, dated 25-6-58.

In exercise of the powers conferred by sub-Section (1) of section 637 of the Companies Act, 1956 (1 of 1956) the Central Government hereby delegates to the Regional Directors of the Department of Company Law Administration at Bombay, Calcutta, Madras and Kanpur, the powers and functions of the Central Government under the following provisions of the said Act subject to the conditions, restrictions and limitations specified there against namely :—

Section 21.
Section 167.
Sub-section (3) of Section 224.
Sub-section (4) of Section 224.
Clause (*a*) of sub-section (8) of Section 224.

Second proviso to sub-section (5) of section 439 and section 496, sub-section (6) of the said section where the period referred to in clause (*a*) of sub-section (1) thereof does not exceed six months. Section 508 where the period referred to in clause (*a*) of sub-section (1) thereof does not exceed 6 months. Clause (*b*) of sub-section (7) of section 555 where the claim does not exceed Rs. 1,000|-.

Proviso to sub-section (1) of Section 610, Section 627.

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Company Law Administration)

New Delhi, the 29th May, 1959.

G.S.R. 663.—In exercise of the powers conferred by sub-section (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 sub-section (1) of section 3 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 75—Return as to allotments.
(2) Section 89—Termination of disproportionately excessive voting rights in existing companies.
(3) Section 113—Limitation of for issue of certificates.

(4) Section 118—Right to obtain copies of and inspect trust deed.

(5) Section 141—Rectification by Court of register of charges.

(6) Section 141—Rectification by Court of register of charges and company's register of charge.

(7) Section 163—Place of keeping and inspection of registers and returns.

(8) Section 196—Inspection of minute books of general meetings.

(9) Section 219—Right of member to copies of balance sheet and auditor's report.

(10) Section 234—Power of Registrar to call for information or explanation.

(11) Section 240—Production of documents and evidence.

(12) Section 304—Inspection of the register of directors, managing agents, Secretaries and Treasurers, etc.

(13) Section 307—Register of directors' shareholdings, etc.

(14) Section 375—managing agent not to engage in business competing with business of managed company ; and

(15) Section 614—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.

No. 11|1|58-PR.

MINISTRY OF FINANCE

Department of Revenue and Company Law (Company Law Division).

NOTIFICATION

New Delhi-1, the 1st July,

G.S.R. 955.—In pursuance of clause (b) of sub-section (1) of section 10A of the Companies Act, 1956 (1 of 1956), the Central Government hereby specifies section 155, section 203 in so far as it relates to the granting of leave under that section, section 240 and sections 397 to 407, as the sections, whereunder the powers and functions conferred on the Court shall be exercised and discharged by the Tribunal.

The Companies Tribunal (Bench) Rules,

The Central Government by a notification issued on the 1st July, under sub-section (2) of section 10B of the Companies Act, 1956, made rules called the Companies Tribunal (Bench) Rules The text of the notification is given below :—

MINISTRY OF FINANCE

Department of Revenue and Company Law (Company Law Division).

NOTIFICATION

New Delhi-1, 1st July,

The Companies Tribunal (Bench) Rules,

G.S.R. 956.—In exercise of the powers conferred by sub-section (2) of section 10B of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, namely :—

1. **Short title.**—These rules may be called the Companies Tribunal (Bench) Rules,

2. **Number of members of the Tribunal.**—Every bench of the Tribunal constituted by the Chairman thereof under sub-section (1) of the said section 10B shall consist of two members.

Powers and Functions of Tribunal Constituted under the Companies Act

Under section 10A of the Companies Act, 1956, the Central Government has constituted a Tribunal consisting of two members with Shri B. N. Gokhale, a retired High Court Judge, as Chairman and Shri G. Mathias, a senior officer of the Indian Audit and Accounts Service, as members of the Tribunal. The Tribunal may enquire into the cases against managerial personnel of companies which may be referred to it by the Central Government, and also exercise and discharge all or any of the powers and functions conferred on the Courts by or under section 156, section 203 in so far as it relates to the granting of leave under that section, section 240 and sections 397 to 407 of the Act.

The powers and functions mentioned above have been transferred to the Tribunal with effect from July 1, by a Government Notification, dated July 1, , the text of which is given below.

The powers and functions relate to the following matters, namely :—

1. rectification of the register of members and the register of debenture-holders of a company ;

2. granting of leave to persons to manage companies in cases where they have been restrained from doing so by orders of the Court ;

3. compelling certain persons to produce documents and requiring them to appear before an inspector appointed by the Central Government to investigate into the affairs of a company and ordering examination on oath of a person whom the inspector has no power to examine on oath ; and

4. granting of relief in cases of oppression of any member or members of a company or mismanagement of the affairs of a company or where the affairs of a company are being conducted in a manner prejudicial to public interest.

As a result of the aforesaid Notification, the District Courts or the High Courts, as the case may be, shall not exercise the powers and functions conferred on them in relating to the above matters with effect from July 1, 1964. By virtue, however of sub-section (5) of section 10A of the Act, these Courts shall continue to exercise the powers and functions in relation to any proceedings arising out of these matters pending before them immediately before the said date.

All applications or references required to be made to the District Courts or the High Courts, as the case may be, in regard to the matters in respect of which the powers and functions of the Courts have been transferred to the Tribunal as aforesaid should, with immediate effect, be made to the Tribunal whose office is located at 25, Curzon Road, New Delhi.

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Company Law Administration)

NOTIFICATION

New Delhi, the 13th January, 1961

THE COMPANIES (BRANCH AUDIT EXEMPTION) RULES, 1961

G.S.R. 72.—In exercise of the powers conferred by sub-section (4) of section 228 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, namely :—

1. **Short title.**—These rules may be called the Companies (Branch Audit Exemption) Rules, 1961.

2. **Definitions.**—In these rules, unless the context otherwise requires,—

(*a*) "quantum of activity" means—

(*i*) the aggregate value of the goods or articles, produced, manufactured or processed, or

(*ii*) the aggregate value of the goods or articles sold and of services rendered, or

(*iii*) the amount of the expenditure, whether of a revenue or capital nature, incurred by a branch office of a company during a financial year, whichever is higher ;

(*b*) "relevant financial year" means the financial year of a company in respect of which exemption from branch audit is to be determined ;

(*c*) "section" means a section of the Companies Act, 1956 (1 of 1956).

3. **Exemption based on quantum of activity.**—Where a company carrying on any manufacturing, processing or trading activity has a branch office whose average of the quantum of activity during the relevant financial year does not exceed rupees two lakhs or two per cent of the average of the total turnover of the company including all its branch and other offices and the earnings from services rendered and from any other source during the same period, whichever is higher, the branch office shall be exempt from the provisions of section 228 :

Provided that in any such case, the auditor of the company shall have the rights referred to in sub-section (2) of section 228 in relation to the accounts of the branch office.

Explanation.—For the purpose of this rule, the average quantum of activity shall be taken to be—

(*a*) the average of the quantum of activity during the three financial years immediately preceding the relevant financial year, or

(*b*) if three financial years have not been completed since the establishment of the branch office, the average of the quantum of activity during the two financial years, or, as the case may be, the quantum of activity during the year, immediately preceding the relevant financial year, or

(*c*) in other cases, the quantum of activity during the relevant financial year.

4. **Grant of exemption in other cases.**—(1) The Central Government on application made to it in this behalf may, after making such inquiry as it may think fit, by order in writing, exempt the branch office of a company from the provisions of section 228 on any of the following grounds, namely :—

(*a*) that a company carrying on activities other than those of manufacturing or processing or trading has made satisfactory arrangements for the scrutiny and check, at regular intervals, of the accounts of the branch office by a responsible person who is competent to scrutinize and check accounts ;

(*b*) that a company has made arrangements for the audit of the accounts of the branch office by a person otherwise qualified for appointment as branch auditor, even though such person is an employee of the company ;

(*c*) that, having regard to the nature and the quantum of activity carried on at the branch office or for any other reason, a branch auditor is not likely to be available at a reasonable cost ; and

(*d*) that, for any other reason, the Central Government is satisfied that exemption may be granted.

(2) An order made under sub-rule (1) shall be in force to such extent, for such period and subject to such conditions, if any, as may be specified in the order.

(3) A copy of every order of exemption shall be communicated to the company which shall forthwith transmit a copy thereof to the auditor of the company and shall also cause it to be read before the next general meeting.

(4) Where, under this rule, an exemption has been granted to a branch office of a company, the auditor of the company shall have the rights referred to in sub-section (2) of section 228 in relation to the accounts of the branch office.

5. **Application for exemption.**—(1) Every application for exemption under rule 4 shall be made by the company in the form set out in the Annexure to these rules and shall be accompanied by a treasury challan in token of payment of the fee prescribed therefor under section 637A of the Act ; the fee shall be credited to the Head "XXI—Miscellaneous Departments—Miscellaneous—Registration of Joint Stock Companies".

Provided that, except in cases where the relevant financial year for which exemption is sought closes on or before the 31st March, 1961, no application for exemption shall be made unless the company has by ordinary resolution passed at a general meeting approved the proposal to apply for such exemption.

(2) An application for exemption on the ground mentioned in clause (*b*) of sub-rule (1) of rule 4 shall be accompanied by—

(*a*) a certificate signed by the managing agents, secretaries and treasurers, managing director or manager of the company, as the case may be, to the effect that arrangements have been made for the audit of the

accounts of the branch office as specified in clause (*b*) of sub-rule (1) of rule 4 ; and

(*b*) a written statement from the auditor of the company that, in his opinion, arrangements made for the audit of the accounts of the branch office are adequate and that the arrangements made for the keeping of the accounts of the branch office are such as would enable the person auditing the accounts to certify that they show a true and fair view of the working of the branch office.

6. **Conditions of exemption in certain cases.**—In every case in which an exemption is granted on the ground mentioned in clause (*b*) of sub-rule (1) of rule 4,—

(*a*) the company shall give the person employed for the purpose of audit of the accounts of the branch office access at all times to the books, accounts and vouchers maintained at the branch office and also furnish such information and explanation as such person may require ;

(*b*) the person so employed shall, during the period the exemption is in force, prepare in respect of each financial year a report on the accounts of the branch office examined by him and forward the same to the company's auditor ; and

(*c*) there shall be attached to the balance sheet for each financial year a certificate to the effect that no material change has taken place in the arrangements made for the audit of the accounts of the branch office, such certificate being signed by a director and by the managing agent, secretaries and treasurers, manager or secretary of the company or where there is no managing agent, secretaries and treasurers, manager or secretary, by two directors of the company, one of whom shall be the managing director where there is one.

7. **Audit report to refer to exemption.**—Where, in any financial year, the accounts of the branch office of a company have not been audited, by an auditor mentioned in sub-section (1) of section 228, the auditor of the company shall expressly state in the audit report that the branch office is exempt from the requirements of section 228 by virtue of rule 3 or that an exemption has been granted under rule 4.

8. **Revocation of execution.**—The Central Government may, after giving the company reasonable opportunity to make its objections, revoke an exemption granted under these rules, if—

(*a*) there has been a contravention of any of the terms and conditions subject to which the exemption was granted ;

(*b*) there has been a material alteration in the circumstances relating to the scrutiny, check or audit of the accounts of the branch office on the basis of which exemption was granted ; and

(*c*) for any other reason, the Central Government is satisfied that the exemption is no longer necessary or justified.

ANNEXURE

(See Rule 5)

Form of application for exemption of a branch office from audit

1. (*a*) Name of the Company.....
(*b*) Registration No. of Company.....
(*c*) Nominal Capital Rs.....

2. Full description of the activities in which engaged (e.g., goods produced, articles manufactured or processed, services rendered, as the case may be).

3. Situation of all the branch offices of the company and the nature of activities carried on at each of them, indicating separately the branch office(s) in respect of which exemption from audit is desired.

Note.—Where the applicant company is a banking company, it shall also furnish the following particulars :—

(*a*) the situation of those branch offices which are to be compulsorily audited by the company's statutory auditor(s) appointed under section 224 or by the branch auditor(s) appointed under section 228(3) during the financial year(s) to which the application relates ;

(*b*) the situation of the branch offices, other than those included under (*a*) above, which were audited by the company's statutory auditor(s) appointed under section 224 or by the branch auditor(s) appointed under section 228(3) during the financial year immediately preceding the financial year(s) to which the application relates ; and

(*c*) the situation of the branch offices, other than those included at (*a*) above, which are proposed to be audited by the company's statutory auditor(s) appointed under section 224 or by the branch auditor(s) appointed under section 228(3) during the financial years(s) to which the application relates.

4. Financial year or years in respect of which exemption is desired.

5. Date of the general meeting at which the proposal to apply for exemption was approved (copy of the resolution and the explanatory note under section 173(2) of the Act to be attached).

6. Reasons for / Grounds on which exemption is asked for.

7. (*a*) Where the applicant company is not a banking company, the value of the total turnover of the company including earnings from services rendered and/or from any other sources for each of the last three financial years (copy of the latest audited balance sheet and profit and loss account of the company to be attached).

(*b*) Where the applicant company is a banking company, the total amount of outstanding deposits (including time-deposits) of the company as at the last date of each of the last three financial years (a copy each of the audited balance sheet and profit and loss account of the company for the last three financial years to be attached).

Note.—No copy or copies of the audited balance sheet(s) and profit and loss account(s) need be attached if a copy thereof has already been submitted to the Department of Company Law Administration, New Delhi, in any other connection ; but the number and date of the communication with which it has been so submitted should be quoted.

8. (*a*) Where the applicant company is not a banking company, a statement showing separately the following particulars in respect of each of the branch offices for which exemption from audit is desired for each of the last three financial years :—

(*i*) the value of the goods or articles produces, manufactured or processed at each branch ;

(*ii*) the value of the goods or articles sold and of services rendered at each branch office ;

(*iii*) the amount of expenditure of a revenue nature incurred by each branch office ; and

(*iv*) the amount of expenditure of a capital nature incurred by each branch office.

(*b*) Where the applicant company is a banking company, a statement showing separately the total amount of outstanding advances (including bills purchased and discounted) of each of the branch offices as at the last date of each of the last three financial years.

9. If the application is for exemption under clause (*a*) of sub-rule (1) of rule 4, the details of the arrangements made for the regular and periodical scrutiny of the accounts of branch office(s) and the name, qualification and experience of the person appointed to conduct such scrutiny.

10. Whether audit of the accounts of the branch offices is at present carried out by the auditor of the company ; if not, the existing arrangements, if any, for the audit of each of the branch offices should be fully explained.

11. Amounts paid as remuneration to each of the auditors including auditors of branch offices during the last financial year.

12. Whether the company has made or proposes to make arrangements for the audit of branch office or offices for which exemption is asked for by a person otherwise qualified for appointment as branch auditor even though such person may be an officer or employee of the company.

13. If the reply to item 12 above is in the affirmative, the following details to be stated :

(*a*) Name of the qualified accountant concerned.

(*b*) Designation.

(*c*) Emoluments.

(*d*) Year of qualification.

(*e*) Previous experience, whether as a practising accountant or as an employee (along with the name of the employer and the period served).

14. A certificate from the company as required under clause (*a*) of sub-rule (2) of rule 5 together with a written statement from the auditor of the company as required under clause (*b*) of sub-rule (2) of that rule.

15. If the application is made on the ground that no auditor is available at a reasonable cost for the audit of the accounts of any branch or branches, a statement showing the names of the auditors who had been requested to undertake the audit of the branch or branches and the fees quoted by them, to be attached.

16. Any other relevant details.

Managing Director or any other Officer duly authorised by the Board.

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Company Law Administration)

NOTIFICATITON.

New Delhi, dated the 31st January, 1961.

G.S.R.—In exercise of the powers conferred by sub-section (2) of section 637A of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, namely :—

1. **Short title and commencement.**—(*i*) These rules may be called the Companies (Fees on Applications) Rules, 1961.

(*ii*) They shall come into force on the 1st February, 1961.

2. **Application.**—These rules shall apply to companies having a share capital.

3. **Fees.**—Every application made to the Central Government under any provision of the Companies Act, 1956 by a company to which these rules apply shall be accompanied by the appropriate fee specified in the Table below :

TABLE OF FEES

(a)	Application by a company having nominal share capital of less than Rs. 1,00,000|- ..	Rs. 10|-
(b)	Application by a company having a nominal share capital of Rs.1,00,000|- or more but less than Rs. 5,00,000|- ..	Rs. 20|-
(c)	Application by a company having a nominal share capital of Rs 5,00,000|- or more but less than Rs. 25,00,000|- ..	Rs. 30|-
(d)	Application by a company having a nominal share capital of Rs. 25,00,000|- or more ..	Rs. 50|-

F. No. 10\|5\|59-PR

Note :—The fee prescribed under Rule 3 above should not be sent in cash or by cheque or by money order or by postal order along with an application. The fee should be paid into the Reserve Bank of India or any other Bank acting as the agent of the Reserve Bank or into a Government treasury for credit to the Public Account of India under the head "XXXVI—Miscellaneous Departments—Miscellaneous—Registration of Joint Stock Companies" and the appropriate treasury challan in token of the payment should be submitted along with the application.

Copy of notification dated 20th June, 1960, issued by the Ministry of Finance.

The attention of the Government of India has been drawn to the insistence 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 names of their heirs or successors. This, it is stated, is causing great inconvenience to such heirs and successors.

Government, therefore, wish to clarify that in their view the "transfer of shares" referred to in section 84(2) of the Estates 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 shareholders apply for registration in their names of the share held by the deceased.

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

Copy of letter No. 8(8)|22|59-PR dated the 17th September, 1959, addressed by Government to All **Chambers of Commerce and Recognised Trade Associations.**

Sub : Balance sheet and the profit and loss account according to the requirements of Schedule VI of the Companies Act, 1956 Authentication of Schedules.

I am directed to say that, as your Chamber|Association may be aware, the Companies Act, 1956 had made considerable innovation in regard to the form in which the balance sheet and profit and loss account of a company should be prepared, the intention being that companies generally and public limited companies in particular should disclose as much information as possible about their affairs for the benefit of their members, creditors and the general public who may have dealings with them. The specific form in which the balance sheet and the profit and loss account are to be prepared and the details to be mentioned therein are given in Parts I and II respectively of Schedule VI to the Act. 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 Companies Act, 1956. They would therefore require specific authentication in terms of section 215, in addition to the authentication of the balance sheet and the 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 authtenticity 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, lest this practice of non-authentication of the schedule 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 letter.

Copy of letter No. 6(23)-CMN|58, dated the 23rd September, 1958.

Subject :—Sections 326 and 412 of the Act, 1956

I am directed to address you in regard to the procedure to be followed by Companies in making applications to the Central Government for re-appointment of managing agents under section 326 of the Companies Act, 1956. It has been observed that some companies have been seeking the approval of the Central Government to re-appointment of their managing agents before obtaining the consent of the shareholders in general meeting to the proposal for such re-appointment. The Central Government are of the view that in the case of re-appointment of a managing agent, it is only in the fitness of things that the shareholders should be given an opportunity of considering the terms of such re-appointment and also of assessing the suitability of the managing agent for re-appointment in the light of the latter's past performance before an

application is made under section 326(1)(*b*) of the Act. I am therefore to request you to advise all your constituent companies that in future all applications for the Central Government's approval to the re-appointment of managing agents|secretaries and treasurers should be made after the proposal for the re-appointment is agreed to be the company in general meeting. If considered necessary, it may be made clear in the resolution to be passed under section 362(1)(*a*) that the re-appointment envisaged will be subject to the approval of the Central Government and subject also to such modifications in the managing agency agreement as may be made by the Central Government. A certified copy of the resolution so passed should be attached to every application.

2. I am also to draw your attention to the provisions of section 412(2) of the Act, which lay down that before any application is made to the Central Government under any of the section referred to in clause (*b*) of section 411, there shall be issued by or on behalf of the company a general notice to the members thereof indicating the nature of the application proposed to be made ; such notice is also required to be published in newspapers. It has been noticed that in the notices aforesaid, some companies do not give sufficient information about the nature of the application proposed to be made by them to Government inorder to give to the members of the companies some idea of the nature of the application. For example, in the case of applications for increase in the remuneration of managing directors, etc., the notices issued by some companies do not contain information about the nature or extent of the proposed increase in the remuneration. Similarly, in the case of notices under section 346, information about the nature of the change in the constitution of the managing agency company|firm is not being given. It will no doubt be appreciated that in the absence of essential particulars regarding the nature of the application, the purpose of the notice would be defeated. Where the essential particulars are not given in a notice, it may even be found necessary to ask the company concerned to re-publish such notice, thus involving delay in the disposal of its application. The shareholders may also be left with no alternative but to obtain from the company further clarification of its proposals and this may again lead to avoidable correspondence and delay. In order to obviate such delays and difficulties, all the companies concerned are advised to ensure that all essential particulars of the proposal are given in the notices referred to in section 412.

3. I am to request you to be good enough to bring the contents of this letter to the notice of your members and constituents for their information and guidance.

Copy of letter No. 6(23)-CMN|58, dated the 2nd April, 1959 addressed by Government to all Chambers of Commerce

Sub : Sections 326 and 412 of the Companies Act, 1956.

I am directed to draw your attention to para 1 of this Department's circular letter of even number dated the 23rd September, 1958 on the above subject, and to say that the Central Government have received representations about certain practical difficulties that may be experienced by some companies in complying strictly with the procedure for making applications for re-appointment of managing agents outlined in para 1 of the letter referred to above. The Central Government have therefore reconsidered the matter in the light of the aforesaid representations and they wish to point out that if, for any special reason, a company does not find it possible to make its application after obtaining the previous consent of the shareholders in the matter, the application would still be entertained by Government, if otherwise unobjectionable, and considered on merits. It is, however, hoped that, as far as possible, companies would find it possible to comply with the procedure outlined in para 1 of this Ministry's circular letter referred to above.

Copy of letter No. 5469, dated the 4th October, 1958, from the Secretary, Indian Chamber of Commerce, Calcutta, to the Secretary, Department of Company Law Administration, Reserve Bank Building, Parliament Street, New Delhi.

I invite attention to your circular No. 6(23)-CMN|58, dated the 23rd September, 1958, on sections 326 and 412 of the Companies Act. In para 2 of your circular it is stated that "there shall be issued by or on behalf of the company a general notice to the members thereof indicating the nature of the application proposed to be made ; such notice is also required to be published in newspapers." : The use of the expression 'also' gives rise to the impression that what the Act requires is (*i*) that a general notice shall be sent to all the members individually by the compay ; and (*ii*) that the said notice shall also be published in the newspapers as required in the Act. On a reading of the section in question, it is found that the Act does not contemplate the service of notices individually on all the members : all that is required is that a notice addressed to the members shall be published in the newspapers in the manner required by the Act. It is requested that this may please be confirmed.

Copy of letter No. 6(23)-CMN|58, dated the 27th November, 1958, from the Under Secretary to the Government of India, Ministry of Commerce and Industry, Department of Company

Law Administration, Reserve Bank Building, Parliament Street, New Delhi-1, to the Secretary, Indian Chamber of Commerce, Calcutta.

Subject : Section 412 of the Companies Act, 1956.

"With reference to your letter No. 5469, dated the 6th October, 1958, on the above subject, I am directed to say that though it would be sufficient compliance with the provisions of law if a general notice is published in newspapers as required by section 412(2) of the Companies Act, 1956, it may be useful to send such notice individually to members of companies as is being done by some companies. This is, however, a matter for the company concerned to decide.

Copy of letter No. 171, dated 5th January, 1961, from the Secretary, Indian Chamber of Commerce, Calcutta, to the Secretary, Department of Company Law Administration, Reserve Bank Building, New Delhi.

It is found from press reports dated the 29th December, 1960, that the Companies (Amendment) Bill has received the assent of the President of India. The Committee of the Chamber wish to point out that the Amending Act has made substantial changes to the Act of 1956, and it will require some time for companies to take the necessary action to conform to the provisions of the Amended Law.

Copies of the Amended Act are not yet available : it is only after the copies become available that companies can initiate steps to conform to the new provisions. Even thereafter it will require some time for companies to regularise matters so as to comply with the new law.

If the Act is suddenly brought into force, some of the amendments become impossible of compliance. For instance, the Bill as amended by the Select Committee require companies to hold the Annual General Meeting within six monthe of close of accounts There are a large number of compaies whose accounts end on 30th June. Normally they would have held their meetings by 31st March, 1961. If the amending Act has come into force on the 28th December, 1960, these companies will have to hold their meetings by 31st December, or apply to the Registrar within 31st December, for extension of time, both of which are virtually impracticable. This is only an instance : there are a number of other provisions in the Act in respect of which companies are confronted with difficulties as a result of the amending law, and which require some time to enable them to take the necessary action.

In the light of the above, the Chamber has sent a telegram to the Department suggesting that, by public notification, time may be given up to 31st March, 1961, to all companies to comply with the new provisions. It is hoped the Chamber's suggestion will receive the Department's sympathetic consideration.

Copy of letter No. 12|39|60-PR(S), dated 12th January, 1961, from the Deputy Secretary to the Government of India, Ministry of Commerce and Industry, Department of Company Law Administration, Reserve Bank Building, Parliament Street, New Delhi.

"I am directed to acknowledge receipt of your letter No. 171, dated the 5th January 1961, enclosing a copy of the telegram dated the 3rd January earlier sent to this Department and to reply to the specific points raised as follows :

2. In regard to the holding of the Annual General Meeting, I am to invite your attention to Part I of the Press Note issued today by the Department, a copy of which is enclosed, which will explain the views of the Department in the matter. It may be added that as the Amendment Act came into force on 28th December, 1960, this Department would have no objection to companies submitting to the Registrars concerned, even after the expiry of last due date for the holding of the Annual General Meeting, applications for extension of time for holding such meeting with a view to present in the meeting the accounts for a financial year which closed before the 28th December, 1960.

3. As to the difficulty pointed out by you in complying with the provisions of section 207 as amended, I am to add for the information of your Chamber that this Department would have no objection as long as in respect of dividends declared prior to the 28th December, 1960, payment is made at any time with in a period of 3 months from the date of declaration of the dividends or 42 days from 28th December, 1960, which is earlier.

4. As regards the difficulty in complying with the provisions of section 332 as amended by section 120 of the Amendment Act, I am to say that those who might be affected by the amendment should ensure compliance with the provisions as amended as early as possible. In the opinion of this Department, not more than a period of three months should elapse before provisions of section 332, as amended, more are complied with".

Enclosure to the above letter :

PRESS NOTE

The effect of the amendment made in section 210 of the Companies Act, 1956, by section 61 of the Companies (Amendment) Act, 1960, which came into force on the 28th December, 1960, is that the accounts to be laid in any Annual General Meeting other

than the first Annual Gneral Meeting held after 28th December 1960, shall relate to a period which shall not precede the day of meeting by more than six months unless the time for the holding of the Annual General Meeting has been extended by the Registrar under section 166. In order to avoid any undue hardship that may be caused to companies by a strict enforcement of this provision, the Department of Company Law Administration has instructed the Registrars of Companies to grant an extension of time not exceeding three months for holding such meeting whenever it may be legitimately necessary to do so to enable a company to lay before such meeting the accounts relating to a financial year which had ended prior to 28th December, 1960. Companies which find any difficulty in complying with the amended provisions of section 210 are advised to apply to the Registrar of Companies concerned for such extension of time not exceeding three months as they consider necessary.

2. It is notified for general information that the balance sheets and the profit and loss accounts of companies in respect of a financial year ending on a date prior to the 28th December, 1960, may be drawn up in the old form, viz., that is set out in Part I of Schedule VI or in accordance with the instructions contained in Part II of that Schedule before its amendment by the Amendment Act. Accounts in respect of financial years ending on the 28th December, 1960, or any subsequent date must, however, be in accordance with the said Schedule as amended.

3. According to section 220 of the principal Act, as amended by section 66 of the Amendment Act, private companies are required in future to file not only their balance sheets as hitherto, but also their profit and loss accounts. The annual accounts filed by a private company after the 28th December, 1960, must accordingly include its audited profit and loss account. In order that the Registrars of Companies may ensure that only the balance sheet of a private company and not the profit and loss account is accessible to any member of the public for inspection, private companies are advised to file their profit and loss accounts separately from the balance sheets.

4. Attention is also invited to section 611 of the principal Act as amended by section 195 of the amendment Act under which Registrars of Companies have been authorised to accept a document which may be or is required to be filed or registered with them under the provisions of the Act even though such filing or registration has been delayed beyond the prescribed time. Companies which have failed to file their documents within the prescribed time may approach the Registrar with a request to accept them. The Registrars are being advised as to the additional fee that will have to be paid on such filing of documents.

Copy of letter No. 387, dated 13th January, , from the Secretary, Indian Chamber of Commerce, Calcutta, to the Secretary, Department of Company Law Administration, Ministry of Commerce and Industry, Government of India, New Delhi.

Sub : Section 209, sub-section 4A of the Companies Act, 1956.

Sub-section 4A of section 209 of the Companies Act as amended provides that books of accounts of every company shall be preserved for a period of eight years immediately preceding the current year. Sub-section 1 of the same section provides that every company shall keep proper books of accounts relating to

(*a*) all monies received ;

(*b*) all monies expended ;

(*c*) all sales ;

(*d*) all purchases ;

(*e*) all assets ; and

(*f*) all liabilities.

It is presumed that the books of accounts that are to be preserved for eight years pursuant to sub-section 4A are only those that are specified in sub-section 1 of section 209, i.e., the above six. It will be apreciated if it is kindly confirmed that this is so.

With particular reference to shipping companies the question has arisen as to whether such companies should also preserve disbursement and cash vouchers as also the accounts copies of manifests on the basis of which freight has been worked out. In view of the provisions contained in sub-section 1 of section 209 it is felt that these items need not be preserved for eight years as otherwise it will raise big problems of storage space. We shall however be glad to have your confirmation in this regard.

Copy of letter No. 8|14|209|61-PR, dated 25th January, 1961 from the Under Secretary to the Government of India, Ministry of Commerce and Industry, Department of Company Law Administration, Reserve Bank Building, Parliament Street, New Delhi.

"With reference to your letter No. 387, dated the 13th January 1961, I am directed to say that in the opinion of this Department all the books of accounts of a company (including those maintained at branch offices) as enumerated in your letter are required to be preserved for the period specified in sub-section (4A) of Section 209

of the Companies Act. Having regard to the facts that sub-section (1) of the section requires a company also to keep books of accounts with respect to the matters in respect of which receipts and expenditure take place and that the books of accounts would not be of much use without the vauchers, records, papers, etc. on the basis of which such books have been prepared, this Department is of the view that such vouchers, records, papers, etc. must also be preserved for a like period. Accordingly, a shipping company should preserve also the disbursement and cash vouchers and the accounts copies of manifests on the basis of which freight had been worked out".

APPENDIX VII

CLARIFICATIONS GIVEN BY COMPANY LAW DEPARTMENT

CLARIFICATION REGARDING EXTENSION OF TIME UNDER SECTIONS 75(3) AND 166(1) SECOND PROVISO

The Department's view on the above subject 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 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 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.

In consonance with the principle underlying the view expressed in paragraph 1 above, 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 of the Act 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.

The principle as enunciated in paragraph 2 above that the Registrar should accept a return of allotment filed with him after the expiry of the time-limit on payment of the additional fee, should not, however, be extended to the filing of the prescribed particulars of the charges under section 125 of the Act as the filing thereof in time is inter-linked with the question of the validity of the charges created. In such cases, the Registrar should

not take on record the documents filed after the expiry of the stipulated period, unless the sanction of the court has been obtained under section 141 of the Act.

Company News & Notes,
Vol. I, July 1st,

CLARIFICATION OF THE PROVISIONS OF SECTION 303 OF THE COMPANIES ACT, 1956.

The proviso to sub-section (2) of section 303 of the Companies Act, 1956, alone will apply to every case of change in the particulars of a director of a company, *e.g.*, in the address or in the holding of directorship in other bodies corporate, whether or not change is in respect of the particulars already contained in the register of directors mentioned by the company pursuant to sub-section (1) of the said section. Thus, if director 'X' of Company 'A' is appointed as a director of Company 'B' it would be sufficient if Company 'A' notifies the fact of this appointment to the Registrar of Companies within 20 days of the close of the calendar year in which he was so appointed. It should be noted, however, that Company 'B' should notify the fact of 'X's appointment as its director within 28 days of the appointment in terms of the provisions of sub-section (2) of section 305 of the Companies Act.

Company News & Notes,
Vol. I, July 1st,

CLARIFICATION REGARDING SECTION 75(2) OF THE COMPANIES ACT, 1956 VIS-A-VIS SECTION 611(2) OF THE ACT—CONDITION OF DELAY IN FILING OF THE RETURN OF ALLOTMENT.

A question has arisen whether, in a case where neither Registrar of Companies nor the Court granted an extension of the time for filing the return of allotment as prescribed in section 75 of the Companies Act, 1956, it was open to the Registrar of Companies to accept the document even if it is presented subsequently for filing and levy the additional fee thereon under sub-section (2) of the section 611 of the Act.

The Department's views on the subject are as follows :—

The exercise of the discretionary power by the Registrar of Companies under section 611(2) of the Act is "without prejudice to any other liability" so that, strictly speaking even in a case where the Registrar accepts a document not filed in time on payment of the additional fee as contemplated in the said section, it does not automatically follow that the liability of the company

or its officers in default under section 75(4) comes to an end. Again, the only effect of the Court making an order extending the time for the filing of the document under the proviso to sub-section (4) of section 75 is that the company or its officers in default would be exonerated from the criminal liability under the operative part of the said sub-section. It is further significant to note that section 611(2) is not made subject to other provisions of the Act.

It will be seen from the foregoing that the Registrar of Companies is not precluded from accepting a return of allotment which is not filed in time, on payment of the additional fee where neither the Court nor he has granted an extension of time for filing the return. While this is the legal position instances where both the Registrar and the Court have refused to grant extension of time are likely to be rare. In such cases the Registrar of Companies can launch prosecution proceedings under section 75(4) with prayers to the Court under section 614A of the Act for directions to the Company to submit the document along with additional fees under section 611(2).

In this connection, the question has also been examined as to whether additional fee under section 611(2) of the Act can be imposed by the Registrar even in a case where the Court's order under section 614A does not specifically mention the filing of documents with such fee. The Department is advised that section 614A empowers the Court trying offences under the Act to direct the filing of the documents with the Registrar within a specified time on payment of a fee including the additional fee that may be imposed under section 611(2) of the Act. Where such order is made by the Court, the Registrar is not precluded from levying the additional fee as contemplated by section 611(2) of the Act irrespective of the fact whether or not any specific mention about filing the documents with additional fees is made by the Court while making the order under section 614A.

Company News & Notes,
Vol. I, July 1st,

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APPROVAL OF THE CENTRAL GOVERNMENT TO THE APPOINTMENT OF SECRETARIES AND TREASURERS—RESTRICTIONS ON DELEGATION OF POWERS.

In reply to a reference made on the 9th May, by the Indian Chamber of Commerce, Calcutta, on the above subject, the reason for imposition of restriction on delegation of powers by secretaries and treasurers was explained to the Chamber as follows :—

The necessity for imposing restrictions on delegation of powers by secretaries and treasurers arose from the fact that it has come to the notice of this Department that the secretaries and treasurers

company or firm had generally been delegating its powers to its associates who were to be remunerated separately by the managed company for services to be rendered by them. Further in some cases it was also noticed that secretaries and treasurers had delegated substantial powers to the paid employees of the managed company who had in effect been discharging some functions which could normally be expected to be discharged by the secretaries and treasurers themselves. In order to check this unhealthy trend this Department has since drawn up a standard clause which the applicant companies are now required to incorporate in the agreement with secretaries and treasurers whenever deemed necessary. A copy of the said standard clause is reproduced below. It will be seen therefrom that the said clause does not prohibit the delegation of power by secretaries and treasurers but only seeks to regulate it in the light of the proivsions of Section 343 of the Companies Act, 1956.

Standard Clause required to be incorporated in agreements with secretaries and treasurers :

(1) The secretaries and treasurers being a partnership firm may manage the affairs of the company by and through its partners or officers thereof duly authorised by a power of attorney granted in that behalf.

OR

The secretaries and treasurers being a body corporate may manage the affairs of the company by and through its Board of Directors, managing director/directors, manager or if duly authorised by a power of attorney granted in that behalf by the Secretary or any other officer thereof. Provided, however, the secretaries and treasurers may sub-delegate its powers of an executive nature to any person or persons, subject to the following terms and conditions only, viz—

(a) Such sub-delegation of powers in all material and important respects shall require the prior sanction of the board of directors of the managed company.;

(b) Such sub-delegation of powers to one or more persons, singly or jointly to the extent it involves the transfer of rights, duties and functions of the secretaries and treasurers to a degree which may be reasonably construed or deemed to be the transfer of the office of secretaries and treasurers or tantamounts or may tantamount thereto, had such rights, duties and functions been transferred to a single person, shall be subject to the provisions of Section 343 of the Companies Act, 1956.

(2) The person or persons to whom the secretaries and treasurers may sub-delegate any of its powers, rights, or functions, by a power of attorney or otherwise shall, for exercising the same, receive remuneration, if any, from the secretaries and treasurers and not from the managed company.

Company News & Notes,
Vol. I, July 1st, 1963.

INTEREST OF DIRECTORS INCLUDING MANAGING AND/OR WHOLE-TIME DIRECTORS IN SOLE SELLING AGENTS APPOINTED BY PUBLIC COMPANIES.

In the course of 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 agents there is a specific provision in the law (section 356) prohibiting the appointment of managing agents or their associates as selling agents of the managed company so far as sales of goods from any place in India is concerned. In the absence of a similar prohibition 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 director or manager as the case may be to the effect that 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 arrangements are finalised approval would be conveyed subject to the condition that if the company appoints a selling agent at a future date the managing directors, 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 or 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.

Company News & Notes,
Vol. I, July 1st,

REVISED PROCEDURE FOR DEALING WITH APPLICATION FOR GRANT OF LICENCE UNDER THE PROVISIONS OF SECTION 25 OF THE COMPANIES ACT, 1956.

With a view to facilitate quicker disposal of applications received from or on behalf of proposed companies for the grant of licence under Section 25 of the Companies Act, 1956, it has been decided that the following procedure will hereafter be followed in processing the aforesaid applications:—

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

(ii) Notices pursuant to Regulations 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. Regulations 4 and 8 have been amended accordingly.

(iv) 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.

(v) 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 Boards 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 as 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 application 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.

Company News & Notes,
Vol. I, July 1st, 1963.

CLARIFICATIONS REGARDING OTHER SECTIONS

Whether the explanation to section 2(3) applies to director-controlled companies?

'A' is a managing agency company ; 'B' is a director-controlled company. 'B' is an associate of 'A', but how can 'A' be an associate of 'B' as 'B' is a director-controlled company?

This Department may state that the director-controlled company can be an associate of the managing agent of another company, but if the former enters into a contract with the latter for sale of goods or for rendering services, only the latter company has to comply with section 360.

Company News & Notes,
Vol. I, July 1st, 1963.

Section 2(3)

If some of the trustees of a charitable trust, which is not a body corporate, are on the board of the managing agency company or are the partners of the managing agency firm or are managing agents themselves, whether such public charitable trust is an associate of the managing agents and if so, under what provisions of law? The definition of associate is exhaustive and does not cover such public charitable trusts.

It is true that a charitable trust as such is not a body corporate but a trustee thereof who is a director of the managing agency company or a partner of the managing agency firm, is an associate of the managing agent. It does not follow therefrom that the trust as such is an associate of the managing agent of the managed company. Whether section 360 will be attracted or not in respect of a contract entered into or proposed to be entered into between a trust and the managed company where a few but not all the trustees are associates of the managing agent of the managed company depends upon several factors, namely, (a) constitution of the trust ; (b) the total number of trustees, the rights and duties of each trustee and the number of trustees who are associates of the managing agent of the managed company ; and (c) whether there is any managing trustee and he or any committee of truees has power to decide whether the contract should be entered into or not with the managed company and in such an event whether the managing trustee or the members of the committee of the trustees or at least the majority of them are associates of the managing agent of the managed company.

Company News & Notes,
Vol. II, June 16, 1964.

Section 3 :

Guarantee Commission

Whether the managing agents will be allowed to charge a guarantee commission from the managed companies when banks

or other financial institutions require guarantee from the managing agents.

As the managing agents are *prima facie* interested in the managed companies functioning properly and consequently in their obtaining the funds needed for such functioning, it would appear that it is part of their duty to procure such funds. They cannot, therefore, be said to be entitled to additional remuneration beyond what they receive as managing agents, if for obtaining such funds they have to stand guarantee, a step which in most cases is a mere formality not involving any real risk.

Company News & Notes.
May 1st, 1964.

Section 17(4) Diversification of objects :

The alterations to objects clauses in the memorandum require Court's confirmation under section 17 (2). Section 17 (4) provides that the Court shall cause a notice of the petition for confirmation of the alterations to be served on the Registrar of Companies who shall be given opportunity to express his views with regard to the proposed alterations.

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. 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 broad-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.

Company News & Notes.
October 1st, 1963.

Section 43A :

Whether in computing the required percentage of share holding for purpose of section 43A. the shares held by a Banking Company on behalf of a trustee of a trust should be taken into account even if there is no written trust deed in respect of such holdings.

The Department's view is that 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 the subject matter of the trust.

Company News & Notes,
Vol. I, July 1st, 1963.

Section 75—Return of Allotment :

Whether, if there is delay in filing the return of allotment within the prescribed time, it is necessary to approach the Court for extension of time.

Under the Department's advice Registrar will allow in appropriate cases Return of Allotment to be filed after the due date along with additional fees.

Company News & Notes,
Vol. I, July 1st, 1963.

The Government of India are advised that under sub-section (3) of section 75 of the Companies Act, 1956 it would be competent for a Registrar to grant an extension of time for the filing of a return of allotment irrespective of whether an application for such extension 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, to be added that the provisions of sub-section (3) are exactly the same as those of sub-section (2A) of section 104 of the Indian Companies Act, 1913, which was inserted by section 2 of Act No. XXVI of 1941 and the power was originally conferred on the Registrar for a more limited purpose, 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 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 occasion, provided he is fully satisfied that there are valid reasons for granting the extension applied for. He may, on such occasions, entertain applications for extension 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 application 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.

Company News & Notes.
October 1st, 1963.

Sections 88 and 93 :

What is the significance of the word "otherwise" used in section 88? 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?

The 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 events of winding up, mode of repayment, etc. ;

(ii) 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.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 141 :

Whether, if there is any delay in filing the satisfaction of charge it is necessary to approach the Court for getting extension of time.

Extension of time can be granted by the Court only.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 150 :

Whether particulars in respect of joint shareholders such as address and occupation are also to be recorded in the Register.

The Department is of the view that particulars of each joint shareholders are to be recorded in the Register.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 172 :

Whether preference shareholders can attend a general meeting in which no business affecting them is to be conducted and what are their rights in such a meeting. Whether in a general meeting in which business affecting such shareholders is also to be transacted, the presence of five members only including preference shareholders, would constitute a quorum.

Under section 172(2)(i) of the Companies Act, 1956 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) of the Act 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 right 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) of the Act to attend the meeting. It would also appear that if the 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 purpose 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.
Vol. II, June 16th, 1964.

Section 198 :

"Is the omission of managing agents and secretaries and treasurers in the proviso to sub-section (4) of section 198 inadvertent or intentional ? If the latter, why they should be excluded ? Now that section 197(A) restricts the category of managerial personnel, why managing agents and secretaries and treasurers should also not be included in the said proviso.

The wording of sub-section (4) is not very happy. It states that notwithstanding anything contained in sub-sections (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.

The Department's reading of the relevant provisions is that the exclusion of managing agents and secretaries and treasurers from the purview of section 198(4), seems to be intentional as another section, *i.e.*, section 352, specifically deals with the payment of additional remuneration to managing agents and secretaries and treasurers in excess of the ceiling specified in section 198 and section 348 (read with sections 379 and 381).

As regards the second point, this Department is of the view that the 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. I, July 1st, 1963.

Sections 198, 309, 310 and 311 :

Whether the payments to directors for entertainment expenses and membership fee in clubs should be considered as remuneration for purposes of the above sections.

In the opinion of this Department, the better course would be if the directors of a company consider it necessary in the interest of the company to entertain people it would be desirable for the board of directors of the company to fix reasonable entertainment allowances for the directors having regard to the size and the business of the company.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 234 :

Whether under section 234, the power of Registrar to call for information or explanation will include power to call information in respect of purchases, etc., even when such purchases are not made from associates or organisations in which relatives of directors are interested.

The Department's view on the subject is that the information or explanation called for under sub-section (1) of section 234 should have some bearing on its items mentioned in the balance sheet, profit and loss account, annual returns, etc., However, in case of complaints from creditors or contributors of a company, the Registrar has power to call for information or explanation on the allegations made.

Company News & Notes
Vol. I, July 1st, 1963.

Sections 254, 255 and 256 :

Whether it is always necessary for all the directors to retire at the first annual general meeting and if it is not so, under what circumstances that becomes necessary?

In the Department's view, reading the above sections 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.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 255 : Appointment of Chartered Accountants and Lawyers as Directors of Companies :

The Department's feeling in this respect is that the Government would always welcome the appointment of full time lawyers and full time Chartered Accountants on the Boards of Companies. However, the Government is not in favour of appointing practising Chartered Accountants on those Boards of Companies which are connected with managing agency houses or with managing directors in some other concerns of which they may have been appointed as auditors. Government also does not generally view with favour the practice of auditors of some companies being employed as tax or financial advisers of the other companies under the control of the same management.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 255 : Rotational Directors for Private Companies :

Whether it is compulsory for private companies to have rotational directors.

The Department's view is that in the case of a private company which is not a subsidiary of a public company, it is not com-

pulsory under the law that they must have rotational directors unless the Articles of Association of the company so requires. [Section 255(2) of the Act].

Company News & Notes.
Vol. I, July 1st, 1963.

Sections 257 and 264 :

Whether (i) an additional director who ceases to hold office under section 260, and (ii) a director to be appointed to fill a casual vacancy who vacates office under section 262 are required to give notice under section 257 when they seek reappointment at the annual general meeting, or a notice from a member under section 257 would be necessary.

Whether they should file a fresh consent to act as director with the company under section 264 before the general meeting, as also file a consent with the Registrar of companies under that section when re-appointed.

The Department's view is that 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 (5) of section 256 of the Act. 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.
Vol. I, July 1st, 1963.

Section 260 :

(i) Whether the words 'up to' occurring in the above section including or excluding the date of the annual general meetings.

(ii) Whether the additional directors should continue to be directors until the completion of the annual general meeting on a subsequent date, in case the annual general meeting was postponed.

The Department's view is 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 annual general meeting of the company.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 262 :

"Mr. X, a director of the company, was appointed at the annual general meeting. Due to some reason, Mr. X resigned from the board and the casual vacancy thus created was filled by the appointment of Mr. Y at a meeting of the board of directors. Necessary return concerning this change was filed with the Registrar. Later on, Mr. Y resigned and the directors again invited Mr. X to fill the vacancy created by the resignation of Mr. Y.

The question is : Is the action of the board in appointing Mr. X, in the second instance, quite in accordance with the provision of section 262(1) of the Companies Act, 1956, and particularly considering the fact that the appointment of Mr. X consequent upon the resignation of Mr. 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".

The Department's view on the point raised is that the appointment of Mr. X, by the Board, in the second instance, in the vacancy caused in the Board by the resignation of Mr. 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(1) of the Act, inasmuch as the appointment of Mr. 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, this Department would have no objection to the board of directors of the company filling that casual vacancy as many times as may be necessary.

It may be made clear here that the above represents the administrative view of this Department and should not be construed as an authoritative interpretation of the provisions of law which only a court can give.

Whether a partnership firm is entitled to become member of companies other than section 25 companies.

The Department's view is that a firm as such cannot be a member of any company other than a company which has been granted a licence either under section 26 of the Indian Companies Act, 1913, or section 25 of the Companies Act, 1956.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 270 :

Under section 270 of the Companies Act, 1956, 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 of the Act because the companies are prohibited from making allotment unless a statement in lieu of prospectus is delivered to Registrar". Whether under such circumstances the company concerned could allot the shares to a director.

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 even 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.
Vol. I, July 1st, 1963.

Section 288 :

Whether in terms of section 288 of the Act, an original board meeting could be held on a public holiday?

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 meetings on public holidays.

Company News & Notes.
Vol. II, August 1st, 1964.

Section 299 :

Whether non-compliance of sub-sections (1) and (2) of section 299 by a director who has by giving a general notice complied with sub-section (3) of the said section render him liable for punishment under sub-section (4) of the section.

In the opinion of the Department if a member 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.
Vol. I, July 1st, 1963.

Section 301 :

Whether the register of contracts with companies and firms in which directors are interested can be removed from the registered office of a company to its administrative office situated in a State other than the State in which the registered office is situated,

for being placed before a meeting of the board of directors and whether any action will be taken against the company for not keeping the register in the registered office.

The Department's view is that the section requires the register of contracts to be kept only at the registered office of the company and does not empower the Central Government to relax the requirement in favour of any company. It is not understood why the meeting of a board of a company is held at a place other than its registered office. In view of the fact that the register of contracts is open to inspection at the registered office and it is required to be placed before a board meeting as required in sub-section (2) of section 301, it is desirable that such meetings are held only at the company's registered office.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 303 :

Whether the word 'year' appearing in sub-section (2) of section 303 relates to the accounting year of a company or whether it means calendar year.

In the opinion of the Department the 'year' is defined in the General Clauses Act as 'calendar year' and will have to be construed accordingly in the Companies Act which does not define 'year'.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 307 :

Whether the director's interest in shares, namely, as a trustee can be recorded in the register as required under section 307.

The Department's views on the subject are as follows :—

By virtue of sub-section (3) of section 307 of the Companies Act, 1956, 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 director's shareholdings if concerned directors so require. Accordingly, in the present case the concerned director's interest in the shares as a trustee can and has to be entered in the register of director's shareholdings if the director so requires.

Regarding the applicability of section 153 of the Act it may be pointed out that the said section is not applicable in the prseent case, as it refers to register of members while section 307(3) refers to register of director's shareholdings.

Company News & Notes.
Vol. I, August 1st, 1963.

Section 309 :

Directors' Remuneration

Whether the directors' remuneration by way of percentage

should be allowed when the shareholders have approved of the same by special resolution.

Government have 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.

Company News & Notes.
May 1st, 1964.

Section 309 :

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.

In the opinion of this Department is 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 put 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.
Vol. I, August 1st, 1963.

Section 314 :

Would the provisions of section 314 apply in a case where the commission agent receives commission which does not exceed Rs. 6,000 per year but exceeds Rs. 500 in a particular month?

The Department's view in the matter is that under clause (b) 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 special resolution. However, this Depart-

ment may not raise any objection to such relative or partner holding (without a 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 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 a year.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 314 :

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?—

(i) Will the director have to vacate his office?

(ii) Will the firm cease to hold office from the date of its reconstitution?

(iii) Will the company be considered to have made any default?

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 3 months from the date of appointment. In default thereof—

(i) the director will have to vacate his office after 3 months of the reconstitution of the firm ;

(ii) the firm will cease to hold office after 3 months from the date of its reconstitution ; and

(iii) the company will not be considered to have defaulted.

Attention in this connection is invited to the provisions to proviso to sub-section (1) and of sub-section (2) of section 314 of the Act.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 314 :

(1) What is the meaning of the terms 'office or place of profit' in section 314?

(2) Whether a director whose services are being utilised by a company as a solicitor or a chemist or a technician against pay-

ment 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?

The Department's views are as follows :—

1. The terms 'office or place of profit' is already sufficiently defined in sub-section (3) of section 314.
2. 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, it 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 a position of a whole time director of the company and accordingly the provision 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 sections 309|310 and the remuneration payable to him may then attract the provisions of section 198.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 326 :

Whether the Department would object to the sharing of the managing agency remuneration by the managing agents with individuals and/or firms or companies having no say in the management, if such arrangement to share the remuneration had been forced by circumstances and subsequent to the receipt of approval from the Government to the appointment of such managing agents. Whether such an arrangement would amount to change in the constitution of managing agency under section 326 of the Companies Act, 1956.

The Department's comment on this point is that as a matter of general policy it does not look with favour the sharing of his remuneration by a managing agent with a third party. Each case is, however, considered on merits in consultation with the Company Law Advisory Committee. In the application form for approval under section 326 there is an item in which the company has to give particulars of the arrangement, if any, entered into or proposed to be entered into by the managing agent with others for sharing his remuneration with detailed reasons therefor. If, therefore, the managing agent of a company proposes to make arrangements with third parties to share his remuneration after his appointment was approved by Government, the company con-

cerned would be well advised to seek Government's approval for the sharing of remuneration by its managing agent, with detailed reasons in support of the proposal.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 348 :

Interest on loans advanced by mangaing agents to managed companies will not be included in the managing agency remuneration for the purpose of determination of the amount of such remuneration under section 348, provided section 360 is complied with.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 349 :

Whether the amount amortised in respect of the leasehold land is required to be deducted while computing net profits under section 349 for calculating the managerial remuneration.

In the opinion of the Department, the mere fact that there is a provision in clause (k) of sub-section (4) of section 349 in respect of depreciation on fixed assets would not enable a company to regard the usually fixed amount amortised in respect of the lease-hold land as not being an item of expense or loss incurred for purpose of earning income. The consolidated payment in respect of lease-hold 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 lease-hold land has, therefore, necessarily to be deducted while computing the net profits under section 349 of the Act, as falling within the scope of the 'outgoings' in clause (j) of sub-section (4) of section 349 of the Companies Act, 1956.

Company News & Notes.
Vol. I, Sept. 2nd, 1963.

Sections 356 and 358 :

In view of the provisions of sections 356 and 358 whether an associate can act as a broker and receive brokerage and whether the provisions of section 360 will be attracted.

Payment of brokerage to an associate of the managing agent of a company is prohibited in respect of sales or purchases falling within the purview of section 356(1) and section 358(1), and in such cases the question of complying with the provisions of section 360 would not arise. If, however, the brokerage contracts with an associate relate to cases falling within the ambit of sections 356(2) and 358(2) the provisions of section 360 will also have to be complied with.

Company News & Notes.
Vol. II, June 16th, 1964.

Section 356 :

"The provision which is causing difficulty in day-to-day working is regarding the term 'Associate'. The definition of the term 'Associate' is very wide and it includes the distant relatives of the directors of the managing agents. It is no doubt true that the original list of persons who were supposed to be included in the definition of 'Associate' is now abridged, but even then it is far too long. The point that requires special mention is that some provisions governing the relationship between the managed company and the associate result in a funny situation which does injustice both to the managed company and the associate. In fact the associate is placed in a specially disadvantageous position *vis-a-vis* a person who is not an associate which is most unfair. For instance the sale of goods by a managed company to an associate requires the consent of the general body even though the sale takes place at the market price, *i.e.*, the price at which the goods are sold to any other person. Even the annual increment of an associate employee requires the sanction of the shareholders at the general meeting and of the Central Government. It is not understandable what useful purpose would be served by such restrictions beyond harassing the directors and wasting money for calling such meetings. To quote another instance wherein an associate is put in a disadvantageous position *vis-a-vis* a person who is not an associate, we can take the case of an associate dealer and a non-associate dealer. A non-associate dealer can be paid commission, etc., while no such payment can be made to an associate dealer though it is common knowledge that the associate dealers put in greater efforts for enhancing the sale of the Company's goods."

This Department does not appreciate why it is stated that an associate is placed in a specially disadvantageous position and that it is most unfair. In the case of small transactions an exemption has already been given, *vide* section 360(4). To avoid the possibility of the managing agents taking advantage themselves or through their associate, this provision was considered necessary. Regarding the annual increment of an associate employee it may be pointed out that this would not be necessary if the scale of pay on which he has been appointed and approved by the Government provides for such increment. It is only where increment is given to him which is not covered by his conditions of services that Government's sanction would be necessary and rightly so. Some reason applies to payment of commission to an associate dealer because there is a possibility of the managing agents giving extra benefit to their associate if there is no check. It may be pointed out that section 356(1) only prohibits payments to associates in respect of sale of company's goods within India.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 360 :

Whether leasing or renting of property will amount to supplying or rendering of service under section 360.

The Department's view is that leasing or renting of property on long term will not amount to supplying or rendering of services. Short term leases will, as a working rule, be those confined to 10 years or a shorter period.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 360 :

Whether Central Government's consent is required for the giving of loans by managing agent to their managed companies.

The Department's view is that the giving of loans by the managing agents to his managed company amounts to rendering of service other than that of managing agent and so Central Government's consent under section 360 is required.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 360 :

Whether the limit of Rs. 5,000 prescribed under section 360(4) will apply to contracts with each of the associates where the managing agent of the contracting company has many associates.

The Department is of the opinion that the limit of Rs. 5,000 applies to contracts with each of the associates.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 360 :

Whether the approval of the Company Law Board is necessary in case of contracts for supplying finance by managing agents to the managed company without charging any interest.

The Board is of the view that such contracts attract the provisions of section 360 of the Companies Act, 1956 just as the contracts where interest is charged. However, the approval of the Company Law Board may be assumed in cases where no interest is charged. Accordingly, in cases where no interest is charged it would not be necessary to make an application to the Company Law Board for its approval under section 360 of the Companies Act, 1956.

Company News & Notes.
Vol. II, July 1st, 1964.

Section 360 :

What would be the position with regard to transactions entered

into between the date of the contract and date of approval by the Central Government under section 360.

The Department is of the view that the transactions not covered by Government's approval would not be valid against the company. Any payments made by the company in respect of these transactions won't come within the mischief of section 363.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 360 :

Whether the contract entered into by a private company with its managing agent or associate by compliance of section 360 (by passing special resolution) would continue to operate in case of conversion of the private company into public company or on becoming public company by the application of section 43A.

The Department's view on the subject is that if a private company enters into contract under section 360 after full compliance with the requirements of that section, that contract would continue to be valid even after its becoming a public company.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 360 :

Managing Agents as Buying/Selling Agents

Whether the provisions of section 360 should be made applicable in the case of a managing agent acting as buying and selling agent of the managed company when there are specific sections like sections 356 and 358 governing the same.

It may be pointed out that sections 356 and 358 indicate the circumstances in which the managing agents or the associate of a managing agent could receive remuneration in respect of sale of goods or purchase of goods after obtaining the approval of the company in a general meeting by a special resolution. Section 360, however, specifically requires not only the passing of a special resolution but the obtaining of Government's approval also where a managing agent or his associate enters into a contract with the managed company for the supply of any services other than that of the managing agents. Thus the scope of section 360 is considerably wider than that of the other two sections and it cannot, therefore, be said that companies with the requirements of law laid down in sections 356 and 358 would preclude the necessity for observing the requirements of section 360.

Company News & Notes.
May 1st, 1964.

Sections 363, 372(3) and 360(2)(a) :

(1) Where the managed company sold goods to an associate company without approval under section 360, whether the managed company was required to keep the said money in trust for such an associate company.

(2) The total investments of a company in the shares and debentures of the companies should not exceed 30% of the investing company's paid-up capital. Whether its investments in its subsidiaries were also taken into account in computing the ceiling of 30%.

(3) Whether a resolution under section 360 passed by some companies in the following form was in order :—

> "Resolved that the company does hereby approve of the contracts entered into or to be entered into from time to time with the managing agents or persons who are or may be deemed to be associates of the managing agents of the company including companies mentioned below for the purchase, sale or supply of any property movable or immovable including machinery, plant and stores in such quantity and in such manner as may be agreed upon between the parties upon the terms ;
>
> (i) that the price or amount charged to or received by the company shall be at rates which are not less favourable to the company than the market rates or which are otherwise reasonable, and
>
> (ii) that the payments for any properties sold or supplied by the company shall be made within one month from the date of sale or supply thereof.
>
> (a) ,
> (b) ,
> (c) ,

This Department's reply to the points raised is as follows seriatim :—

(i) Section 363 comes into play only in regard to payments made by a company to its managing agent or his associate.

(ii) For the purpose of sub-section (3) of section 372 investments in a subsidiary or subsidiaries are required to be taken into account.

(iii) It is considered that the resolution in question cannot be deemed to comply with the requirements of section 360(2)(a).

Company News & Notes.
Vol. I, July 1st, 1963.

Section 369 :

Whether it is correct to say that loans given to managing agents or their associates prior to the coming into force of the Companies Act, 1956, are not covered by section 369, since there is no restriction under the section for such loans to continue till repaid in accordance with the terms.

Though section 369 applies only to loans made after the commencement of the Companies Act, 1956, yet section 370A would cover all the loans made prior to the commencement of the Companies (Amendment) Act, 1960 including loans made prior to the commencement of the Companies Act, 1956. Consequently, such loans were to be repaid within six months of the commencement of the Companies (Amendment) Act, 1960. The period of six months could have been extended by seeking approval of the Central Government.

Company News & Notes.
Vol. II, June 16th, 1964.

Section 372 :

INTER-COMPANY INVESTMENTS.

Investment in Subsidiary Company—Section 372

Whether the investments by a company in its subsidiary should be taken into account for calculating the overall ceiling of 30%, etc., laid down in section 372(2).

Government has always held the view that the exemptions contemplated in sub-section (14) of section 372 relate to the making of investments by the companies mentioned therein and that they do 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 investment in that subsidiary would count for calculation of the 30% specified in sub-section (2), if it wanted to make any investment in the shares of another company. This view of this provision of law, which Government has all along been taking, has been generally accepted by the business community as representing the intention of the legislature.

Company News & Notes.
May 1st, 1964.

Section 372 :

Whether the restrictions laid down under section 372(2) applied to a company which dealt in shares.

The Department is of the view that there is no exemption in the case of a 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.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 372 :

Whether in the case of a company dealing in shares in 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.

The Department's reply to above is that such purchases are covered by section 372.

Company News & Notes.
Vol. I, July 1st, 1963.

What is the definition of an investment company ?

"According to one set of legal opinion, an investment company only means such a company as acquired 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".

The Department's view is that a company will be deemed to be an investment company only when it holds the shares acquired by it for a reasonable time.

Company News & Notes.
Vol. I, July 1st, 1963.

Section 372 :

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.

The Department is of the opinion that the 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 & Notes.
Vol. I, July 1st, 1963.

Regulation 18 of Companies Rules and Regulations :

Whether parties will be allowed to rectify mistakes in documents which have been taken on the Register, if such mistakes are *bona fide* made through oversight and whether they will be allowed to file such documents after corrections without being required to pay fresh filing fees.

The Department's view is that where the document has been filed but not yet taken on the Register, fresh filing fee will not be necessary for the subsequent corrected document : but if it had been taken on the Register, fresh filing fee will be necessary for the subsequent corrected documents.

Company News & Notes.
Vol. I, July 1st, 1963.

Part II of Schedule VI :

If a director-controlled company which is an associate of managing agents of a company enters into a contract with such managed companies is it required to state the money value of contracts as required by clause 5 of note 4 of Schedule VI in Part II?

The Department's reply to the above query is that sub-section (v) of clause 4 of Part II of Schedule VI applies only to a company managed by managing agents or secretaries and treasurers.

Company News & Notes.
Vol. I, July 1st, 1963.

Schedule X of Companies Act : Meaning of the words "Nominal Share Capital" :

Whether the words 'Nominal Share Capital' as used in Schedule X of the Companies Act should be construed as paid-up capital and not as 'authorised capital'.

The Department's view is that nominal share capital is the authorised capital of the company as stated in the memorandum.

Company News & Notes.
Vol. I, July 1st, 1963.

Depreciation :

"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 recasting 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?

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 1st April, 1956 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 1st April, 1956, would be the notional written down value referred to in the said memorandum.

Company News & Notes.
Vol. I, July 1st, 1963.

Writing back of the depreciation on the fixed assets provided in excess in previous years.

It appears that several companies have written back a portion of the depreciation on the fixed assets previously charged in their profit and loss accounts 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 preovisions 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 the books of the company as well as in its balance sheet. It is hoped that all companies would follow the above advice.

Company News & Notes.
Vol. I, July 1st, 1963.

Managerial Remuneration of Section 43A Companies :

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

1. 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.

2. 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 per-

sonnel of public companies generally, such remuneration should be protected in full by issuing suitable orders under sections 198(4) and 309(3).

3. 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.

4. 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 remunerations should not exceed the ceilings prescribed under the Act.

Company News & Notes.
October 1st, 1963.

Clarification regarding holding of shares by a minor in a joint stock company :

The Judicial Committee of the Privy Council in the leading case Mohori Bibi *Vs.* Dharmadas Ghose (1903)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 agreements, 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 a 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 wards' 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 comment 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 the minor is shown in the register of members.

Company News & Notes.
November 16th, 1963.

Expeditious disposal of requests for Government's approval :

Government's aim has always been to administer the provisions of the Companies Act in a spirit of positive helpfulness. Regional Directors as well as Registrars' are being instructed from time to time that the problems of the business community should be viewed with sympathy and understanding by them and advice and guidance, whenever sought, should be freely given to the members of the public. Regarding the expeditious disposal of applications for approval received by Government from the public, the Board has laid down time targets for the disposal of each type of application, the period laid down for the disposal of a particular application depending upon its nature. A strict watch is kept at headquarters on the adherence to these time targets, and where for one reason or another such as failure to receive full data or further information called for by the Board from the applicant, the disposal of an application is delayed beyond the target period the case receives personal attention of senior officers. The board would welcome cases of unconscionable delay in the disposal of a particular application being brought to its notice so that steps could be taken to avoid such delays if they are attributable to procedural shortcomings in the Board's office.

Company News & Notes.
May 1st, 1964.

CLARIFICATION OF THE PROVISIONS OF SECTIONS 43A, 360 AND 372 OF THE COMPANIES ACT, 1956

Circular letter No. 48(50-CL.IV/61, dated the 12th February, 1962, on the above subject, addressed to all recognised Chambers of Commerce and Trade Associations.

Since the Companies (Amendment) Act, 1960 came into force in December, 1960, numerous enquiries have been received by this Department from many companies and Chambers of Commerce regarding the provisions of sections 43A, 360 and 372 of the Act as amended and the precise manner in which the requirements of these sections are to be met. Having observed the working of these sections for about one year, this Department feels that its own views on these provisions and the guiding principles followed by it in dealing with applications received under these sections should be made known to the business community in the country to ensure a proper understanding of these sections and to facilitate compliance therewith. The Department has, therefore, prepared brief notes on these provisions of law and a copy of each of these notes is enclosed. It requested that the contents of these may kindly be brought to the notice of your constituents for their information and guidance.

2. I am to add that the views contained in the enclosed notes should be regarded as the present views of this Department and should not be construed as authentic interpretation of the relevant sections of the Act which only a Court of law can give. The administrative implementation of these sections on the lines indicated in these notes is aimed primarily at achieving the basic objectives underlying these provisions without making it unduly difficult for the companies concerned to comply with the procedural requirements of law.

Section 43A of the Companies Act, 1956 :

1. By virtue of the new section 43A, 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 43A will, however, continue to remain so, if it fulfils immediately before the 28th March, 1961 either of the conditions laid down under sub-section (6) thereof.

2. 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 43A. However, the provisions of sections 12(1) and 45 of the Act which require a public company to have at least seven members will not apply to a section 43A company. The articles of association of such a company may continue to contain a provision similar to that in section 3(1)(iii) which is applicable to private companies. Section 44 also is not applicable to a private company, when it becomes a public company by virtue of section

43A and consequently such a company will not be required to file with the Registrar a statement in lieu of prospectus under section 44(1)(b) of tht Act. When it intends to raise subscriptions from the public, the company must comply with the requirements of section 70.

3. In order to comply with the requirements of sections 174, 252, etc., it is necessary for a private company, which becomes a public company by virtue of section 43A, to increase the number of its members and also its directors.

4. The provisions of sections 198, 269, 309, 319, 311, 387, and 388, etc., of the Companies Act, 1956, which govern *inter alia* the appointment and re-appointment and the payment of remuneration to managing and whole-time directors or managers apply to section 43A companies. The provisions of section 269(1) of the Act will not, however, apply to a person holding the office of managing or whole-time director or manager of such a company for a period not exceeding 5 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, 309, 310, 311, etc., would automatically be applicable to such companies from the date they became public companies (*i.e.* the 28th March, 1961). 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 sub-section (8) 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 said sub-section 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, 1956 was promulgated. The Companies (Amendment) Act, 1960, has brought about certain changes in the existing sub-sections. The words 'this Act' occurring in sub-section 8 of section 309, therefore, refer to the Companies Act, 1956, which came into force on the 1st April, 1956, and *not* to the Companies (Amendment) Act, 1960. The provisions of sections 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. Since the restrictive 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 sections 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.

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

6. The word 'held' in sub-section (1) and elsewhere in section 43A does not mean "beneficially held" since companies are not permitted under section 153 of the Act to recognise trust or nominee holdings. Nominee holdings, however, are permissible to the extent they are provided for in sub-sections (2) and (3) of section 49 and companies which seek exemption from the provisions of section 43(A) under sub-section (6)(a) thereof would not be entitled to such exemption unless holdings by nominees of the parent company are restricted to what is permitted under sections 49(2) and 49(3). For this limited purpose, the Department has construed the word 'Company' appearing in these two sub-sections to include a 'Body Corporate'.

7. 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 28th March, 1961 under the provisions of section 43A(1) could not, for one reason or the other reorganise their shareholdings before 28th March, 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 31st December, 1961 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 sub-sections (2) and (4) of section 43A. Where, however, for its own protection any such company applies for the approval of the Central Government under section 43(A)(4), it should first fulfil the obligations imposed on it under section 43(A)(2) and then only seek Central Government's approval under sub-section (4).

8. Companies which have failed to reorganise their shareholdings by 31st December, 1961 would be deemed to have become and continued as public limited companies on and from 28th March 1961 and would become liable to penal proceedings as prescribed in law for failure to comply with the provisions of sub-section (2) of section 43A as well as other provisions of the Act applicable to public limited companies.

Section 360 of the Companies Act, 1956 :

Section 360 of the Companies Act, 1956, as amended, lays down *inter alia* that a contract between a company on the one hand and its managing agent or an associate of the managing agent on the other, for the supply or rendering of any service other than that of a managing agent has, in order to be valid against the company, to be approved by the company in general meeting by a special resolution and also by the Central Government either before the date of the contract or at any time within three months next after that date. These two requirements are to be complied with in regard to contracts for the supply or rendering of services both by the managing agent and/or associates to the managed company and also by the latter to the former.

2. Approval of the Central Government is required only in respect of contracts entered into on or after the 28th December, 1960 (i.e. the date of commencement of the Companies (Amendment) Act, 1960) and which have been brought into force *on or after that date.* In other words, a contract entered into prior to the 28th December, 1960 in accordance with the provisions of section 360, as obtaining at that time, would continue to be valid against the company for the duration of that contract, but if a company chooses to vary any of the material terms at any time or to renew the said contract for a further period even if it be on the same terms and conditions as heretofore, such variation or renewal as the case may be will require the approval of the Central Government.

3. The expression "supply or rendering of any service other than that of a managing agent" used in sub-clause (a) of subsection (1) of section 360 refers to the supply or rendering of any service which is not required to be rendered by the managing agent as managing agent to the managed company. Provision for a number of such services to be rendered by the managing agents to the managed companies is made in some of the managing agency agreements. Approval of any such managing agency agreement at the time of the appointment or reappointment of the managing agent by the Central Government does not necessarily imply that the Central Government has approval of the supply or rendering of such services under section 360 of the Act. The approval contemplated under section 360 should be obtained separately at the appropriate time. The expression referred to at the beginning of this paragraph should be given a very wide interpretation and in case of doubt as to the applicability of section 360 to a particular contract, it would be in accord with sound company practice if approval of the Central Government is sought to such a contract. In this connection, this Department would like to clarify that any contract for lease or renting of property, would require Government's approval under section 360, unless it be a case of long-term lease such as lease of land for 99 years. It is also clarified that a contract for the giving of loans by managing agents or their

associates to a managed company does likewise fall within the scope of section 360 of the Act and requires Central Government's approval.

4. It will be noticed that the Central Government's approval under Section 360 has to be obtained either before the date of the contract or at any time within three months next after that date. It should be pointed out here that the contracts envisaged in the section can become effective only on or after the date of the respective contracts and not from a date prior to the date of the contract. For example, if a contract is executed on 1st January, 1962, it can be brought into force on or after that date. But it would not be in conformity with law if it were to be made effective from a date earlier than 1st January, 1962. In the example cited, the Central Government's approval must be obtained either before the 1st January, 1962, or at any time before the 31st March, 1962. Even if the said contract were to become effective, say, on 1st February, 1962, the approval of the Central Government must be obtained before the 31st March, 1962, if it had been executed on 1st January, 1962. As the Central Government has no power to waive the aforesaid requirement of law, it is essential that companies must submit their applications for approval of Government well before the due date, so as to enable Government to accord approval within the period of three months prescribed in section 360, reckoned in the manner indicated above.

5. Some companies have, however, been submitting their applications to the Central Government towards the end of the period of three months from the date of the respective contracts and sometimes even after the expiry of the said period of three months. Since the requirement of obtaining Central Government's approval was newly introduced in December, 1960, this Department has considered those applications on merits and accorded approval to the contracts after the companies agreed to change the dates of such contracts suitably. Since the provisions of the amended section should have become quite familiar to all companies by now, it has been decided that any application for approval received too late by the Central Government will in future be rejected as time-barred. It would, therefore, be in the interest of the companies concerned to make their applications to this Department either before the date of the contract or immediately after the date on which it is entered into.

6. Every application for approval to the contracts for supply or rendering of services under section 360 must be made in the revised Form No. 34-A, prescribed by the Companies (Central Government's) General Rules and Forms (4th amendment) Rules, 1961, as notified in the Gazette of India, Part II, section 3, sub-section (i), dated the 25th November, 1961, along with the appropriate treasury challan in original in token of the payment of the fee prescribed by the Companies (Fees on Applications) Rules, 1961. In addition to the particulars to be given in the prescribed

form, every application should be accompanied by a copy of the special resolution by which the contract was approved by the company in general meeting and also a copy of the explanatory statement circulated to its members for purposes of the special resolution, together with a copy of the existing contract for similar services, where such a contract exists, and a copy of the proposed or new contract. As some companies seem to be under a misapprehension that notices of their intention to seek Government's approval of such contracts are to be published in newspapers, it is hereby clarified for the information of all concerned that the publication of such notices is not required while making applications for approval under section 360. It is also not necessary to forward more than one copy of the application and of the accompanying documents.

7. It would facilitate expeditious disposal of such applications if the applicant company gives full details of the nature of the services contemplated under the contract including, in particular, the basis on which the charges payable for the services have been fixed, so as to enable a layman to appreciate the full implications of the proposal. Where an application relates to more than one contract, it will help quicker disposal if the details of the nature of services and the charges payable therefor are given separately for each service in the form of annexures to the application. The reason why the managing agent or the associate is considered to be the more suitable person for the supply or rendering of the relevant services must invariably be given. If an attempt was made to secure better terms by public advertisement or otherwise, details, of the attempts made and the terms secured should be given to justify the proposals made. Any special advantage in having the services from the managing agent or his associate should, where such and advantage exists, be indicated.

8. In the case of a contract for employment of an associate of the managing agent, the age, general and technical qualifications, experience, basis of selection, the basis on which the scale offered to the employee was fixed, exact relationship with the managing agents, etc., nature and estimated value of perquisites, grade offered for other comparable posts and to people with similar qualifications in the company and reasons for departure, if any, in the particular case should invariably be given. It should also be indicated whether any attempt was made to select the best person by a public advertisement or otherwise and the results thereof. In case the proposals involve a premature or *ad hoc* granting of increment to or the revision of the pay scales of an associate, the basis on which the increment or revision is proposed must be given with the applicant form. It should also be stated whether similar treatment was given to other employees generally or employees in the same category as the associate.

9. It has been brought to the notice of the Department that some companies are of the view that the approval of Government would not be required for the employment of associates of their

managing agents if the remuneration payable to each such associate were Rs. 5,000 per annum or less. In the opinion of the Central Government, this view is not correct as no contract for the rendering of services as an employee by an associate of the managing agent to the managed company qualified for exemption under sub-section (4) of section 360 as the condition specified in that sub-section would not be satisfied. The companies concerned would, therefore, be well-advised to obtain Government's approval to contracts of the nature mentioned above, irrespective of the quantum of remuneration payable to the associates. With a view, however, to simplifying the procedure for obtaining approval in such cases, it has been decided by Government that where the remuneration (including the monetary value of the perquisites, if any) payable by a company to its employee, who is an associate of its managing agent, is less than Rs. 6,000 per annum, it would not be necessary for the company while seeking Government's approval to fill in items 7 and 9 to 14 of the application Form No. 34A. Information as required by items Nos. 1 to 6 and 8 of the said application form should, however, be furnished along with a copy of the requisite special resolution and the relevant explanatory statement circulated to the members. Additional information whether the proposed employee is or is not drawing any remuneration from the company in any other capacity or from other companies, etc., in any capacity and whether the employee will give whole-time to the company should, however, be furnished in such cases.

10. In the course of examination of the applications under section 360, it has been observed that the material terms of contracts for which approval was sought have not been set out in the special resolutions passed by some companies, though clause (a) of sub-section (2) of section 360 makes it obligatory on the party concerned to set out such material terms in the special resolution. It is, therefore, essential that the companies concerned must fully comply with the provisions of section 360(2)(a).

11. The guiding principle for considering these applications is that the managing agent or the associate should not get more than what he would get for the same or similar services in the market if such services are supplied or rendered to any other company or person and that the companies should get the best services either from the employees or from managing agents or their associates for the payment they are required to make.

Section 372 of the Companies Act, 1956 :

Section 372 of the Companies Act, 1956 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.

2. 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 the 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 investigating company.

3. The following clarifications are given for the information and guidance of all concerned :—

(i) 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.

(ii) 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.

(iii) In calculating the aggregate of the investments made in all other bodies corporate, for the purpose of computing the percentage 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.

(iv) For purposes of calculating the prescribed limits 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 nominal value of the shares of that company proposed to be purchased or subscribed.

(v) 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 Directors, the Managing Director, the Managing Agents, Secretaries and Treasurers, the Manager or any other person specified in the first proviso to section 292(1).

(vi) As the provisions of the amended section have not 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 373 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.

(vii) 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).

(viii) 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 restrive 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 (13) of the said section.

(ix) 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 share/debtnures 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.

4. 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, 1961. 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 sugar-cane 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 up 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 investments 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 interests 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 pro-

vided 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 giltedged securities ; 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 Government on its own merits and in the light of the facts and circumstances of each case.

CLARIFICATION OF THE PROVISIONS OF SECTION 348

Circular letter No. 12(48)-C.III/61, dated the 31st March, 1962 to all recognised Chambers of Commerce and Trade Associations regarding the provisions of section 348 of the Companies Act, 1956.

I am directed to say that companies have from time to time asked for the Department's views regarding interpretation of the provisions of section 348 of the Companies Act, 1956, as amended by section 126 of the Companies (Amendment) Act, 1960, particularly in relation to matters, provision for which has also been made in sections 198 and 360 of the Act. The Department has carefully considered the various issues posed and has taken the following view :—

(1) The ceiling of 10%/7½% of net profits for remuneration of managing agents/secretaries and treasurers is applicable to the remuneration payable to managing agents/secretaries and treasurers for management services and for similar other services for which payment of remuneration may be approved by the Central Government in accordance with the managing agency agreement. Amounts payable to the managing agents/secretaries and treasurers and their associates under sections 352, 354, 356 to 360 of the Act are not covered by the managing agency remuneration payable under sub-section (1) of section 348 read with section 381 of the Act. Before making these payments, however, companies should make sure that provisions of the sections under which payments are made have all been complied with and prior approval of the Government obtained, where necessary.

(2) A payment made by way of remuneration to any of the associates of managing agents/secretaries and treasurers specified in clauses (a), (b) and (c) of sub-section (2) of section 348 will form part of the remuneration payable to managing agents/secretaries and treasurers under sub-section (1) of section 348 read with section 381 of the Act only if the payment relates to services of management rendered by these associates and/or are not approved by Government for payment to them under section 360 of the Act.

(3) Payment of sitting fees or commission on net profits (as admissible to its ordinary directors made to any of the persons specified in sub-section (2) of section 348 in their capacity as directors of the managed company will form a part of the remuneration payable to managing agents under sub-section (1) of section 348 of the Act. It is also felt that payment of any such fees or commission on net profits to a nominee of the managing agents on the Board of the managed company should form part of the remuneration of the managing agents under sub-section (1) of section 348 even if the nominee does not fall in any of the categories mentioned in sub-section (2) of section 348 because such nominee, even if an employee of the managing agents, acts for and on behalf of managing agents and should, therefore, be remunerated for his services by the managing agents.

(4) If, however, in any financial year, a company does not earn adequate profits and is obliged to pay to its managing agents or secretaries and treasurers the minimum remuneration approved for payment in term of section 198 (4) of the Act, the amounts paid by way of sitting fees to any of its directors will be in addition to the minimum remuneration paid irrespective of the fact that any director falls in any of the categories specified in sub-section (2) of section 348 or is a nominee of the managing agents on the board of the managed company.

(5) For purposes of computing the net profits of a company under section 349, any sum paid by way of sitting fees or com-

mission on net profits to its directors who are either nominees of its managing agents under the provisions of section 377 or are persons specified in sub-section (2) of section 348, need not be deducted for purposes of clause (b) of sub-section (4) of section 349 as such sum is required to be included in the remuneration of the managing agents.

ACCOUNTING HEAD ALLOTTED TO C.L.A.

Circular letter No. 5/11/62-PR., dated the 2nd May, 1962 addressed to all recognised Chambers of Commerce and Trade Associations regarding change in the Receipt Head allotted to the Departmen 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, 1956 (1 of 1956), 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*, for example, 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 treasurers 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 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 the relevant challans.

GUIDING INSTRUCTIONS REGARDING AVAILABILITY OF NAMES

I am directed to send herewith 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 been given for guidance.

In this connection I may further add 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 of the

Companies Act 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.

I would request you to bring these instructions to the notice of your constituents for their 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 that first name is not made available.

Guiding Instructions for deciding cases of making a name available for registration under the Companies Act, 1956 *referred to in circular letter No.* 10(19)-*RS*/61, *dated the* 5*th May,* 1962.

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 Textile Mills Ltd. or Silk Manufacturing Ltd.

6. If it includes, the word 'Co-operative', 'Sahakari' 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 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, 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 personages 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.), H.M.T. (Hindustan Machine Tools), I.C.I. (Imperial Chemical Industries), Texmaco (Textile Machineery 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 words 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 no branches of such companies in India.

*A few illustrations of closely resembling names are given below for guidance. The names as proposed in Column 1 should not (normally) be made available in view of the companies in existence as shown in Column 2.

Proposed Name	Existing Company with too nearly resembling names
1	2
1. Hindustan Motor & General Finance Co.	Hindustan Motor Ltd.
2. The National Steel Mfg. Co. Pvt. Ltd.	National Steel Works.
3. Trade Corporation of India Ltd.	State Trading Corporation of India Ltd.
4. Visvakarma Engineering Works Private Ltd.	Viswakarma Engineering (India) Private Ltd.
5. General Industrial Financing & Trading Co. Ltd.	General Financial & Trading Corporation.
6. India Land & Finance Ltd.	Northern India Land & Finance Ltd.
7. United News of India Ltd.	United News Papers Ltd.
8. Hindustan Chemicals & Fertilizers Ltd.	Hindustan Fertilizers Ltd.

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 2 years from the date of such dissolution since the dissolution of the company could be declared void within the period aforesaid by an order of the court under section 559 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 20 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 20 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, 'Nav', 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 exceept for valid reasons. Fo rexample, 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 Pirvate Ltd., All India Sales Organisation Ltd., Intercontinental Import and Export Company Ltd., etc., should not be allowed, when the authorised capital is to be only a few lakhs, and the area of operation limited to a State. Words like 'International', 'Hindustan', 'India', 'Bharat', 'Continental', 'Asiatic' 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' 'Nav Bharat', 'New India', etc. included in the proposed name need not stand the same test as 'Hindusthan', '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 tests 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 Marsden Electricals (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 share 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's 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 place 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 it from the name of the existing company. For example, "Oriental.....Ltd."

Interpretation of sections 205 *and* 350 :

Circular letter No. 10(1)-CL-VI|62. dated the 21st May, 1962 to all the Chambers of Commerce and Trade Associations regarding interpretation of the provisions of section 205 and 350 of the Companies Act, 1956.

I am directed to invite your attention to paragraph II(2) of the note forwarded with this Department's circular letter No. 10(1)-CL-VI/61, dated the 27th September, 1961 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 its substantial source of income) as required by section 205 of the Companies Act, 1956 on the grounds that (1) 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 (2) 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 matter has been very carefully examined by the Central Government and they have been advised that the contention of the company in the case mentioned above, is not tenable in law. As the company managements are aware, the provisions in 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 of the Act 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 Law 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 of the Companies Act, 1956. In support of this view, attention is also invited to the provisions of section 205 (2) (d) of the Companies Act, 1956 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 accordingly, the balance sheet and profit and loss account of the company for the relevant year cannot be said to give a true and fair view of its state of affairs or of its profits or losses as contemplated by section 211 (1) and (2) with the result that the officers of the company would become liable to the penalty as provided in section 211 (7) of the Act.

Advertisement of prospectus

Circular No. 5(13)-CL-VI|62, dated the 21st May, 1962 to all the Chambers of Commerce & Stock Exchanges regarding advertisement of prospectuses.

I am directed to invite your attention to this Department's circular letter of even number dated the 6th February, 1962 on the above subject, and to say that 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 the Departments 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 (1) to induce the prospective investors to obtain copies of the prospectus relating to a particular issue and study the same before deciding to invest, (2) to prevent the unwary among them from mistaking the Press announcement which might contian 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 (3) to ensure that in making announcements in the press regarding the issue of prospectus, company managements and promoters did not offend section 56 and any other applicable provisions of the Companies Act, 1956. As this Department has been advised that the announcements 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 proforma circulated earlier.

2. On a careful re-consideration 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 proforma as in the Annexure to this letter, and they would advise company managements and promoters to make all furture announcements regarding issues of capital in that from. In this connection I am to point out that adoption of the enclosed prorma 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, directors and other persons concerned would render themselves liable to the penalities under the law and also to the payment of compensation to every person who subscribes for any shares or debentures of the company on the faith of the announcement.

Annexure : Referred to in circular letter No. 5(13)-*CL-VI*|62 *dated the* 21*st May,* 1962.

Announcement 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/Managing Agents/Secretaries and Treasurers/Managers.

6. (a) Authorised Capital.
(b) Subscribed Capital.
(c) Proposed issue to the public (whether at par, discount or premium).

7. Dates of the opening and closing of the subscription.

8. Application forms alongwith copies of the prospectus can be had from the registered office of the company or from the Underwriters/Bankers/Brokers whose names and addresses are given below.

Underwriters
Bankers
Brokers

Interpretation of the term 'Body Corporate' as defined in section 2(7) of the Companies Act, 1956--Societies registered under the Societies Registration Act, 1860.

Circular letter No. 8/48|2(7)|62-PR, dated the 24th November, 1962 on the above subject, addressed to the Registrars of Companies.

I am directed to refer to the correspondence resting with your replies to this Department's circular of even number, dated the 31st July, 1962 on the above subject and to say that 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, 1956, has been carefully examined further in consultation with the Ministry of Law as well as in the light of recent judgment of the Supreme Court in the Board of Trustees Vs. State of Delhi (reported in A.I.R. 1962 SC. 458). 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, 1956. The view expressed in paragraph 1 of the Department's letter No. 8/2/56-PR, dated the 30th November, 1957 to Registrar of Companies, New Delhi, copy endorsed to all other field officers, may accordingly be deemed to have been modified to the extent stated above.

2. Consistent with the revised interpretation of the expression 'body corporate' as stated above, you are requested to interpret the said expression occurring in various provisions of the Companies Act, *viz.*, sections 43A, 295, 303, 372, etc. and exclude a society registered under the Societies Registration Act from the scope of the expression 'body corporate'.

Banking Companies (Amendment) Act, 1962.

Circular letter No. 13/7/62-PR, dated the 1st December, 1962 to all the Regional Directors and Registrars of Companies.

I am directed to say that 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 269, 309(3), 310 and 387 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. The legal position as explained above may be carefully noted.

2. The text of section 7 of the Banking Companies (Amendment) Act 1962, is reproduced below :—

"7. In section 35B of the principal Act, in sub-section (2), for the figures and word "268, 269, 310, 311 and 388", the figures, words and brackets "268 and 269, the proviso to sub-section (3) of section 309, sections 310 and 311, the proviso to section 387, and section 388" shall be substituted."

Applicability of section 372 *of the Companies Act,* 1956 *to subscription to the Memorandum of Association of a new company either by itself or through its nominees :*

Circular No. 8(31)-CL. VI/62, dated the 11th December, 1962 on the above subject, addressed to the Registrars of Companies.

I am directed to draw your attention to sub-section (1) of section 372 of the Companies Act, 1956, which provides that a public company shall not subscribe for, or purchase whether such subscription or purchases be made by the investing company or by an individual or association of individuals in trust for it or for its benefit or on its account—the shares of any other body corporate except to the extent and in accordance with the restrictions and conditions specified in the section. Sub-section (4) of section 372 of the Companies Act, 1956 provides that no public company shall make investment in the shares of any other body corporate in excess of the percentages specified in sub-section (2) thereof unless the investment is sanctioned by a resolution of the investing com-

pany in general meeting and also approved by the Central Government. In this connection, a question recently arose whether the provisions of section 372 would be applicable to the subscription to the memorandum of association of a new company by an existing company through its nominees. This question has been carefully examined in this Department and they have been advised that where subscribers to the memorandum of association of a new company are an existing public company and/or its nominees, such subscription amounts to the latter company subscribing for shares in the former, attracting thereby section 372 of the Act. The position is further explained in the following paragraphs.

2. In the case of a company with share capital each subscriber to the memorandum shall write opposite to his name the number of shares, not being less than one, he takes. As provided by section 41, the subscribers to the memorandum are deemed to have agreed to become members of the company and on its registration shall be entered as members in its register of members. Thus the said subscribers automatically become members and holders of the shares for which they have subscribed. They have not to apply for shares and await the chances of allotment as in the case of other subscribers for the shares in the company. No allotment of shares is required in the case of subscribers to the memorandum. By subscribing to the memorandum of association of a company, the subscribers undertake to subscribe for the number of shares in that company written opposite to their names ; and subscription has been held to mean taking or agreeing to take unissued shares for cash.

3. In view of the legal position set out above, where company A and/or its nominees are the signatories to the memorandum of association of company B (to be formed) and the number of shares which company A either by itself or through its nominee undertakes to subscribe in company B exceeds the percentage limits specified in sub-section (2) of section 372, the subscription of the said shares by company A would attract the provisions of sub-section (4) of section 372 and company B can be registered only after the requirements of section 372(4) are complied with by company A. I am to add that for purposes of computing the limits of 10% of the "subscribed capital" of company B, the total number of shares agreed to be taken up by all the signatories to the memorandum of association of company B should be taken as its "subscribed capital"

Section 301(5) *of the Companies Act*, 1956.

Circular letter No. 8/88(301)/62-PR, dated the 27th December, 1962 on the above subject addressed to the Federation of Indian Chamber of Commerce and Industry, New Delhi.

With reference to your letter No. 15205/Comm/10, dated the 13th December, 1962, I am directed to say that in cases where

the board meetings at which the register of contracts has to be placed in pursuance of section 301(2) of the Companies Act cannot be held at the registered office of the company this 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.

Reimbursement of entertainment expenses incurred by the Directors on behalf of a company :

This Department's view regarding the procedure to be adopted in the above matter, as made known to the Federation of Indian Chamber of Commerce and Industry *vide* this Department's letter No. 6(10)-CI/62, dated the 4th February, 1963, is given below for general information.

The view is that if the Directors of a company consider it necessary in the interest of the company to entertain people it would be desirable for the board of directors of the company to fix reasonable entertainment allowances for the directors having regard to the size and the business of the company.