

ACT NO. XXII OF 1936.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the
27th October, 1936.)

An Act further to amend the Indian Companies Act,
1913, for certain purposes.

VII of 1913.

WHEREAS it is expedient further to amend the
Indian Companies Act, 1913, for the purposes
hereinafter appearing; It is hereby enacted as
follows :—

1. (1) This Act may be called the Indian Companies Short title
and commence-
ment.
(Amendment) Act, 1936.

(2) It shall come into force on such date as the
Governor General in Council may, by notification in the
Gazette of India, appoint in this behalf.

VII of 1913.

2. (1) Section 2 of the Indian Companies Act, 1913 Amendment of
section 2, Act
VII of 1913.
(hereinafter referred to as the said Act), shall be re-
numbered as sub-section (1) of that section and in that
section as so re-numbered—

(a) for clause (9) the following clauses shall be
substituted, namely :—

“(9) ‘ manager ’ means a person who, subject
to the control and direction of the directors
has the management of the whole affairs
of a company, and includes a director or any
other person occupying the position of a
manager by whatever name called and
whether under a contract of service or not:

(9A) ‘ managing agent ’ means a person, firm
or company entitled to the management of
the whole affairs of a company by virtue of
an agreement with the company, and under
the control and direction of the directors
except to the extent, if any, otherwise
provided for in the agreement, and includes
any person, firm or company occupying
such position by whatever name called:”;

Explanation.—

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Explanation.—If a person occupying the position of a managing agent calls himself a manager he shall nevertheless be regarded as managing agent and not as manager for the purposes of this Act.

(b) in clause (11), after the word “director” the words “managing agent” shall be inserted.

(c) for clause (13) the following clause shall be substituted, namely:—

“(13) ‘private company’ means a company which by its articles—

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

(b) limits the number of its members to fifty not including persons who are in the employment of the company; and

(c) prohibits any invitation to the public to subscribe for the shares, if any, or debentures of the company:

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be treated as a single member:”;

(d) after clause (13) the following clause shall be inserted, namely:—

“(13A) ‘public company’ means a company incorporated under this Act or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby, which is not a private company:”;

and

(e) to clause (14) the following words shall be added, namely:—

“but shall not include any trade advertisement which shows on the face of it that a formal prospectus has been prepared and filed”.

(2) To section 2 as so re-numbered the following subsection shall be added, namely:—

“(2) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee

and

and whether that other company is a company within the meaning of this Act or not, and

- (a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent. of the issued share capital of that other company or such as to entitle the company to more than fifty per cent. of the voting power in that other company, or
- (b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act, and the expression 'subsidiary company' in this Act means a company in the case of which the conditions of this subsection are satisfied and includes a subsidiary company of such company :

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

3. To section 4 of the said Act the following subsections shall be added, namely :—

Amendment of section 4, Act VII of 1918.

- "(3) This section shall not apply to a joint family carrying on joint family trade or business and where two or more such joint families form a partnership, in computing the number of persons for the purposes of this section, minor members of such families shall be excluded.
- (4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.

(5) Any

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(5) Any person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine not exceeding one thousand rupees."

Substitution of new section for section 9, Act VII of 1913.

Printing and signature of memorandum.

4. For section 9 of the said Act the following section shall be substituted, namely :—

"9. The memorandum shall—

- (a) be printed,
- (b) be divided into paragraphs numbered consecutively, and
- (c) be signed by each subscriber (who shall add his address and description) in the presence of at least one witness who shall attest the signature."

Amendment of section 10, Act VII of 1913.

5. To section 10 of the said Act, the following proviso shall be added, namely :—

"Provided that any provision in the memorandum relating to the appointment of a manager or managing agent and other matters of a like nature incidental or subsidiary to the main objects of the company, shall not be deemed to be such condition."

Amendment of section 11, Act VII of 1913.

6. For sub-section (3) of section 11 of the said Act the following sub-section shall be substituted, namely :—

"(3) Except with the previous consent in writing of the Governor General in Council, no company shall be registered by a name which—

(a) contains any of the following words, namely, 'Crown', 'Emperor', 'Empire', 'Empress', 'Federal', 'Imperial', 'King', 'Queen', 'Royal', 'State', 'Reserve Bank', 'Bank of Bengal', 'Bank of Madras', 'Bank of Bombay', or any word which suggests or is calculated to suggest the patronage of His Majesty or of any member of the Royal Family or any connection with His Majesty's Government or any department thereof ; or

(b) contains the word 'Municipal' or 'Chartered' or any word which suggests or is calculated to suggest connection with any municipality

or

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or other local authority or with any society
or body incorporated by Royal Charter :

Provided that nothing in this sub-section shall
apply to companies registered before the com-
mencement of this Act."

7. In sub-section (1) of section 12 of the said Act, ^{Amendment of}
after clause (e) the following word and clauses shall be ^{section 12, Act}
added, namely:— ^{VII of 1913.}

" or

(f) to sell or dispose of the whole or any part of the
undertaking of the company; or

(g) to amalgamate with any other company or
body of persons."

8. To sub-section (2) of section 17 of the said Act the ^{Amendment of}
following shall be added, namely:— ^{section 17, Act}
^{VII of 1}

" and shall in any event be deemed to contain re-
gulations identical with or to the same effect
as regulation 56, regulation 66, regulation 71,
regulations 78, 79, 80, 81 and 82, regulation 95,
regulation 97, regulation 105, regulation 107
and regulations 112, 113, 114, 115 and 116
contained in that Table :

Provided that regulation 78 shall not be deemed to
be included in the articles of any private com-
pany except a private company which is the
subsidiary company of a public company :

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

9. In clause (c) of section 19 of the said Act, after ^{Amendment of}
the word " memorandum " the brackets and words ^{section 19, Act}
" (who shall add his address and description) " shall be ^{VII of 1913.}
inserted.

10. After

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Insertion of new section 20A in Act VII of 1913.

Effect of alteration in memorandum or articles.

10. After section 20 of the said Act the following section shall be inserted, namely—

“20A. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company :

Provided that this section shall not apply in any case where the member agrees in writing either before or after the alteration is made to be bound thereby.”

Amendment of section 25, Act VII of 1913.

11. In sub-section (1) of section 25 of the said Act, for the words “at his request, and” the words “at his request and within fourteen days thereof” shall be substituted.

Insertion of new section 25A in Act VII of 1913.

Alteration of memorandum or articles to be noted in every copy.

12. After section 25 of the said Act the following section shall be inserted, namely:—

“25A. (1) Where an alteration is made in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum or articles which are not in accordance with the alteration, it shall be liable to a fine not exceeding ten rupees for each copy so issued and every officer of the company who is knowingly and wilfully in default shall be liable to the like penalty.”

Amendment of section 26, Act VII of 1913.

13. In sub-section (3) of section 26 of the said Act, for the words “and of filing lists of members and directors and managers with the registrar” the words “and of sending lists of members to the registrar” shall be substituted.

14. After

14. After section 31 of the said Act the following section shall be inserted, namely:—

Insertion of
new Section
31A in Act
VII of 1913.

- “31A. (1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall within fourteen days after the date on which any alteration is made in the register of members make any necessary alteration in the index.
- (2) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.
- (3) If default is made in complying with this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.”

Index of
members of
company.

15. In section 32 of the said Act,—

Amendment of
Section 32, Act
VII of 1913.

- (a) in sub-section (1), after the word “shall” the words “within eighteen months from its incorporation and thereafter” shall be inserted;
- (b) in sub-section (2),—
- (i) in clause (f), for the words “in respect of any debentures” the words “in respect of any shares or debentures” shall be substituted, and to that clause the words “or so much thereof as has not been written off at the date of the return” shall be added; and
- (ii) in clause (l), for the words “the managers of the company” the following words shall be substituted, namely:—
- “the managers or managing agents of the company, and the changes in the personnel of the directors, managers and managing agents since the last return together with the dates on which they took place”;
- (c) in sub-section (3), for the words “seven days” the words “twenty-one days” shall be substituted; and

(d) sub-section

(d) sub-section (4) shall be re-numbered as sub-section (5) and the following sub-section shall be inserted as sub-section (4), namely :—

“(4) A private company shall send with the annual return required by sub-section (1) a certificate signed by a director or other officer of the company that the company has not, since the date of the last return or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under sub-clause (b) of clause 13 of sub-section (1) of section 2 are not to be included in reckoning the number of fifty”.

Substitution of
new section
for section 34,
Act VII of
1913.
Transfer of
shares.

16. For section 34 of the said Act the following section shall be substituted, namely :—

- “34. (1) An application for the registration of the transfer of shares in a company may be made either by the transferor or the transferee, provided that where such application is made by the transferor no registration shall in the case of partly paid shares be effected unless the company gives notice of the application to the transferee and subject to the provisions of sub-section (4) the company shall, unless objection is made by the transferee within two weeks from the date of receipt of the notice, enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee.
- (2) For the purposes of sub-section (1) notice to the transferee shall be deemed to have been duly given if despatched by prepaid post to the transferee at the address given in the instrument of transfer and shall be deemed to have been delivered in the ordinary course of post.
- (3) It shall not be lawful for the company to register a transfer of shares in or debentures of the company

company unless the proper instrument of transfer duly stamped and executed by the transferor and the transferee has been delivered to the company along with the scrip:

Provided that, where it is proved to the satisfaction of the directors of the company that an instrument of transfer signed by the transferor and transferee has been lost, the company may, if the directors think fit, on an application in writing made by the transferee and bearing the stamp required by an instrument of transfer, register the transfer on such terms as to indemnity as the directors may think fit.

- (4) If a company refuses to register the transfer of any shares or debentures, the company shall, within two months from the date on which the instrument of transfer was lodged with the company, send to the transferee and the transferor notice of the refusal.
- (5) If default is made in complying with sub-section (4) of this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.
- (6) Nothing in sub-section (3) shall prejudice any power of the company to register as share holder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.
- (7) Nothing in this section shall prejudice any power of the company under its articles to refuse to register the transfer of any shares."

17. In section 36 of the said Act,—

Amendment of
section 36,
Act VII of
1913.

- (a) (i) in sub-section (1), after the word "company" where it first occurs the words "and the index of members" shall be inserted ;

(ii) to

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(ii) to sub-section (1) the words "Any such member or other person may make extracts therefrom" shall be added at the end;

(b) to sub-section (2) the following words shall be added, namely :—

"and the company shall cause any copy so required by any person to be sent to that person within a period of ten days, exclusive of non-working days and days on which the transfer books of the company are closed, commencing on the day next after the day on which the requirement is received by the company"; and

(c) for sub-section (3) the following sub-section shall be substituted, namely :—

"(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding twenty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal or default continues and the Court may by an order compel an immediate inspection of the register and index or direct that copies required shall be sent to the persons requiring them."

Amendment of section 37, Act VII of 1918.

18. In section 37 of the said Act,—

(a) after the word "giving" the words "seven days' previous" shall be added;

(b) for the word "thirty" the word "forty-five" shall be substituted; and

(c) the words "but not exceeding thirty days at a time" shall be added at the end.

Amendment of section 39, Act VII of 1918.

19. To section 39 of the said Act the following words shall be added, namely :—

"within a fortnight from the date of the completion of the order".

Amendment of section 43, Act VII of 1918.

20. Section 43 of the said Act shall be re-numbered as sub-section (1) of that section and to the section as so re-numbered

re-numbered the following sub-section shall be added, namely :—

“ (2) Nothing in this section shall apply to a private company.”

21. In section 50 of the said Act,—

Amendment of
section 50, Act
VII of 1913.

(a) in sub-section (2), the words “ with respect to sub-division of shares ” shall be omitted, and for the words “ by special resolution ” the words “ by the company in general meeting ” shall be substituted ;

(b) sub-sections (3) and (4) shall be omitted and sub-section (5) shall be re-numbered as sub-section (3) ; and

(c) after sub-section (5) as so re-numbered the following sub-section shall be added, namely :—

“ (4) The company shall file with the registrar notice of the exercise of any power referred to in clause (d) or clause (e) of sub-section (1) within fifteen days from the exercise thereof.”

22. In section 53 of the said Act,—

Amendment of
section 53, Act
VII of 1913.

(a) in sub-section (1) the words “ or in the case of a special resolution the confirmation ” shall be omitted ;

(b) sub-section (2) shall be re-numbered as sub-section (3) and the following sub-section shall be inserted as sub-section (2), namely :—

“ (2) The notice to be given as aforesaid shall include particulars of the classes of shares affected and the conditions (if any) subject to which the new shares are to be issued.”

23. In the proviso to sub-section (1) of section 54 of the said Act, the words “ and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed ” shall be omitted.

Amendment to
section 54, Act
VII of 1913.

24. After

Insertion of new section 54A in Act VII of 1913.

Restrictions on purchase by company or loans by company for purchase of its own shares.

24. After the heading "*Reduction of Share Capital*" and before section 55 the following section shall be inserted, namely :—

"54A. (1) No company limited by shares shall have power to buy its own shares or the shares of a public company of which it is a subsidiary company unless the consequent reduction of capital is effected and sanctioned in the manner provided by sections 55 to 66.

(2) No company limited by shares other than a private company, not being a subsidiary company of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company :

Provided that nothing in this section shall be taken to prohibit, where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business.

(3) If a company acts in contravention of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding one thousand rupees.

(4) Nothing in this section shall affect the right of a company to redeem any shares issued under section 105B."

Amendment of section 55, Act VII of 1913.

25. In section 55 of the said Act,—

- (a) sub-section (1) shall be omitted ; and
- (b) sub-sections (2) and (3) shall be re-numbered as sub-sections (1) and (2), respectively.

Amendment of section 56, Act VII of 1913.

26. In section 56 of the said Act, the words "and confirmed" shall be omitted.

Amendment of section 57, Act VII of 1913.

27. In section 57 of the said Act, for the word "confirmation", where it first occurs, the word "passing" shall be substituted and for the words "the presentation of the petition for confirming the reduction" the words "the making of the order confirming the reduction" shall be substituted.

28. After

28. After section 66 of the said Act the following heading and section shall be inserted, namely :—

Insertion of
new heading
and section
66A in Act
VII of 1913.

“ *Variation of Shareholders’ Rights.*”

66A. (1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than ten per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and where any such application is made the variation shall not have effect unless and until it is confirmed by the Court.

Rights of
holders of
special classes
of shares.

- (2) An application under this section must be made within fourteen days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
- (3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.
- (4) The decision of the Court on any such application shall be final.

(5) The

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- (5) The company shall within fifteen days after the service on the company of any order made on any such application forward a copy of the order to the registrar and, if default is made in complying with this provision, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.
- (6) The expression 'variation' in this section includes 'abrogation' and the expression 'varied' shall be construed accordingly."

Amendment of section 71, Act VII of 1913.

29. In section 71 of the said Act,—

- (a) in sub-section (2) for the word "confirmation" the word "passing" shall be substituted and all the words after the word "memorandum" shall be omitted, and
- (b) sub-section (3) shall be omitted.

Substitution of new section for section 72, Act VII of 1913.
Registered office of company.

30. For section 72 of the said Act the following section shall be substituted, namely :—

- "72. (1) A company shall as from the day on which it begins to carry on business, or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.
- (2) Notice of the situation of the registered office and of any change therein shall be given within twenty-eight days after the date of the incorporation of the company or of the change, as the case may be, to the registrar who shall record the same.
- (3) The inclusion in the annual return of a company of the statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this section.
- (4) If a company carries on business without complying with the requirements of this section it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business."

31. For

31. For section 76 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 76, Act VII of 1913.

- “76. (1) A general meeting of every company shall be held within eighteen months from the date of its incorporation and thereafter once at least in every calendar year and not more than fifteen months after the holding of the last preceding general meeting.
- (2) If default is made in holding a meeting in accordance with the provisions of this section, the company and every director or manager of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees.
- (3) If default is made as aforesaid, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.”

Annual general meeting.

32. For section 77 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 77, Act VII of 1913.

- “77. (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.
- (2) The directors shall, at least twenty-one days before the day on which the meeting is held, forward a report (in this Act referred to as the statutory report) certified as required by this section to every member of the company.
- (3) The statutory report shall be certified by not less than two directors of the company or by the chairman of the directors if authorised in this behalf by the directors and shall state—
- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

Statutory meeting of company.

(b) the

- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid ;
 - (c) an abstract of the receipts of the company and of the payments made thereout up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company showing separately any commission or discount paid on the issue or sale of shares ;
 - (d) the names, addresses and descriptions of the directors, auditors, managing agents and managers, if any, and secretary of the company and the changes, if any, which have occurred since the date of the incorporation ;
 - (e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification ;
 - (f) the extent to which underwriting contracts, if any, have been carried out ;
 - (g) the arrears, if any, due on calls from directors, managing agents and managers ; and
 - (h) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, managing agent or manager or a partner of the managing agent if the managing agent is a firm or if the managing agent is a private company a director thereof.
- (4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares and to the receipts and payments of the company, be certified as correct by the auditors of the company.

(5) The

- (5) The directors shall cause a copy of the statutory report certified as required by this section to be delivered to the registrar for registration forthwith after the sending thereof to the members of the company.
- (6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.
- (7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.
- (8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.
- (9) If a petition is presented to the Court in manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.
- (10) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding five hundred rupees.
- (11) This section shall not apply to a private company."

33. Sub-section (4) of section 78 of the said Act shall be omitted, sub-section (5) shall be re-numbered as sub-section

Amendment
of section 78,
Act VII of
1913.

sub-section (4) and after sub-section (5) as so re-numbered the following sub-section shall be added, namely :—

“(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default.”

Substitution
of new section
for section 79,
Act VII of
1913.
Provisions as
to meetings
and votes.

34. For section 79 of the said Act the following section shall be substituted, namely :—

“79. (1) The following provisions shall have effect with respect to meetings of a company other than a private company not being a subsidiary of a public company and the procedure thereat, notwithstanding any provision made in the articles of the company in this behalf :—

- (a) a meeting of a company other than a meeting for the passing of a special resolution may be called by not less than fourteen days' notice in writing; but with the consent of all the members entitled to receive notice of some particular meeting that meeting may be convened by such shorter notice and in such manner as those members may think fit;
- (b) notice of the meeting of a company with a statement of the business to be transacted at the meeting shall be served on every member in the manner in which notices are required to be served by Table A and for the purpose of this clause the expression 'Table A' means that table as for the time being in force; but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting;
- (c) five members present in person or by proxy, or the chairman of the meeting, or any member or members holding not less than one-tenth of the issued capital which carries voting rights shall be entitled to demand a poll: Provided that in the case of a private company

if

if not more than seven members are personally present, one member, and if more than seven members are personally present, two members shall be entitled to demand a poll ;

- (d) an instrument appointing a proxy, if in the form set out in regulation 67 of Table A, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles ; and
 - (e) any shareholder whose name is entered in the register of shareholders of the company shall enjoy the same rights and be subject to the same liabilities as all other shareholders of the same class.
- (2) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf :—
- (a) two or more members holding not less than one-tenth of the total share capital paid up or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting ;
 - (b) in the case of a private company two members and in the case of any other company five members personally present shall be a quorum ;
 - (c) any member elected by the members present at a meeting may be chairman thereof ;
 - (d) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each hundred rupees of stock held by him, and in any other case every member shall have one vote ;
 - (e) on a poll votes may be given either personally or by proxy ;
 - (f) the instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation, either under seal or under the hand of an officer or an attorney duly authorised ; and

(g) a proxy must be a member of the company.

- (3) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or to conduct the meeting of the company in manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is given may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted."

Amendment
of section 81,
Act VII of
1913.

35. In section 81 of the said Act,—

- (a) for sub-section (2) the following sub-section shall be substituted, namely :—

"(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice specifying the intention to propose the resolution as a special resolution has been duly given :

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given." ;

- (b) in sub-sections (3) and (4), for the words "is submitted to be passed or a special resolution is submitted to be passed or confirmed" the words "or a special resolution is submitted to be passed" shall be substituted ;
- (c) in sub-section (4), the words following the words "a poll may be demanded" shall be omitted ; and
- (d) at the end of sub-section (6) and sub-section (7) the words "or under this Act" shall be added.

36. In

36. In sub-section (1) of section 82 of the said Act, for the words "the confirmation of the special resolution or the passing of the extraordinary resolution, as the case may be," the words "the passing thereof" shall be substituted, and after the word "typewritten" the words "and duly certified under the signature of an officer of the company" shall be inserted.

Amendment of section 82, Act VII of 1913.

37. To section 83 of the said Act the following sub-sections shall be added, namely:—

Amendment of section 83, Act VII of 1913.

- "(4) The books containing the minutes of proceedings of any general meeting of a company held after the commencement of the Indian Companies (Amendment) Act, 1936, shall be kept at the registered office of the company and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.
- (5) Any member shall at any time after seven days from the meeting be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any minutes referred to in sub-section (4) at a charge not exceeding six annas for every hundred words.
- (6) If any inspection required under sub-section (4) of this section is refused or if any copy required under sub-section (5) of this section is not furnished within the time specified in sub-section (5) the company and every officer of the company who is knowingly and wilfully in default shall be liable in respect of each offence to a fine not exceeding twenty-five rupees and to a further fine to twenty-five rupees for every day during which the default continues.
- (7) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them."

Amendment
of section 83A,
Act VII of
1918.

38. In section 83A of the said Act,—

(a) for sub-section (1) the following shall be substituted, namely:—

“(1) Every company shall have at least three directors.”; and

(b) to sub-section (2) the words “except a private company being a subsidiary company of a public company” shall be added.

Amendment
of section 83B,
Act VII of
1918.

39. Section 83B of the said Act shall be re-numbered as sub-section (1) of that section and to the section as so re-numbered the following sub-section shall be added, namely:—

“(2) Notwithstanding anything contained in the articles of a company other than a private company not less than two-thirds of the whole number of directors shall be persons whose period of office is liable to determination at any time by retirement of directors in rotation:

Provided that nothing herein contained shall apply to a company incorporated before the commencement of the Indian Companies (Amendment) Act, 1936, where by virtue of the articles of the company the number of directors whose period of office is liable to determination at any time by retirement of directors in rotation falls below the two-thirds proportion mentioned in this section.”

Amendment
of section 84,
Act VII of
1918.

40. In section 84 of the said Act,—

(a) in clause (ii) of sub-section (1), for the words “a company limited by guarantee and” the word “companies” shall be substituted; after the brackets and words “(if any)”, where they first occur, the words “or taken from the company and paid or agreed to pay for his qualification shares” shall be inserted, and after the brackets and words “(if any)”, where they occur for the second time, the following words shall be added, namely:—

“or made and filed with the registrar an affidavit to the effect that a number of shares, not less than his qualification (if any), are registered in his name”;

(b) in

- (b) in sub-section (2), after the word "articles" the words ", if any," shall be inserted; and
- (c) in sub-section (3), after the words "private company" the words "or a company which was a private company before becoming a public company" shall be inserted.

41. Sub-section (2) of section 85 of the said Act shall be omitted, and sub-section (3) of that section shall be re-numbered as sub-section (2). Amendment of section 85 Act VII of 1913.

42. After section 86 of the said Act the following sections shall be inserted, namely :— Insertion of new sections 86A to 86I in Act VII of 1913.

" 86A. (1) If any person being an undischarged insolvent acts as director or managing agent or manager of any company, he shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand rupees or to both. Ineligibility of bankrupt to act as director.

(2) In this section the expression 'company' includes a company incorporated outside British India which has an established place of business within British India.

86B. If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company : Assignment of office by directors.

Provided that the exercise by a director of a power to appoint an alternate or substitute director to act for him during an absence of not less than three months from the district in which meetings of the directors are ordinarily held, if done with the approval of the board of directors, shall not be deemed to be an assignment of office within the meaning of this section :

Provided always that any such alternate or substitute director shall *ipso facto* vacate office

if

if and when the appointor returns to the district in which meetings of the directors are ordinarily held.

Explanation.—For the purposes of the provisoes to this section, the presidency-towns of Calcutta and Madras shall be deemed to be part of the 24-Parganas and Chingleput districts, respectively, and the presidency-town of Bombay shall be deemed to be part of the Bombay Suburban and the Thana districts.

A voidance of provisions relieving liability of directors

86C. Save as provided in this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company or any person (whether an officer of the company or not) employed by the company as auditor from or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void :

Provided that—

- (a) in relation to any such provision which is in force at the date of the commencement of the Indian Companies (Amendment) Act, 1936, this section shall have effect only on the expiration of a period of six months from that date, and
- (b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force, and
- (c) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, or in connection with any application under section 281 of this Act in which relief is granted to him by the Court.

Loans of directors.

86D. (1) No company shall make any loan or guarantee any loan made to a director of the company

company or to a firm of which such director is a partner or to a private company of which such director is a director.

- (2) In the event of any contravention of sub-section (1) any director of the company who is a party to such contravention shall be punishable with fine which may extend to five hundred rupees, and if default is made in repayment of the loan or in discharging the guarantee shall be liable jointly and severally for the amount unpaid.
- (3) This section shall not apply to a private company (except a private company which is the subsidiary company of a public company) or to a banking company.

86E. No director or firm of which such director is a partner or private company of which such director is a director shall without the consent of the company in general meeting hold any office of profit under the company except that of a managing director or manager or a legal or technical adviser or a banker :

Director not to hold office of profit.

Provided that nothing herein contained shall apply to a director elected or appointed before the commencement of the Indian Companies (Amendment) Act, 1936, in respect of any office of profit under the company held by him at the commencement of the said Act.

Explanation.—For the purposes of this section the office of managing agent shall not be deemed to be an office of profit under the company.

86F. Except with the consent of the directors, a director of the company, or the firm of which he is a partner or any partner of such firm, or the private company of which he is a member or director, shall not enter into any contracts for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract or agreement for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936.

Sanction of directors necessary for certain contracts.

86G. (1) The

Removal of directors.

86G. (1) The company may by extraordinary resolution remove any director, whose period of office is liable to determination at any time by retirement of directors in rotation, before the expiration of his period of office and may by ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected director. A director so removed shall not be reappointed a director by the board of directors.

(2) This section shall not apply to directors elected or appointed before the commencement of the Indian Companies (Amendment) Act, 1936.

Restrictions on powers of directors.

86H. The directors of a public company or of a subsidiary company of a public company shall not, except with the consent of the company concerned in general meeting,—

- (a) sell or dispose of the undertaking of the company ;
- (b) remit any debt due by a director.

Vacation of office of director.

86I. (1) The office of a director shall be vacated if—

- (a) he fails to obtain within the time specified in sub-section (1) of section 84, or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment, or
- (b) he is found to be of unsound mind by a Court of competent jurisdiction, or
- (c) he is adjudged an insolvent, or
- (d) he fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made, or
- (e) he or any firm of which he is a partner or any private company of which he is a director without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker, or

(f) he

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

(g) he or any firm of which he is a partner or any private company of which he is a director accepts a loan or guarantee from the company in contravention of section 86D, or

(h) he acts in contravention of section 86F.

(2) Nothing contained in this section shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on grounds additional to those specified in this section."

43. For section 87 of the said Act the following section shall be substituted, namely :—

Substitution of new section for section 87, Act VII of 1913.

" 87. (1) Every company shall keep at its registered office a register of its directors, managers and managing agents containing with respect to each of them the following particulars, that is to say :—

Register of directors, managers and managing agents.

(a) in the case of an individual, his present name in full, any former name or surname in full, his usual residential address, his nationality and, if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any, and if he holds any other directorship or directorships the particulars of such directorship or directorships ;

(b) in the case of a corporation, its corporate name and registered or principal office ; and the full name, address and nationality of each of its directors ; and

(c) in the case of a firm, the full name, address and nationality of each partner, and the date on which each became a partner.

- (2) The company shall within the periods respectively mentioned in this sub-section send to the registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors, managers or managing agents or in any of the particulars contained in the register.

The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

- (3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one rupee or such less sum as the company may impose for each inspection.

- (4) If any inspection required under this section is refused or if default is made in complying with sub-section (1) or sub-section (2) of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine of fifty rupees.

- (5) In the case of any such refusal, the Court on application made by the person to whom inspection has been refused and upon notice to the company may by order direct an immediate inspection of the register."

44. After section 87 of the said Act the following heading and sections shall be inserted, namely :—

" Managing Agents.

87A. (1) No managing agent shall, after the commencement of the Indian Companies (Amendment) Act, 1936, be appointed to hold office for a term of more than twenty years at a time.

(2) Notwithstanding

Insertion of
new heading
and sections
87A to 87I in
Act VII of
1913.

Duration of
appointment
of managing
agent.

- (2) Notwithstanding anything to the contrary contained in the articles of a company or in any agreement with the company a managing agent of a company appointed before the commencement of the Indian Companies (Amendment) Act, 1936, shall not continue to hold office after the expiry of twenty years from the commencement of the said Act unless then reappointed thereto or unless he has been reappointed thereto before the expiry of the said twenty years.
- (3) A managing agent whose office is terminated by virtue of the provisions of sub-section (2) shall upon such termination be entitled to a charge upon the assets of the company by way of indemnity for all liabilities or obligations properly incurred by the managing agent on behalf of the company subject to existing charges and encumbrances, if any.
- (4) The termination of the office of a managing agent by virtue of the provisions of sub-section (2) shall not take effect until all moneys payable to the managing agent for loans made to or remuneration due up to the date of such termination from the company are paid.
- (5) Nothing in this section shall apply to a private company which is not the subsidiary company of a public company.

87B. Notwithstanding anything to the contrary contained in the articles of the company or in any agreement with the company—

Conditions applicable to managing agents.

- (a) a company may, by resolution passed at a general meeting of which notice has been given to the managing agent in the same manner as to members of the company, remove a managing agent if he is convicted of an offence in relation to the affairs of the company punishable under the Indian Penal Code, and being under the provisions of the Code of Criminal Procedure, 1898, non-bailable; and for the purposes of this clause, where the managing agent is a firm or company an offence committed by a member

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of such firm or a director of or an officer holding a general power of attorney from such company shall be deemed to be an offence committed by such firm or company :

Provided that a managing agent shall not be liable to be removed under the provisions hereof if the offending member, director or officer as aforesaid is expelled or dismissed by the managing agent within thirty days from the date of his conviction or if his conviction is set aside on appeal ;

- (b) the office of a managing agent shall be vacated if he is adjudged insolvent ;
- (c) a transfer of his office by a managing agent shall be void unless approved by the company in general meeting :

Provided that in the case of a managing agent's firm a change in the partners thereof shall not be deemed to operate as a transfer of the office of managing agent, so long as one of the original partners shall continue to be a partner of the managing agent's firm. For the purpose of this proviso 'original partners' shall mean, in the case of managing agents appointed before the commencement of the Indian Companies (Amendment) Act, 1936, partners who were partners at the date of the commencement of the said Act, and in the case of managing agents appointed after the commencement of the said Act, partners who were partners at the date of the appointment ;

- (d) a charge or assignment of his remuneration or any part thereof effected by a managing agent shall be void as against the company ;
- (e) if a company is wound up either by the Court or voluntarily, any contract of management made with a managing agent shall be thereupon determined without prejudice however, to the right of the managing agent to recover any moneys recoverable

by

by the managing agent from the company :

Provided that where the Court finds that the winding up is due to the negligence or default of the managing agent himself the managing agent shall not be entitled to receive any compensation for the premature termination of his contract of management ; and

(f) the appointment of a managing agent, the removal of a managing agent and any variation of a managing agent's contract of management made after the commencement of the Indian Companies (Amendment) Act, 1936, shall not be valid unless approved by the company by a resolution at a general meeting of the company notwithstanding anything to the contrary in section 86E :

Provided that nothing herein contained shall apply to the appointment of a company's first managing agent made prior to the issue of the prospectus or statement in lieu of prospectus where the terms of the appointment of such managing agent are there set forth.

87C. (1) Where any company appoints a managing agent after the commencement of the Indian Companies (Amendment) Act, 1936, the remuneration of the managing agent shall be a sum based on a fixed percentage of the net annual profits of the company, with provision for a minimum payment in the case of absence of or inadequacy of profits, together with an office allowance to be defined in the agreement of management.

Remuneration
of managing
agent.

(2) Any stipulation for remuneration additional to or in any other form than the remuneration specified in sub-section (1) shall not be binding on the company unless sanctioned by a special resolution of the company.

(3) For the purposes of this section 'net profits' means the profits of the company calculated after allowing for all the usual working charges, interest on loans and advances, repairs and outgoings, depreciation, bounties or subsidies received from Government or from a public body, profits by way of premium on shares sold, profits on sale proceeds

of forfeited shares, or profits from the sale of the whole or part of the undertaking of the company but without any deduction in respect of income-tax or super-tax, or any other tax or duty on income or revenue or for expenditure by way of interest on debentures or otherwise on capital account or on account of any sum which may be set aside in each year out of the profits for reserve or any other special fund.

- (4) This section shall not apply to a private company except a private company which is the subsidiary company of a public company or to any company whose principal business is the business of insurance.

Loans to
managing
agents.

87D. (1) No company shall make to a managing agent of the company or to any partner of the firm, if the managing agent is a firm, or to any director of the private company, if the managing agent is a private company, any loan out of moneys of the company or guarantee any loan made to a managing agent.

- (2) Nothing contained in this section shall apply to any credit held by a managing agent in a current account maintained subject to limits previously approved by the board of directors by the company with the managing agent for the purposes of the company's business.

- (3) In the event of any contravention of subsection (1) any director of the company who is a party to the making of the loan or giving of the guarantee shall be punishable with fine which may extend to five hundred rupees, and if default is made in repayment of the loan or discharging the guarantee shall be liable jointly and severally for the amount unpaid.

- (4) Nothing in this section shall apply to a private company except a private company which is the subsidiary company of a public company.

- (5) Except with the consent of three-fourths of the directors present and entitled to vote

on

on the resolution, a managing agent of [the company, or the firm of which he is a partner, or any partner of such firm, or, if the managing agent is a private company, a member or director thereof, shall not enter into any contract for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936.

- §7E. (1) No company incorporated under this Act after the commencement of the Indian Companies (Amendment) Act, 1936, which is under the management of a managing agent shall make any loan to or guarantee any loan made to any company under management by the same managing agent, and no company shall after the expiry of six months from the commencement of the said Act except by way of renewal of an existing loan or guarantee given make any loan to or guarantee any loan made to any such company:

Loans to or by companies under the same management.

Provided that nothing herein contained shall apply to loans made or guarantees given by a company to or on behalf of a company under its own management or loans made by or to a company to or by a subsidiary company thereof or to guarantees given by a company on behalf of a subsidiary company thereof.

- (2) In the event of any contravention of the provisions of this section, any director or officer of the company making the loan or giving the guarantee who is knowingly and wilfully in default shall be liable to a fine not exceeding one thousand rupees and shall be jointly and severally liable for any loss incurred by the company in respect of such loan or guarantee.

- §7F. A company other than an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities,

Purchase by company of shares of company under same managing agent.

shall

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shall not purchase shares or debentures of any company under management by the same managing agent, unless the purchase has been previously approved by a unanimous decision of the board of directors of the purchasing company.

Restriction on managing agent's powers of management.

87G. A managing agent shall not exercise in respect of any company of which he is a managing agent a power to issue debentures or, except with the authority of the directors, and within the limits fixed by them, a power to invest the funds of the company, and any delegation of any such power by a company to a managing agent shall be void.

Managing agent not to engage in business competing with the business of managed company.

87H. A managing agent shall not on his own account engage in any business which is of the same nature as and directly competes with the business carried on by a company under his management or by a subsidiary company of such company.

Limit on number of directors appointed by managing agent.

87I. Notwithstanding anything contained in the articles of a company other than a private company the directors, if any, appointed by the managing agent shall not exceed in number one-third of the whole number of directors."

Amendment of section 90, Act VII of 1913.

45. In section 90 of the said Act, for the words "not situate in British India" the words "either in or outside British India" shall be substituted.

Amendment of section 91A, Act VII of 1913.

46. In section 91A of the said Act,—

(a) in the proviso to sub-section (1), for the words "member of any specified firm or company" the words "director or a member of any specified company or is a member of any specified firm" shall be substituted; and

(b) the following sub-sections shall be added, namely:—

"(3) A register shall be kept by the company in which shall be entered particulars of all contracts or arrangements to which sub-section (1) applies, and which shall be open to inspection by any member of the company at the registered office of the company during business hours.

(4) Every

- (4) Every officer of the company who knowingly and wilfully acts in contravention of the provisions of sub-section (3) shall be liable to a fine not exceeding five hundred rupees."

47. In section 91B of the said Act,—

- (a) in sub-section (1), after the word "interested" the words "nor shall his presence count for the purpose of forming a quorum at the time of any such vote" shall be inserted; and

Amendment
of section
91B, Act VII
of 1913.

- (b) to sub-section (3) the following proviso shall be added, namely:—

"Provided that where a private company is a subsidiary company of a public company, this section shall apply to all contracts or arrangements made on behalf of the subsidiary company with any person other than the holding company."

48. In section 91C of the said Act, after the word "manager" the words "or managing agent" shall be inserted and after the words "the company shall" the words "within twenty-one days from the date of entering into the contract or the varying of the contract," shall be inserted.

Amendment
of section
91C, Act VII
of 1913.

49. In section 91D of the said Act,—

- (a) in sub-section (1), after the words "private company" the words "not being the subsidiary company of a public company" shall be inserted; and

Amendment
of section
91D, Act VII
of 1913.

- (b) in sub-section (2), after the words "to the company" the words "and send copies to the directors" shall be inserted.

50. In section 93 of the said Act,—

- (a) in sub-section (1),—

- (i) in clause (a), after the word "company" the words "and the number of redeemable preference shares intended to be issued with the date or, where no date is fixed, the period of notice required and the proposed method of redemption" shall be inserted;

Amendment
of section 93,
Act VII of
1913.

(ii) in

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(ii) in clause (c), before the brackets and words “(if any)” the words “and managing agents or proposed managing agents” shall be inserted, and after the brackets and words “(if any)” the following words shall be inserted, namely :—

“and any provision in the articles or in any contract as to the appointment of managers or managing agents and the remuneration payable to them”;

(iia) after clause (e) the following clause shall be inserted, namely :—

“(ee) where any issue of shares or debentures is underwritten, the names of the underwriters, and the opinion of the directors that the resources of the underwriters are sufficient to discharge the underwriting obligations; and”;

(iii) after clause (f) the following clause shall be inserted, namely :—

“(ff) where any property referred to in clause (f) has within the two years preceding the issue of the prospectus been transferred by sale, the amount paid by the purchaser at each such transfer so far as the information is available and, where any such property is a business, the profits accruing from such business during each of the three years immediately preceding the issue of the prospectus or during each year of the existence of the business if less than three years so far as the information is available. A balance sheet of the business concerned made up to a date not more than ninety days before the date of the issue of the prospectus shall be appended to the prospectus; and”;

(iia) in clause (h), for the word “or the rate of any such commission” the words “or as discount in respect of shares issued, showing separately the amount, if any so paid to the managing agents” shall be substituted;

(iv) in

(iv) in clause (l), after the words "every material contract" the words "including contracts relating to the acquisition of property to which clause (f) applies" shall be inserted and in the proviso after the word "contract", where it occurs for the second time, the following brackets and words shall be inserted, namely:—

"(except a contract appointing or fixing the remuneration of a managing director or managing agent)";

(v) in clause (o), after the word "by" the words "and the rights in respect of capital and dividends attached to" shall be inserted;

(vi) after clause (o) the following word and clause shall be added, namely:—

"and

(p) where the articles of the company impose any restrictions upon the members of the company in respect of the right to attend, speak or vote at meetings of the company or of the right to transfer shares, or upon the directors of the company in respect of their powers of management, the nature and extent of those restrictions.";

(b) after sub-section (I) the following sub-sections shall be inserted, namely:—

"(1A) Where the prospectus is issued by a company which has been carrying on business prior to the issue thereof, the prospectus shall set out the following reports in addition to the matters referred to in sub-section (I), namely:—

(i) a report by the auditors of the company with respect to the profits of the company including its subsidiary companies, if any, so far as the information is available in each of the three financial years immediately preceding the issue of the prospectus and with respect to the rates of the dividends, if any, paid by the company on each class of shares in the
company

company for each of the said three years giving particulars of each such class of shares on which such dividends have been paid and the source from which the dividends have been paid and particulars of the cases in which no dividends have been paid on any class of shares for any of those years, and if no accounts have been made up for any part of a period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact;

- (ii) if the proceeds or any part of the proceeds of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by an accountant or accountants holding the certificate referred to in section 144 who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus:

Provided that if, in the case of a company which has been carrying on business for less than three years, the accounts of the company have been made up only in respect of two years or any shorter period, this subsection shall have effect as if references to two years or such shorter period were substituted for references to three years.

- (1B) The statement referred to in clause (ff) of sub-section (1) and the report referred to in sub-section (1A) with respect to the profits of a company or business shall show clearly the trading results and all charges and expenses incidental thereto excluding income or profits having no relation to the trading for the period covered and excluding also items of profit or income of a non-recurring nature but including amounts appropriated from profits to such purposes as payment of taxation or reserves.

(1C) Where

(1C) Where any part of the sums required for the matters set out in sub-section (2) of section 101 is to be provided out of sources other than share capital particulars of the amount to be so provided and the sources thereof.”; and

(e) to sub-section (4) the following proviso shall be added, namely:—

“ Provided that the said requirements, except the requirement as to the amount or estimated amount of preliminary expenses, shall apply to a prospectus filed in pursuance of section 154.”

51. Section 96 of the said Act shall be re-numbered ^{Amendment of section 96, Act VII of 1913.} as sub-section (1) of that section and after the sub-section as so re-numbered, the following sub-section shall be added, namely:—

“(2) It shall not be lawful to issue any form of application for the shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of section 93 :

Provided that this sub-section shall not apply if it is shown that the form of application was issued either—

(a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this sub-section, he shall be liable to a fine not exceeding five hundred rupees.”

52. (1) Section 97 of the said Act shall be re-numbered ^{Amendment of section 97, Act VII of 1913.} as sub-section (2) of that section and the following sub-section shall be inserted as sub-section (1), namely:—

“(1) If a prospectus is issued which does not comply with the provisions of section 93, every person who is knowingly responsible for the issue of such prospectus shall be liable to a fine not exceeding fifty rupees for every day from the day of the issue of the prospectus until a copy complying with the requirements of section 93 is filed.”

(2) In

(2) In the said section as so re-numbered—

- (a) after the words "non-compliance with", in both places where they occur, the words "or contravention of" shall be inserted;
- (b) after the word "non-compliance", in the three places where it occurs, the words "or contravention" shall be inserted; and
- (c) after clause (b) the following word and clause shall be inserted, namely:—

" or

- (c) the non-compliance or contravention was in respect of matters which in the opinion of the Court were immaterial, or was otherwise such as ought in the opinion of the Court having regard to all the circumstances of the case reasonably to be excused: "

Amendment of Section 98, Act VII of 1913.

53. In sub-section (1) of section 98 of the said Act, for the words "set out in the Second Schedule" the words "set out in the form marked I in the Second Schedule" shall be substituted.

Insertion of new section 98A in Act VII of 1913.

54. After section 98 of the said Act the following section shall be inserted, namely:—

Document offering shares or debentures for sale to be deemed a prospectus.

" 98A. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For

- (2) For the purposes of this Act it shall, unless the contrary is proved, be evidence that an allotment of or an agreement to allot shares or debentures was made with a view to the shares or debentures being offered for sale to the public, if it is shown—
- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot ; or
 - (b) that at the date when the offer was made the whole of the consideration to be received by the company in respect of the shares or debentures had not been so received.
- (3) Section 97 shall apply to the person or persons making the offer as though they were persons named in a prospectus as directors of a company, and the provisions of section 93 shall have effect as if it required a prospectus to state, in addition to the matters required by that section to be stated in a prospectus,—
- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates, and
 - (b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.
- (4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by all directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.”

55. In section 101 of the said Act,—

- (a) for sub-sections (1) and (2) the following sub-sections shall be substituted, namely :—

“(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which in the

opinion

opinion of the directors must be raised by the issue of share capital in order to provide the sums or, if any part thereof is to be defrayed in any other manner, the balance of the sum required to be provided in respect of the matters specified in sub-section (2) has been subscribed, and the sum of at least five per cent. thereof has been paid to or received in cash by the company.

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

- (a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue,
- (b) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for or of his procuring or agreeing to procure subscriptions for any shares in the company,
- (c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters, and
- (d) working capital.

(2A) The amount referred to in sub-section (1) as the amount stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription.

(2B) All moneys received from applicants for shares shall be deposited and kept in a scheduled bank as defined in the Reserve Bank of India Act, 1934, until returned in accordance with the provisions of sub-section (4) or until the certificate to commence business is obtained under section 103. II of 1934;

(2C) In the event of any contravention of the provisions of sub-section (2B) every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding five hundred rupees.”: and

(b) in

(b) in sub-section (4), for the word "twenty" the word "eighty", for the word "thirty" the word "ninety" and for the word "thirtieth" the word "ninetieth" respectively shall be substituted.

56. In sub-section (1) of section 102, after the words "and not later" the words "or in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting within one month after the date of the allotment and not later" shall be added.

Amendment of section 102, Act VII of 1913.

57. To section 104 of the said Act the following sub-section shall be added, namely :—

Amendment of section 104, Act VII of 1913.

"(4) Nothing in this section shall apply to the issue and allotment by a company of shares which under the provisions of its articles were forfeited for non-payment of calls."

58. In sub-section (2) of section 105 of the said Act, after the words "as aforesaid" the words "and save as provided in section 105A" shall be inserted.

Amendment of section 105, Act VII of 1913.

59. After section 105 of the said Act the following sections shall be inserted, namely :—

Insertion of new sections 105A and 105B in Act VII of 1913.

"105A. (1) Subject to the provisions of this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued :

Power to issue shares at a discount.

Provided that—

- (a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company and must be sanctioned by the Court ;
- (b) the resolution must specify the maximum rate of discount (not exceeding ten per cent. in any case) at which shares are to be issued ;
- (c) not less than one year must at the date of issue have elapsed since the date on which the company was entitled to commence business ;
- (d) the shares to be issued at a discount must be issued within six months after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Every

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- (2) Every prospectus relating to the issue of the shares and every balance-sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question.
- (3) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty rupees.

Issue of
redeemable
preference
shares.

105B. (1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be, liable to be redeemed :

Provided that—

- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or out of sale proceeds of any property of the company ;
- (b) no such shares shall be redeemed unless they are fully paid ;
- (c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the amount applied in redeeming the shares, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company ;
- (d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption must have been provided for out of the profits of the company before the shares are redeemed.
- (2) There shall be included in every balance-sheet of a company which has issued redeemable preference shares a statement specifying what
- part

part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be, liable to be redeemed or, where no definite date is fixed for redemption, the period of notice to be given for redemption.

If a company fails to comply with the provisions of this sub-section, the company and every officer of the company who is in default shall be liable to a fine not exceeding one thousand rupees.

(3) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purpose of calculating the fees payable under section 249 be deemed to be increased by the issue of shares in pursuance of this sub-section:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this sub-section unless the old shares are redeemed within one month after the issue of the new shares.

(5) Where new shares have been issued in pursuance of the last foregoing sub-section, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

105C. Where the directors decide to increase the capital of the company by the issue of further shares such shares shall be offered to the members in proportion to the existing shares held by each member (irrespective of class) and such offer shall be made by notice specifying the number of shares to which the member is entitled, and

limiting

limiting a time within which the offer, if not accepted, will be deemed to be declined ; and after the expiration of such time, or on receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company."

Amendment of section 109, Act VII of 1913.

60. Section 109 of the said Act shall be re-numbered as sub-section (I) of that section, and

(a) in the section as so re-numbered, clause (e) shall be re-lettered as clause (f) and the following shall be inserted as clause (e), namely,—

"(e) a mortgage or a charge, not being a pledge on any moveable property of the company except stock-in-trade ; or", and

(b) to the section as so re-numbered the following sub-section shall be added, namely :—

"(2) Where any mortgage or charge on any property of a company required to be registered under this section has been so registered, any person acquiring such property or any part thereof, or any share or interest therein, shall be deemed to have notice of the said mortgage or charge as from the date of such registration."

Insertion of new section 109A in Act VII of 1913.
Registration of charges on properties acquired subject to charge.

61. After section 109 of the said Act the following section shall be inserted, namely :—

"109A. (1) Where after the commencement of the Indian Companies (Amendment) Act, 1936, a company registered in British India acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed :

Provided that, if the property is situate and the charge was created outside British India,

twenty-one

twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar.

- (2) If default is made in complying with this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine of five hundred rupees."

62. To section 116 of the said Act the following sub-section shall be added, namely:—

Amendment of section 116, Act VII of 1913.

- "(3) Whenever the terms or conditions or extent or operation of any mortgage or charge registered under this section are modified, it shall be the duty of the company to send to the registrar the particulars of such modification, and the provisions of this section as to registration of mortgage or a charge shall apply to such modification of the mortgage or charge as aforesaid."

63. For sub-section (2) of section 119 of the said Act the following sub-sections shall be substituted, namely:—

Amendment of section 119, Act VII of 1913.

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

- (3) If default is made in complying with the requirements of this section, the company and every director, manager, managing agent, secretary or other officer of the company and every receiver who knowingly and wilfully authorises or permits the default, shall be liable to a fine not exceeding two hundred rupees."

64. Section 120 of the said Act shall be re-numbered as sub-section (1) of that section, and—

Amendment of section 120, Act VII of 1913.

- (a) in that section as so re-numbered, after the words "mortgage or charge", where they occur

for

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for the second time, the following words shall be inserted, namely :—

“, or the omission to give intimation to the registrar of the payment or satisfaction of a debt for which a charge or mortgage was created ” ;

and

(b) to that section as so re-numbered the following sub-section shall be added, namely :—

“(2) Where the Court extends the time for the registration of a mortgage or charge, the order shall not prejudice any rights acquired in respect of the property concerned prior to the time when the mortgage or charge is actually registered.”

Substitution
of new section
for section
121, Act VII
of 1918.
Registration
of satisfaction
of mortgages
and charges.

65. For section 121 of the said Act the following section shall be substituted, namely :—

“121. (1) It shall be the duty of the company to give intimation to the registrar of the payment or satisfaction of any charge or mortgage created by the company and requiring registration under section 109 within twenty-one days from the date of the payment or satisfaction thereof.

(2) The registrar shall on receipt of such intimation cause a notice to be sent to the mortgagee calling upon him to show cause, within a time (not exceeding fourteen days) to be fixed by such notice, why the payment or satisfaction of the charge or mortgage should not be recorded.

(3) The registrar shall, if no cause is shown, order that a memorandum of satisfaction be entered on the register and shall if required furnish the company with a copy thereof.

(4) Where cause is shown, the registrar shall record a note to that effect in the register, and shall inform the company that he has done so.”

66. In sub-section (1) of section 122 of the said Act, clause (b) shall be re-lettered as clause (c) and the following clause shall be inserted as clause (b), namely :—

“(b) of the payment or satisfaction of a debt in respect of which a mortgage or charge has been registered under section 109 or section 109A ; or ”.

Amendment
of section
122, Act VII
of 1918.

67. In

67. In sub-section (I) of section 123 of the said Act, the word "limited" shall be omitted and after the words "property of the company" the words "and all floating charges on the undertaking or on any property of the company" shall be inserted.

*Amendment
of section 123,
Act VII of
1918.*

68. For section 130 of the said Act the following section shall be substituted, namely:—

*Substitution
of new section
for section
130, Act VII
of 1918.*

"130. (I) Every company shall cause to be kept proper books of account with respect to—

*Books to be
kept by
company and
penalty for
not keeping
proper books.*

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company;
- (c) the assets and liabilities of the company.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall be open to inspection by the directors during business hours.

(3) In the case of a company managed by a managing agent the managing agent, or where the managing agent is a firm or company, the partner or director of such firm or company and in any other case the director or directors who have knowingly by their act or omission been the cause of any default by the company in complying with the requirements of this section, shall in respect of such offence be liable to a fine not exceeding one thousand rupees."

69. In section 131 of the said Act,—

*Amendment
of section 131,
Act VII of
1918.*

(a) for sub-section (I) the following sub-section shall be substituted, namely:—

"(I) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a balance-sheet and profit and

loss

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loss account or in the case of a company not trading for profit an income and expenditure account for the period, in the case of the first account since the incorporation of the company and in any other case since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months or in the case of a company carrying on business or having interests outside British India by more than twelve months :

Provided that the registrar may for any special reason extend the period by a period not exceeding three months." ;

- (b) in sub-section (2), after the words " The balance-sheet " the words " and the profit and loss account or income and expenditure account " shall be inserted ;
- (c) in sub-section (3), for the words " such balance-sheet so audited " the words " such balance-sheet and profit and loss account or income and expenditure account so audited together with a copy of the auditors' report " shall be substituted and for the words " seven days " wherever they occur the words " fourteen days " shall be substituted ; and
- (d) sub-section (4) shall be omitted.

Insertion of
new section
131A in Act
VII of 1913.

70. After section 131 of the said Act the following section shall be inserted, namely :—

Directors'
Report.

" 131A. (1) The directors shall make out and attach to every balance-sheet a report with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to the Reserve Fund, General Reserve or Reserve Account shown specifically on the balance-sheet or to a Reserve Fund, General Reserve or Reserve Account to be shown specifically in a subsequent balance-sheet.

(2) The

- (2) The report referred to in sub-section (1) may be signed by the chairman of the directors on behalf of the directors if authorised in that behalf by the directors.
- (3) The provisions of sub-section (3) of section 130 shall apply to any person being a director who is knowingly and wilfully guilty of a default in complying with this section."

71. To section 132 of the said Act the following sub-section shall be added, namely :—

Amendment of section 132, Act VII of 1913.

- "(3) The profit and loss account shall include particulars showing the total of the amount paid whether as fees, percentages or otherwise to the managing agent, if any, and the directors respectively as remuneration for their services and, where a special resolution passed by the members of the company so requires, to the manager, and the total of the amount written off for depreciation. If any director of the company is by virtue of the nomination, whether direct or indirect, of the company, a director of any other company, any remuneration or other emoluments received by him for his own use, whether as a director of, or otherwise in connection with the management of, that other company, shall be shown in a note at the foot of the account or in a statement attached thereto."

72. After section 132 of the said Act the following section shall be inserted, namely :—

Insertion of new section 132A in Act VII of 1913.

- "132A. (1) Where a company, in this Act referred to as the holding company, holds shares, either directly or through a nominee, in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance-sheet of the holding company the last audited balance-sheet, profit and loss account and auditors' report of the subsidiary company or companies, and a statement signed by the persons by whom, in pursuance of section 133, the balance-sheet of the holding company is signed stating how the profits and losses of the subsidiary

Balance-sheet to include particulars as to subsidiary companies.

subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have been dealt with in or for the purposes of the accounts of the holding company, and in particular how and to what extent—

- (a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company or of both, and
- (b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the company as disclosed in its accounts :

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner :

Provided further that for the purposes of this section an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities, shall not be deemed to be a holding company by reason only that part of its assets consists in 51 per cent. or more of the shares of another company.

- (2) If, in the case of a subsidiary company, the auditors' report on the balance-sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance-sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement, which is to be annexed as aforesaid to the balance-sheet of the holding company, shall contain particulars of the manner in which the report is qualified.

(3) For

- (3) For the purposes of this section the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.
- (4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance-sheet shall so report in writing and their report shall be annexed to the balance-sheet in lieu of the statement.
- (5) The holding company may by a resolution authorise representatives named in the resolution to inspect the books of account kept in accordance with section 130 by any subsidiary company, and on such resolution being passed those books of account shall be open to inspection by those representatives at any time during business hours.
- (6) The rights conferred by section 138 upon members of a company may be exercised in respect of any subsidiary company by members of the holding company as if they were members of that subsidiary company."

73. In section 133 of the said Act,—

Amendment
of section 133,
Act VII of
1913.

- (a) after the word "balance-sheet" wherever it occurs the words "and profit and loss account or income and expenditure account" shall be inserted;
- (b) after the word "manager" wherever it occurs the words "or managing agent" shall be inserted; and
- (c) for sub-section (3) the following sub-section shall be substituted, namely:—

"(3) If any default is made in laying before the company or in issuing a balance-sheet and profit and loss account or income and expenditure

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expenditure account as required by section 131 or if any balance-sheet and profit and loss account or income and expenditure account is issued, circulated or published which does not comply with the requirements laid down by and under section 131, section 132, section 132A and this section, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to five hundred rupees."

Amendment of section 134, Act VII of 1913.

74. In sub-section (1) of section 134 of the said Act, for the words "after the balance-sheet has" the words "after the balance-sheet and profit and loss account have" shall be substituted, and for the word "thereof" the words "of the balance-sheet" shall be substituted.

Amendment of section 135, Act VII of 1913.

75. In section 135 of the said Act, after the words "the balance-sheet" the words "and the profit and loss account or the income and expenditure account" shall be added.

Amendment of section 136, Act VII of 1913.

76. In sub-section (2) of section 136 of the said Act, after the words "A copy of the statement" the words "together with a copy of the last audited balance-sheet laid before the members of the company" shall be inserted.

Amendment of section 137, Act VII of 1913.

77. In section 137 of the said Act,—

(a) to sub-section (3) the following words shall be added, namely :—

"and the Court may on the application of the registrar and upon notice to the company make an order on the company for production of such documents as in its opinion may reasonably be required by the registrar for his investigation and allow the registrar inspection thereof on such terms and conditions as it thinks fit";

and

(b) after sub-section (5) the following sub-sections shall be added, namely :—

"(6) If it is represented to the registrar in materials placed before him by any contributory or creditor that the business of a

company

company is carried on in fraud of its creditors or in fraud of persons dealing with the company or for a fraudulent purpose, he may after giving the company an opportunity of being heard by written order call on the company for information or explanation on matters specified in the order within such time as he may specify in the order and the provisions of sub-sections (2), (3) and (5) of this section shall apply to such order. If upon investigation the registrar is satisfied that any representation on which he has taken action under this sub-section is frivolous or vexatious, he shall disclose the identity of the informant to the company.

(7) The provisions of this section shall apply *mutatis mutandis* to documents which a liquidator is required to file under this Act."

78. In section 141 of the said Act,—

(a) in sub-section (1), after the words "by the Local Government" the words "to the registrar and another copy" shall be inserted;

Amendment
of section 141,
Act VII of
1918.

(b) to sub-section (3) the following proviso shall be added, namely:—

"Provided that the expenses of and incidental to an investigation held in pursuance of clause (iv) of section 138 shall be paid out of the assets of the company and shall be recoverable as an arrear of land-revenue." ; and

(c) after sub-section (3) the following sub-section shall be added, namely:—

"(4) The registrar shall keep the copy of the report sent to him with the records of the company in his custody."

79. After section 141 of the said Act the following section shall be inserted, namely:—

"141A. (1) If from any report made under section 138 it appears to the Local Government that any person has been guilty of any offence in relation to the company for

Insertion of
new section
141A in Act
VII of 1918.

Institution of
prosecutions.

which

which he is criminally liable, the Local Government shall refer the matter to the Advocate General or the Public Prosecutor.

- (2) If the officer to whom the matter is referred considers that the case is one in which a prosecution ought to be instituted, he shall cause proceedings to be instituted, and it shall be the duty of all officers and agents of the company, past and present (other than the accused in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.
- (3) For the purposes of sub-section (2), the expression "agents" in relation to a company shall be deemed to include the bankers and legal advisers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.
- (4) Any director, manager or other officer of the company convicted as the result of a prosecution initiated under this section shall not without the leave of the Court be a director of or in any way whether directly or indirectly be concerned in or take part in the management of a company for a period of five years from the date of such conviction.

Amendment of section 144, Act VII of 1918.

80. In section 144 of the said Act,—

- (a) in sub-section (1), after the words "private company" the words "not being the subsidiary company of a public company" shall be inserted;
- (b) in sub-section (5),—
 - (i) in clause (iii), after the words "private company" the words "not being the subsidiary company of a public company" shall be inserted; and
 - (ii) after clause (iii) the following word and clause shall be inserted, namely:—

"and

(iv) any person indebted to the company";

and

(iii) to

(iii) to that sub-section the following words shall be added, namely:—

“and if any person after being appointed auditor becomes indebted to the company his appointment shall thereupon be terminated.”

81. In section 145 of the said Act,—

Amendment
of section 145,
Act VII of
1913.

(a) in sub-section (2),—

(i) after the words “on every balance-sheet” the words “and profit and loss account” shall be inserted;

(ii) for clause (b) the following clause shall be substituted, namely:—

“(b) whether or not in their opinion the balance-sheet and the profit and loss account referred to in the report are drawn up in conformity with the law; and”;

(iii) in clause (c) after the word “whether” the words “or not” shall be inserted; and

(iv) after clause (c) the following word and clause shall be added, namely:—

“and

(d) whether in their opinion books of account have been kept by the company as required by section 130.”;

(b) after sub-section (2) the following sub-section shall be inserted, namely:—

“(2A) Where any of the matters referred to in clauses (a), (b), (c) and (d) of sub-section (2) is answered in the negative or with a qualification, the report shall state the reason for such answer.”;

and

(c) after sub-section (3) the following sub-sections shall be added, namely:—

“(4) The auditors of a company shall be entitled to receive notice of and to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and may make any statement or explanation they desire with respect to the accounts.

(5) If

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- (5) If any auditors' report is made which does not comply with the requirements of this section, every auditor who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to one hundred rupees."

Amendment
of section 146,
Act VII of
1918.

82. In section 146 of the said Act, —

- (a) in sub-section (1), after the word "balance-sheets" the words "and profit and loss accounts" shall be inserted; and
- (b) to sub-section (2) the following proviso shall be added, namely:—

" Provided that in the case of any public company whether registered before or after the commencement of this Act the trustees for holders of debentures shall have the right conferred by sub-section (1) on holders of preference shares and debentures of a company. "

Amendment
of section 153,
Act VII of
1913.

83. In section 153 of the said Act,—

- (a) sub-section (3) shall be re-numbered as sub-section (6) and the following sub-sections shall be inserted, namely:—

" (3) An order made under sub-section (2) shall have no effect until a certified copy of the order has been filed with the registrar, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

- (4) If a company makes default in complying with sub-section (3) the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(5) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against a company on such terms as it thinks fit and proper until the application is finally disposed of."

(b) to

(b) to sub-section (3) as now re-numbered the following words shall be added, namely:—

“and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors”; and

(c) after sub-section (3) as now re-numbered the following sub-section shall be added, namely:—

“(7) An appeal shall lie from any order made by the Court exercising original jurisdiction under this section to the authority authorised to hear appeals from the decisions of the Court.”

84. After section 153 of the said Act the following sections shall be inserted, namely:—

Insertion of new sections 153A and 153B in Act VII of 1918.

Provisions for facilitating arrangements and compromises.

“153A. (1) Where an application is made to the Court under section 153 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as a ‘transferor company’) is to be transferred to another company (in this section referred to as ‘the transferee company’), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:—

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

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

(c) the

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- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company ;
 - (d) the dissolution, without winding up, of any transferor company ;
 - (e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement ;
 - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.
- (2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.
- (3) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the registrar for registration within fourteen days after the completion of the order, and if default is made in complying with this sub-section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.
- (4) In this section the expression 'property' includes property, rights and powers of every description, and the expression 'liabilities' includes duties.
- (j) Notwithstanding the provisions of sub-section (4) of section 153, the expression 'company' in this section does not include any company other than a company within the meaning of this Act.

153B. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as 'the transferor company') to another company, whether a company within the meaning of this Act or not (in this section referred to as the 'transferee company'), has within four months after

Power to acquire shares of shareholders dissenting from schemes or contract approved by majority.

after the making of the offer in that behalf by the transferee company been approved by the holders of not less than three-fourths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company :

Provided that, where any such scheme or contract has been so approved at any time before the commencement of the Indian Companies (Amendment) Act, 1936, the Court may by order, on an application made to it by the transferee company within two months after the commencement of that Act, authorise notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the Court may by the order direct instead of the terms provided by the scheme or contract.

- (2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that

company

company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

- (3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.
- (4) In this section the expression 'dissenting shareholder' includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract."

85. For section 154 of the said Act the following section shall be substituted, namely:—

Substitution
of new section
for section
154, Act VII
of 1913.

Conversion of
private
company into
public
company.

- " 154. (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under the provisions of clause (13) of sub-section (1) of section 2, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, file with the registrar a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the form marked II in the Second Schedule.
- (2) If default is made in complying with sub-section (1) of this section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding five hundred rupees.
 - (3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in this Act, and thereupon the provisions of this Act shall apply to the company as if it were not a private company:

Provided

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid."

86. For sub-section (1) of section 159 of the said Act the following sub-section shall be substituted, namely:— Amendment of section 159, Act VII of 1913.

"(1) The liability of a contributory shall create a debt payable at the time specified in the calls made on him by the liquidator."

87. To section 160 of the said Act the following sub-section shall be added, namely:— Amendment of section 160, Act VII of 1913.

"(3) For the purposes of this section the surviving coparceners of a contributory who is a member of a Hindu joint family governed by the Mitakshara School of Hindu Law shall be deemed to be his legal representatives and heirs."

88. Section 163 of the said Act shall be re-numbered as sub-section (1) of that section and in the section as so re-numbered,— Amendment of section 163, Act VII of 1913.

(a) in clause (i), for the words "by leaving the same" the words "by causing the same to be delivered by registered post or otherwise" shall be substituted; and

(b) the following sub-section shall be added, namely:—

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

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Amendment
of section 166,
Act VII of
1913.

89. In section 166 of the said Act,—

- (a) after the words "together or separately" the words ", or by the registrar" shall be inserted, and
- (b) after clause (a) of the proviso the following clause shall be inserted, namely :—
 - "(aa) the registrar shall not be entitled to present a petition for winding up a company—
 - (i) except on the ground that from the financial condition of the company as disclosed in its balance-sheet or from the report of an inspector appointed under section 138 it appears that the company is unable to pay its debts, and
 - (ii) unless the previous sanction of the Local Government has been obtained to the presentation of the petition :

Provided that no such sanction shall be given unless the company has first been afforded an opportunity of being heard."

Amendment
of section 170,
Act VII of
1913.

90. To section 170 of the said Act the following sub-section shall be added, namely :—

- "(3) Where the Court makes an order for the winding up of a company it shall, except where a liquidator is appointed simultaneously, forthwith cause intimation thereof to be sent to the official receiver."

Amendment
of section 171,
Act VII of
1913.

91. In section 171 of the said Act, after the words "has been made" the words "or a provisional liquidator has been appointed" shall be inserted.

Insertion of
new section
171A in Act
VII of 1913.

92. After section 171 of the said Act the following section shall be inserted, namely :—

"171A. (1) For the purposes of this Act, so far as it relates to the winding up of companies by the Court, the term 'official receiver' means the official receiver attached to the Court, or, if there is no such official receiver, then such person as the Local Government may, by notification in the local official Gazette, appoint for the purpose.

- (2) On the making of a winding up order, the official receiver shall become the official liquidator of the company and shall continue to act as such until his further continuance is terminated by an order of the Court.

(3) The

(3) The official receiver shall as such official liquidator forthwith take into his custody and control all the books, documents and the assets of the company.

(4) The official receiver shall be entitled to such remuneration as the Court shall fix."

93. For sub-section (1) of section 172 of the said Act the following sub-section shall be substituted, namely :— Amendment of section 172, Act VII of 1913.

"(1) On the making of a winding up order it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the registrar a copy of the order within a month from the date of the making of the order."

94. In section 175 of the said Act,—

Amendment of section 175, Act VII of 1913.

(a) in sub-section (1), after the words "a person or persons" the words "other than the official receiver" shall be inserted; and

(b) to sub-section (2), the following words shall be added, namely :—

"but shall before making any such appointment give notice to the company, unless for reasons to be recorded it thinks fit to dispense with notice."

95. To sub-section (2) of section 176 of the said Act the following words shall be added, namely :— Amendment of section 176, Act VII of 1913.

"and until the vacancy is so filled up the official receiver shall be and act as the official liquidator".

96. After section 177 of the said Act the following sections shall be inserted, namely :— Insertion of new sections 177A and 177B in Act VII of 1913.

"177A. (1) Where the Court has made a winding up order or appointed an official liquidator provisionally, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the official liquidator a statement as to the affairs of the company verified by an affidavit and containing the following particulars, namely :— Statement of affairs to be made to the liquidator.

(a) the assets of the company, stating separately the cash balance in hand and at the bank, if any;

(b) the

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- (b) the debts and liabilities;
 - (c) the names, residences and occupations of the creditors stating separately the amount of secured debts and unsecured debts, and in the case of secured debts particulars of the securities, their value and the dates when they were given ;
 - (d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised therefrom.
- (2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary, manager or other chief officer of the company, or by such of the persons hereinafter in this subsection mentioned as the official liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons—
- (a) who are or have been directors or officers of the company ;
 - (b) who have taken part in the formation of the company at any time within one year before the relevant date ;
 - (c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the official liquidator capable of giving the information required ;
 - (d) who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates.
- (3) The statement shall be submitted within twenty-one days from the relevant date, or within such extended time as the official liquidator or the Court may for special reasons appoint.
- (4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs

costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court.

- (5) If any person, without reasonable excuse, knowingly and wilfully makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.
- (6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.
- (7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code and shall, on the application of the liquidator or of the official receiver, be punishable accordingly.
- (8) In this section the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order.

177B. (1) In a case where a winding up order is made, the official liquidator shall, as soon as practicable after receipt of the statement to be submitted under section 177A, and not later than four, or with the leave of the Court, six months from the date of the order, or in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—

(a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, giving separately under the heading of assets particulars of—

- (i) cash and negotiable securities ;
 (ii) debts due from contributories ;

(iii) debts

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- (iii) debts due to and securities, if any, available to the company ;
 - (iv) moveable and immoveable properties belonging to the company ;
 - (v) unpaid calls ; and
 - (b) if the company has failed, as to the causes of the failure ; and
 - (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.
- (2) The official liquidator may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court. ”

Amendment of section 178, Act VII of 1918.

97. In section 178 of the said Act,—

- (a) in sub-section (1), after the word “ liquidator ” the words “ whether appointed provisionally or not ” shall be inserted ; and
- (b) for sub-section (2) the following sub-section shall be substituted, namely :—

“ (2) All the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company. ”

98. After section 178 of the said Act the following section shall be inserted, namely :—

“ 178A. (1) The official liquidator shall within a month from the date of the order for the winding up of a company convene a meeting of the creditors of the company (as ascertained from the books and documents of the company) for the purpose of determining whether or not a committee of inspection shall be appointed to act with the liquidator, and who are to be members of the committee, if appointed.

- (2) The official liquidator shall within a week from the date of the creditors' meeting convene a meeting of the contributories to consider the decision of the creditors and to accept the same with or without modifications.

(3) If

Insertion of new section 178A in Act VII of 1918. Committee of inspection in compulsory winding up.

- (3) If the contributories do not accept the decision of the creditors in its entirety, it shall be the duty of the official liquidator to apply to the Court for directions as to whether there shall be a committee of inspection and, if so, what shall be the composition of the committee, and who shall be members thereof.
- (4) A committee of inspection appointed under this section shall consist of not more than twelve members being creditors and contributories of the company or persons holding general or special powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.
- (5) The committee of inspection shall have the right to inspect the accounts of the official liquidator at all reasonable times.
- (6) The committee shall meet at such times as they may from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
- (7) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.
- (8) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.
- (9) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.
- (10) A member of the committee may be removed by an ordinary resolution at a meeting of creditors if he represents creditors, or of contributories if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(11) On

(11) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(12) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee."

Amendment of section 182 Act VII of 1913.

99. Section 182 of the said Act shall be re-numbered as sub-section (1) of that section and to the section as so re-numbered the following sub-sections shall be added, namely :—

- "(2) Every official liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Court an account of his receipts and payments as such liquidator.
- (3) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.
- (4) The Court shall cause the account to be audited in such manner as it thinks fit and for the purpose of the audit the liquidator shall furnish the Court with such vouchers and information as the Court may require, and the Court may at any time require the production of and inspect any books or accounts kept by the liquidator.
- (5) When the account has been audited, one copy thereof shall be filed and kept by the Court, and the other copy shall be delivered to the registrar for filing, and each copy shall be open to the inspection of any creditor, or of any person interested."

Amendment of section 183, Act VII of 1913.

100. To sub-section (1) of section 183 of the said Act, the words "or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection" shall be added at the end.

Amendment of section 188, Act VII of 1913.

101. In section 188 of the said Act, the words "the Bank of Bengal, the Bank of Madras or the Bank of Bombay, as the case may be, or any branch thereof respectively to" shall be omitted and after the words "official liquidator" where they first occur the words

"in

II of 1934.

“in any scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934” shall be inserted.

102. In section 189 of the said Act, for the words “the Bank of Bengal, the Bank of Madras or the Bank of Bombay or any branch thereof respectively” the words “the Bank where the liquidator of the Company may have his account” shall be substituted. Amendment of section 189, Act VII of 1913.

103. To section 203 of the said Act after clause (3) the following words shall be added, namely :— Amendment of section 203, Act VII of 1913.

“and the expression ‘resolution for voluntarily winding up’ when used hereafter in this Part means a resolution passed under clause (1), clause (2) or clause (3) of this section”.

104. In section 204 of the said Act, for the words “authorising the winding up” the words “for voluntarily winding up” shall be substituted. Amendment of section 204, Act VII of 1913.

105. For sections 207 to 219 of the said Act, both included, the following sections and headings shall be substituted, namely :— Substitution of new sections for sections 207 to 219, Act VII of 1913.

“207. (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, to make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding three years, from the commencement of the winding up. Declaration of solvency.

(2) Such declaration shall be supported by a report of the company’s auditors on the company’s affairs and shall have no effect for the purposes of this Act unless it is delivered to the registrar for registration before the date mentioned in sub-section (1) of this section.

(3) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as a ‘members’ voluntary winding up’, and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as ‘a creditors’ voluntary winding up’.

Members’

Members' voluntary winding up.

Provisions applicable to a members' voluntary winding up.

Power of company to appoint and fix remuneration of liquidators.

208. The provisions contained in sections 208A to 208E, both inclusive, shall apply in relation to a members' voluntary winding up.

208A. (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

Power to fill vacancy in office of liquidator.

208B. (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

Power of liquidator to accept shares, etc., as consideration for sale of property of company.

208C. (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called 'the transferee company'), the liquidator of the first-mentioned company (in this section called 'the transferor company') may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the transferee company:

(2) Any

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner hereafter provided.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

IX of 1899.

(6) The provisions of the Indian Arbitration Act, 1899, other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

208D. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or as soon thereafter as may be convenient within ninety days of the close of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the liquidation.

Duty of liquidator to call general meeting at end of each year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding one hundred rupees.

208E. (1) As

Final meeting
and dissolu-
tion.

208E. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement specifying the time, place and object thereof, and published one month at least before the meeting in the manner specified in sub-section (1) of section 206 for publication of a notice under that sub-section.

(3) Within one week after the meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this sub-section the liquidator shall be liable to a fine not exceeding fifty rupees for every day during which the default continues :

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the said return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall be deemed to have been complied with.

(4) The registrar on receiving the account and either of the returns mentioned in sub-section (3) shall forthwith register them and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within twenty-one days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails so to do he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Creditors' voluntary winding up.

Provisions
applicable to
a creditors'
voluntary
winding up.

209. The provisions contained in sections 209A to 209H, both inclusive, shall apply in relation to a creditors' voluntary winding up.

209A. (1) The

209A. (1) The company shall cause a meeting of ^{Meeting of} the creditors of the company to be summoned for the ^{creditors.} day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised in the manner specified in sub-section (1) of section 206 for the publication of a notice under that sub-section.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors, held in pursuance of sub-section (1) of this section, shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

(a) by the company in complying with sub-sections (1) and (2),

(b) by the directors of the company in complying with sub-section (3),

(c) by any director of the company in complying with sub-section (4),

the company, directors or director, as the case may be, shall be liable to a fine not exceeding one thousand rupees and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

209B. The

Appointment
of liquidator.

209B. The creditors and the company at their respective meetings mentioned in section 209A may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator :

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment
of committee
of inspection.

209C. The creditors at the meeting to be held in pursuance of section 209A or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number :

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

Fixing of
liquidators'
remuneration
and cesser
of directors'
powers.

209D. (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators, and where the remuneration is not so fixed, it shall be determined by the Court.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

209E. If

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209E. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the Court, the creditors may fill the vacancy.

Power to fill vacancy in office of liquidator.

209F. The provisions of section 208C shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

Application of section 208C to a creditors' voluntary winding up.

209G. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year and a statement in the prescribed form containing the prescribed particulars with respect to the position of the winding up.

Duty of liquidator to call meetings of company and of creditors at end of each year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding one hundred rupees.

209H. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

Final meeting and dissolution.

(2) Each such meeting shall be called by advertisement specifying the time, place and object thereof and published one month at least before the meeting in the manner specified in sub-section (1) of section 206 for the publication of a notice under that sub-section.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this sub-section the

liquidator

liquidator shall be liable to a fine not exceeding fifty rupees for every day during which the default continues :

Provided that, if a quorum (which for the purposes of this section shall be two persons) is not present at either such meeting, the liquidator shall, in lieu of such return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) The registrar on receiving the account and in respect of each such meeting either of the returns mentioned in sub-section (3) shall forthwith register them, and on the expiration of three months from the registration thereof the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within ten days after the making of the order, to deliver to the registrar a certified copy of the order for registration, and if that person fails to do so he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Members' or creditors' voluntary winding up.

210. The provisions contained in sections 211 to 218, both inclusive, shall apply to every voluntary winding up whether a members' or a creditors' winding up.

211. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

212. (1) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of either the Court or the committee

Provisions applicable to every voluntary winding up.

Distribution of property of company

Powers and duties of liquidator in voluntary winding up.

committee of inspection, exercise any of the powers given by clauses (d), (e), (f) and (h) of section 179 to a liquidator in a winding up. The exercise by the liquidator of the powers given by this clause shall be subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers ;

- (b) without the sanction referred to in clause (a), exercise any of the other powers by this Act given to the liquidator in a winding up by the Court ;
- (c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories ;
- (d) exercise the power of the Court of making calls ;
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

213. (1) If from any cause whatever there is no liquidator acting, the Court may appoint a liquidator.

Power of Court to appoint and remove liquidator in voluntary winding up.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

214. (1) The liquidator shall, within twenty-one days after his appointment, deliver to the registrar for registration a notice of his appointment in the form prescribed.

Notice by liquidator of his appointment.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

215. (1) Any

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Arrangement
when binding
on creditors.

215. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Power to
apply to
Court to
have
questions
determined
of powers
exercised.

216. (1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The liquidator or any creditor or contributory may apply for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

Such application shall be made—

(a) if the attachment, distress or execution is levied or put into force by a High Court, to such High Court, and

(b) if the attachment, distress or execution is levied or put into force in any other Court, to the Court having jurisdiction to wind up the company.

(3) The Court, if satisfied that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

Cost of
voluntary
winding up.

217. All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

Saving for
rights of
creditors and
contributo-
ries.

218. The winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory, the Court must be satisfied that

that the rights of the contributories will be prejudiced by a voluntary winding up."

106. In sub-section (I) of section 230 of the said Act,— Amendment of section 230, Act VII of 1913.

(a) in clause (b) the word " and " shall be omitted ; and

(b) after clause (c) the following clauses shall be added, namely :—

" (d) compensation payable under the Workmen's Compensation Act, 1923, in respect of the death or disablement of any officer or employee of the company ;

(e) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company ; and

(f) the expenses of any investigation held in pursuance of clause (iv) of section 138 of this Act."

VI of 1923.

107. After section 230 of the said Act the following section shall be inserted, namely :— Insertion of new section 230A in Act VII of 1913.

" 230A. (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he had endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property : Disclaim of property.

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company,

company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim, and in the case of a contract; if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in
the

the person therein named in that behalf without any conveyance or assignment for the purpose :

Provided that, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company whether as under-lessee or as mortgagee except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up ; or
- (b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date ;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up."

108. In sub-section (1) of section 232 of the said Act, after the words "estate or effects" the words "or any sale held without leave of the Court of any of the properties" shall be inserted. Amendment of section 232, Act VII of 1918.

109. In section 235 of the said Act,—

- (a) in sub-section (1), after the words "or of any creditor or contributory" the words "made within three years from the date of the first appointment of a liquidator in the winding up or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer," shall be inserted; and

(b) sub-section (3) shall be omitted.

Amendment of section 235, Act VII of 1918.

110. For

83

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Substitution
of new section
for section
237 in Act
VII of 1913.

Prosecution
of delinquent
directors.

110. For section 237 of the said Act the following section shall be substituted, namely :—

“ 237. (1) If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the registrar.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator relating to the matter in question, as he may require.

(3) Where any report is made under subsection (2) to the registrar, he may, if he thinks fit, refer the matter to the Local Government for further inquiry, and the Local Government shall thereupon investigate the matter and may, if they think it expedient, apply to the Court for an order conferring on any person designated by the Local Government for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.

(4) If on any report to the registrar under subsection (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the Court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the registrar, the Court may, on the application

application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report has been made in pursuance of the provisions of sub-section (2).

(6) If, where any matter is reported or referred to the registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall place the papers before the Advocate General or the public prosecutor and if advised to do so institute proceedings, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give :

Provided that no prosecution shall be undertaken without first giving the accused person an opportunity of making a statement in writing to the registrar and of being heard thereon.

For the purposes of this sub-section, the expression 'agent' in relation to a company shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(7) If any person fails or neglects to give assistance in manner required by sub-section (6), the Court may, on the application of the registrar, direct that person to comply with the requirements of the said sub-section, and where any such application is made with respect to a liquidator, the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally."

111. After section 238 of the said Act the following section shall be inserted, namely :—

Insertion
of new section
238A in Act
VII of 1913.

" 238A. (1) If any person, being a past or present director, managing agent, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the Court or voluntarily, or is subsequently ordered to be wound up by the Court or

Penal
provisions.

subsequently

subsequently passes a resolution for voluntary winding-up—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company ;
or
- (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up ; or
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up ; or
- (d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of one hundred rupees or upwards or conceals any debt due to or from the company ; or
- (e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards ; or
- (f) makes any material omission in any statement relating to the affairs of the company ; or
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof ; or
- (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company ; or
- (i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates

or

or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or paper affecting or relating to the property or affairs of the company ; or

- (j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company ; or
- (k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company ; or
- (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses ; or
- (m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for ; or
- (n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ; or
- (o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company ; or

(p) is

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up :

he shall be punishable, in the case of the offences mentioned respectively in clauses (m), (n) and (o) of this sub-section, with imprisonment for a term not exceeding five years, and, in the case of any other offence, with imprisonment for a term not exceeding two years :

Provided that it shall be a good defence to a charge under any of clauses (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of clauses (a), (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (o) of sub-section (1) every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be punishable with imprisonment for a term not exceeding three years."

Amendment
of section
244, Act VII
of 1913.

112. In section 244 of the said Act,—

(a) in sub-section (1),—

(i) for the words " at such intervals as may be prescribed " the words " once in each year and at intervals of not more than twelve months " shall be substituted, and

(ii) for the words " file with the registrar " the words " file in Court or with the registrar, as the case may be " shall be substituted :

(b) after sub-section (3) the following sub-section shall be added, namely :—

" (4) When the statement is filed in Court a copy shall simultaneously be filed with the registrar and shall be kept by him along with the other records of the company."

Insertion of
new section
244A in Act
VII of 1913.
Payment of
liquidator into
bank.

113. After section 244 of the said Act the following section shall be inserted, namely :—

" 244A. (1) Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as may be prescribed,

prescribed, pay the money received by him into a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 :

¶I of 1984.

Provided that if the Court is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Court may authorise the liquidator to make his payments into or out of such other bank as the Court may select and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the Court may in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per cent. per annum and shall be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up shall open a special banking account and pay all sums received by him as liquidator into such account."

114. In sub-section (1) of section 246 of the said Act, ^{Amendment of section 246, Act VII of 1913} after the words "Courts subordinate thereto," the words "and for voluntary winding up (both members and creditors), for the holding of meetings of creditors and members in connection with proceedings under section 153 of this Act," shall be inserted, and after the words "shares of a company" the following words shall be inserted, namely :—

"and generally for all applications to be made to the Court under the provisions of this Act".

115. Afte

Insertion of
new section
249A in Act
VII of 1913.

115. After section 249 of the said Act the following section shall be inserted, namely :—

Enforcing
submission
of returns
and docu-
ments to
Registrar.

“ 249A. (1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the Court may, on an application made to the Court by any member or creditor of the company or by the registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to pre-
judice the operation of any enactment im-
posing penalties on a company or its officers
in respect of any such default as aforesaid.”

Amendment
of section
271, Act VII
of 1913.

116. To section 271 of the said Act the following sub-
section shall be added, namely :—

“(3) Where a company incorporated outside British India which has been carrying on business in British India ceases to carry on business in British India it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.”

Amendment of
Section 277,
Act VII of
1913.

117. In section 277 of the said Act,—

(a) in sub-section (3),—

(i) after the words “ a copy of that balance-sheet ”
the following words shall be inserted,
namely :—

“ and if the balance-sheet does not contain all
the information provided for in the form
marked H in the Third Schedule, such
supplementary statements as shall fur-
nish such information ” ;

(ii) the

(ii) the proviso shall be omitted;

(b) sub-sections (5), (6) and (7) shall be re-numbered as sub-sections (6), (7) and (8) and after sub-section (4) the following sub-section shall be inserted as sub-section (5), namely:—

“(5) Every company to which this section applies shall if the liability of the members of the company is limited cause notice of that fact to be stated in legible characters in every prospectus inviting subscriptions for its shares, and in all bill-heads and letter paper notices, advertisements and other official publications of the company in British India, and to be affixed on every place where it carries on business.”

118. In Part X of the said Act, after section 277 the following sections shall be inserted, namely:—

Insertion of new sections 277A to 277E in Act VII of 1913.

“ 277A. (1) It shall not be lawful for any person—

Restriction on sale and offer for sale of shares.

(a) to issue, circulate or distribute in British India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside British India whether the company has or has not established, or when formed will or will not establish, a place of business in British India, unless—

(i) before the issue, circulation or distribution of the prospectus in British India a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the registrar;

(ii) the prospectus states on the face of it that the copy has been so delivered;

(iii) the prospectus is dated; and

(iv) the prospectus otherwise complies with this Part; or

(b) to issue to any person in British India a form of application for shares in or debentures of such a company or intended company as aforesaid,

aforesaid, unless the form is issued with a prospectus which complies with this Part :

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside British India are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 98A to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be liable to a fine not exceeding five thousand rupees.

(6) In this section and in section 277B, the expressions 'prospectus', 'shares' and 'debentures' have the same meanings as when used in relation to a company incorporated under this Act.

Requirements
as to
prospectus.

277B. (1) In order to comply with this Part a prospectus, in addition to complying with the provisions of sub-clauses (ii) and (iii) of clause (a) of sub-section (1) of section 277A, must—

(a) contain particulars with respect to the following matters :—

(i) the objects of the company ;

(ii) the

- (ii) the instrument constituting or defining the constitution of the company ;
- (iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected ;
- (iv) an address in British India where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof in the English language certified in the prescribed manner, can be inspected ;
- (v) the date on which and the country in which the company was incorporated ;
- (vi) whether the company has established a place of business in British India and, if so, the address of its principal office in British India :

Provided that the provisions of sub-clauses (i), (ii) and (iii) of this clause shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business ;

- (b) subject to the provisions of this section, state the matters specified in sub-section (1A) of section 93 and set out the reports specified in that section :

Provided that—

- (i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed, and
- (ii) in section 93 of this Act a reference to the articles of the company shall be deemed to be a reference to the constitution of the company.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part, or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused :

Provided that in the event of failure to include in a prospectus a statement with respect to the matters specified in clause (n) of sub-section (1) of section 93, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

Restriction on canvassing for sale of shares.

277C. (1) It shall not be lawful for any person to go from house to house offering shares of a company incorporated outside India for subscription or purchase to the public or any member of the public.

(2) In this sub-section the expression 'house' shall not include an office used for business purposes.

(3) Any person acting in contravention of this section shall be liable to a fine not exceeding rupees one hundred.

Registration of charges.

277D. The provisions of sections 109 to 117, both inclusive, and 120 to 125, both inclusive, shall extend to charges on properties in British India which are created and to charges on property in British India which is acquired after the commencement of the Indian Companies (Amendment) Act, 1936, by a company incorporated outside British India which has an established place of business in British India.

277E. The

277E. The provisions of sections 118 and 119 shall *mutatis mutandis* apply to the case of all companies incorporated outside British India but having an established place of business in British India and the provisions of section 130 shall apply to such companies to the extent of requiring them to keep at their principal place of business in British India the books of account required by that section with respect to money received and expended, sales and purchases made, and assets and liabilities in relation to its business in British India.”

Notice of appointment of receiver.

119 After Part X of the said Act as amended by this Act the following shall be inserted, namely :—

Insertion of new sections 277F, 277G, 277H, 277I, 277J, 277K, 277L, 277M and 277N as Part XA of Act VII of 1913.

“ PART XA.

Banking Companies.

277F. A ‘banking company’ means a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one or more of the following forms of business, namely :—

Definition of banking company.

- (1) the borrowing, raising or taking up of money ; the lending or advancing of money either upon or without security ; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not ; the granting and issuing of letters of credit, travellers cheques and circular notes ; the buying, selling and dealing in bullion and specie ; the buying and selling of foreign exchange including foreign bank notes ; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds ; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others ; the negotiating of loans and advances ; the receiving of all

kind,

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kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise ; the collecting and transmitting of money and securities ;

- (2) acting as agents for Governments or local authorities or for any other person or persons ; the carrying on of agency business of any description other than the business of a managing agent, including the power to act as attorneys and to give discharges and receipts ;
- (3) contracting for public and private loans and negotiating and issuing the same ;
- (4) the promoting, effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, Municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue ;
- (5) carrying on and transacting every kind of guarantee and indemnity business ;
- (6) promoting or financing or assisting in promoting or financing any business undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise ;
- (7) acquisition by purchase, lease, exchange, hire or otherwise of any property immoveable or moveable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition or which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liability ;
- (8) managing, selling and realising all property moveable and immoveable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims ;
- (9) acquiring and holding and generally dealing with any property and any right, title or interest in any property moveable or immoveable
which

which may form part of the security for any loans or advance or which may be connected with any such security ;

- (10) undertaking and executing trusts ;
- (11) undertaking the administration of estates as executor, trustee or otherwise ;
- (12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company ;
- (13) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or *ex-employees* of the company or the dependents or connections of such persons ; granting pensions and allowances and making payments towards insurance ; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object ;
- (14) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company ;
- (15) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company ;
- (16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section ;
- (17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.

277G. (1) No company formed after the commencement of the Indian Companies (Amendment) Act, 1936, for the purpose of carrying on business as a banking company or which uses as part of the name under which it proposes to carry on business the word 'bank', 'banker' or 'banking' shall be registered under this Act, unless the memorandum limits the objects of the company to the carrying on of the business of accepting deposits

Limitation of activities of banking company.

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deposits of money on current account or otherwise subject to withdrawal by cheque, draft or otherwise along with some or all of the forms of business specified in section 277F.

(2) No banking company whether incorporated in or outside British India shall after the expiry of two years from the commencement of the said Act carry on any form of business other than those specified in section 277F :

Provided that the Governor General in Council may, by notification in the Gazette of India, specify in addition to the businesses set forth in clauses (1) to (17) of section 277F other forms of business which it may be lawful under this section for a banking company to engage in.

Banking company not to employ managing agent.

277H. No banking company shall after the expiry of two years from the commencement of the Indian Companies (Amendment) Act, 1936, employ or be managed by a managing agent other than a banking company for the management of the company.

Restriction on commencement of business by banking company.

277I. Notwithstanding anything contained in section 103, no banking company incorporated under this Act after the commencement of the Indian Companies (Amendment) Act, 1936, shall commence business, unless shares have been allotted to an amount sufficient to yield a sum of at least fifty thousand rupees as working capital and unless a declaration duly verified by an affidavit signed by the directors and the manager that such a sum has been received by way of paid up capital has been filed with the registrar.

Prohibition of charge on unpaid capital.

277J. No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

Reserve fund.

277K. (1) Every banking company shall, after the commencement of the Indian Companies (Amendment) Act, 1936, maintain a reserve fund.

(2) Every banking company shall out of the declared profits of each year and before any dividend is declared transfer a sum equivalent to not less than twenty per cent. of such profits to the reserve fund until the amount of the said fund is equal to the paid up capital.

(3) A banking company shall invest the amount standing to the credit of its reserve fund in Government securities or in securities mentioned or referred to in section 20 of the Indian Trusts Act, 1882, or keep deposited in a special account to be opened by

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the company for the purpose in a scheduled bank as defined in clause (e) of section (2) of the Reserve Bank of India Act, 1934 :

II of 1934.

Provided that the provision of the sub-section shall not apply to a banking company incorporated before the commencement of the Indian Companies (Amendment) Act, 1936, till after the expiry of two years from the commencement of the said Act.

277L. (1) Every banking company shall maintain ^{Cash reserve.} by way of cash reserve in cash a sum equivalent to at least one and a half per cent. of the time liabilities and five per cent. of the demand liabilities of such company and shall file with the registrar before the tenth day of every month a statement of the amount so held on the Friday of each week of the preceding month with particulars of the time and demand liabilities of each such day.

(2) For the purposes of sub-section (1) 'demand liabilities' means liabilities which must be met on demand, and 'time liabilities' means liabilities which are not demand liabilities.

(3) Nothing in this section or in section 277K shall apply to a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934.

II of 1934.

(4) If default is made in complying with the requirements of section 277G, section 277H, section 277J, section 277K or section 277M or with the requirements of this section as to the maintenance of a cash reserve, every director or other officer of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues, and if default is made in complying with the requirements of this section as to the filing of the statement referred to in sub-section (1), to a fine not exceeding one hundred rupees for every day during which the default continues.

277M. A banking company shall not form or hold shares in any subsidiary company except a subsidiary company of its own formed for the purpose of undertaking and executing trusts, undertaking the administration of estates as executor trustee or otherwise and such other purposes set forth in section 277F as are incidental to the business of accepting deposits of money on current account or otherwise.

Restriction on nature of subsidiary companies.

277N. (1) The

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Power of Court to stay proceedings.

277N. (1) The Court may on the application of a banking company which is temporarily unable to meet its obligations make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper and may from time to time extend the period.

(2) No such application shall be maintainable unless accompanied by a report of the registrar :

Provided, however, the Court may, for sufficient reasons, grant interim relief, even if the application is not accompanied by such report.

(3) The registrar shall for the purposes of his report be entitled at the cost of the company to investigate the financial condition of the company and for such purpose to have the books and documents of the company examined by an accountant holding a certificate issued under section 144."

Substitution of new section 281 in Act VII of 1913.

120. For section 281 of the said Act the following section shall be substituted, namely :—

Power of Court to grant relief in certain cases.

" 281. (1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the Court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) The

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(3) The persons to whom this section applies are the following:—

- (a) directors of a company ;
- (b) managers and managing agents of a company ;
- (c) officers of a company ;
- (d) persons employed by a company as auditors, whether they are or are not officers of the company.”

121. After section 282 of the said Act the following sections shall be inserted, namely:—

“282A. Any director, managing agent, manager or other officer or employee of a company who wrongfully obtains possession of any property of a company, or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or directed in the articles and authorised by this Act, shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine not exceeding one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied or in default to suffer imprisonment for a period not exceeding two years.

Insertion of new sections 282A and 282B in Act VII of 1913.

Penalty for wrongful withholding of property.

282B. (1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company in a special account to be opened by the company for the purpose in a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934, and no portion thereof shall be utilised by the company except for the purposes agreed to in the contract of service.

Penalty for misapplication of securities by employers.

II of 1934.

(2) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or accruing by way of interest or otherwise to such fund after the commencement of the Indian Companies (Amendment) Act, 1936, shall be invested, and shall be invested only in securities mentioned or referred to in clauses (a) to (e) of section 20 of the Indian Trusts Act, 1882, and all moneys belonging to such fund at the commencement of

II of 1882.

the said Act which are not so invested shall be invested in such securities by annual instalments not exceeding ten in number and not less in amount in any year than one-tenth of the whole amount of such moneys.

(3) Notwithstanding anything to the contrary in the rules of any fund to which sub-section (2) applies or in any contract between a company and its employees, no employee shall be entitled to receive in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (2) interest at a rate exceeding the rate of interest yielded by such investment.

(4) An employee shall be entitled on request made in this behalf to the company to see the bank's receipt for any money or security such as is referred to in sub-section (1) and sub-section (2).

(5) Any director, managing agent, manager or other officer of the company who knowingly contravenes or permits or authorises the contravention of the provisions of this section shall be liable on conviction to a fine not exceeding five hundred rupees."

Amendment
of First
Schedule,
Act VII of
1913.

122. In the First Schedule to the said Act, in Table A,—

- (a) to regulation 3 the words "and any preference share may with the sanction of a special resolution be issued on the terms that it is or at the option of the company is liable to be redeemed" shall be added ;
- (b) in regulation 4, after the word "may" the words "subject to the provisions of section 66A of the Indian Companies Act, 1913" shall be inserted :
- (c) in regulation 8, the following words shall be inserted at the beginning, namely :—
"Except to the extent allowed by section 54A of the Indian Companies Act, 1913," ;
- (d) to regulation 20 the following words shall be added, namely :—
"If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee and the transferor notice of the refusal." ;

(e) in

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- (e) in regulation 41, for the words "an extraordinary resolution of the company" the words "the company in general meeting" shall be substituted ;
- (f) in regulation 44,—
 - (i) for the words "special resolution" the word "ordinary resolution" shall be substituted, and
 - (ii) clause (d) shall be omitted ;
- (g) after regulation 44, the following new regulation shall be inserted, namely :—

"44A. The company may, by special resolution, reduce its share capital in any manner and with, and subject to any incident authorised and consent required, by law."
- (h) in regulation 46, for the words "once in every year" the words "within eighteen months from the date of its incorporation and thereafter once at least in every year" shall be substituted ;
- (i) in regulation 49,—
 - (i) the words "subject to the provisions of subsection (2) of section 81 of the Indian Companies Act, 1913, relating to special resolutions" shall be inserted at the beginning,
 - (ii) between the word "under" and the words "the regulations of the company" the words "the Indian Companies Act, 1913, or" shall be inserted, and
 - (iii) for the words "non-receipt of the notice" the words "the accidental omission to give notice to or the non-receipt of notice" shall be substituted ;
- (j) in regulation 51, for the words "three members" the words "two members in the case of a private company and five members in the case of any other company" shall be substituted ;

(k) in
103

(k) in regulation 60, for the second sentence the following sentence shall be substituted, namely:—

“ On a poll every member shall have one vote in respect of each share or each hundred rupees of stock held by him. ” ;

(l) in regulation 65, for the words following the word “ unless ” the words “ he is a member of the company ” shall be substituted ;

(m) in regulation 77, clauses (e) and (f) shall be re-lettered as clauses (h) and (i) and the following clauses shall be substituted for clauses (a) to (d), namely:—

“ (a) fails to obtain within the time specified in sub-section (1) of section 84 of the Indian Companies Act, 1913, or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment ;
or

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

(c) is adjudged insolvent ; or

(d) fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made ; or

(e) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker ; or

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

(g) accepts a loan from the company ; or ” ;

(n) in

- (n) in regulation 83, at the beginning, the words
“ Subject to the provisions of sections 83A and
83B of the Indian Companies Act, 1913 ”
shall be inserted ;
- (o) in regulation 97 the words “ of the year or any
other undistributed profits ” shall be added
at the end ;
- (p) for regulation 103 the following regulation shall
be substituted, namely :—
“ 103. The directors shall cause to be kept
proper books of account with respect to—
(a) all sums of money received and expended
by the company and the matters in respect
of which the receipts and expenditure take
place ;
(b) all sales and purchases of goods by the
company ;
(c) the assets and liabilities of the company.” ;
- (q) for regulation 104 the following regulation shall
be substituted, namely :—
“ 104. The books of account shall be kept at the
registered office of the company or at such
other place as the directors shall think fit
and shall be open to inspection by the directors
during business hours.” ;
- (r) for regulation 106 the following regulation
shall be substituted, namely :—
“ The directors shall as required by sections 131
and 131A of the Indian Companies Act,
1913, cause to be prepared and to be laid
before the company in general meeting
such profit and loss accounts, balance
sheets, and reports as are referred to in those
sections.” ;
- (s) in regulation 107, after the word “ shall ” the
following words shall be inserted, namely :—
“ in addition to the matters referred to in sub-
section (3) of section 132 of the Indian
Companies Act, 1913.”.

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123. For the Second Schedule to the said Act the substitution of new Schedule for the Second Schedule, Act VII of 1913. following shall be substituted, namely :—

“THE SECOND SCHEDULE.

(See sections 98 and 154.)

FORM I.

THE INDIAN COMPANIES ACT, 1913.

STATEMENT IN LIEU OF PROSPECTUS

filed by

..... LIMITED,

pursuant to section 98 of the Indian Companies Act, 1913.

Presented for filing by

The nominal share capital of the company.	Rs.
Divided into.....	shares of Rs..... each. shares of Rs..... each. shares of Rs..... each.
Amount (if any) of above capital which consists of redeemable preference shares.	shares of Rs..... each.
The date on or before which these shares are, or are liable, to be redeemed.	

Names,

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Names, descriptions and addresses of directors or proposed directors and managers or proposed managers, and any provision in the articles, or in any contract, as to appointment of and remuneration payable to directors or managers.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	<ol style="list-style-type: none">1. —shares of Rs..... fully paid.2. —shares upon which Rs..... per share credited as paid.3. Debenture Rs.....4. Consideration.
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company. Amount (in cash, shares or debentures) payable to each separate vendor.	

Amount

Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price . Rs. Cash . Rs. Shares . Rs. Debentures. Rs. <hr/> Goodwill . Rs.
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company ; or Rate of the commission.....	Amount paid. Amount payable Rate per cent.
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses.	Rs.....
Amount paid or intended to be paid to any promoter. Consideration for the payment.	Name of promoter..... Amount Rs..... Consideration :—
Dates of, and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the company or contracts, other than contracts appointing or fixing the remuneration of a managing director or managing agent, entered into more than two years before the delivery of this statement).	

Time

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<p>Time and place at which the contracts or copies thereof may be inspected.</p>	
<p>Names and addresses of the auditors of the company (if any).</p>	
<p>Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.</p>	
<p>If it is proposed to acquire any business, the amount, as certified by the persons by whom the amounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in</p>	

the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing).

Date

FORM II.

THE INDIAN COMPANIES ACT, 1913.
STATEMENT IN LIEU OF PROSPECTUS
filed by

.....LIMITED,

pursuant to sub-section (1) of section 154 of the Indian Companies Act, 1913.

Presented for filing by

The nominal share capital of the Company.	Rs.
Divided into	Shares of Rs....each. Shares of Rs....each. Shares of Rs....each.
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of Rs....each.

The

The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of Directors or proposed Directors and Managers or proposed Managers, and any provision in the Articles, or in any contract, as to appointment of and remuneration payable to Directors or Managers.	
If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	<ol style="list-style-type: none"> 1. Shares of Rs. fully paid. 2. Shares upon which Rs. per share credited as paid. 3. Debenture Rs. 4. Consideration.

Names

<p>Names and addresses of vendors of property (1) purchased or acquired by the Company within the two years preceding the date of this Statement or (2) agreed or proposed to be purchased or acquired by the Company.</p>	
<p>Amount (in cash, shares or debentures) payable to each separate vendor.</p>	
<p>Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill.</p>	<p>Total purchase price .. Rs..... Cash .. Rs..... Shares .. Rs..... Debentures Rs..... Goodwill .. Rs.....</p>
<p>Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the Company ; or rate of the commission.</p>	<p>Amount paid. Amount payable. Rate per cent.</p>
<p>The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.</p>	

Unless

<p>Unless more than two years have elapsed since the date on which the Company was entitled to commence business :— Estimated amount of preliminary expenses. Amount paid or intended to be paid to any promoter. Consideration for the payment.</p>	<p>Rs. Name of promoter. Amount Rs. Consideration.</p>
<p>Dates of, and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the Company or contracts, other than contracts appointing or fixing the remuneration of a Managing Director or Managing Agent, entered into more than two years before the delivery of this statement).</p>	
<p>Times and place at which the contracts or copies thereof may be inspected.</p>	
<p>Names and addresses of the Auditors of the Company.</p>	
<p>Full particulars of the nature and extent of the interest of every Director in the promotion of or in the property purchased or acquired by the Company within the two years preceding the date of this statement or proposed to be</p>	

acquired

acquired by the Company or where the interest of such a Director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a Director, or otherwise for services rendered by him or by the firm in connection with the promotion of the formation of the Company.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one

year

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year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.	
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(Signatures of the persons above named as Directors or proposed Directors or of their agents authorised in writing.)	
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Dated the *day of* ”

124. In

115

B 2

Amendment of Third Schedule, Act VII of 1913.

124. In the Third Schedule to the said Act,—
(a) for Form F the following form shall be substituted:—

“FORM F.
(See section 132.)
..... LIMITED.
.....19

Balance-Sheet as at.....

CAPITAL AND LIABILITIES.					PROPERTY AND ASSETS.
CAPITAL—					<p>FIXED CAPITAL EXPENDITURE— (Distinguishing as far as possible between expenditure upon goodwill, land, buildings, lease-holds, railway sidings, plant, machinery, furniture, development of property, patents, trade marks and designs, interest paid out of Capital during construction, etc., and stating in every case the original cost and the additions thereto and deductions therefrom during the year, and the total Depreciation written off under each head. Where sums have been written off on a reduction of capital or a revaluation of assets every balance-sheet after the first balance-sheet subsequent to the</p>
Authorised Capital shares of Rs.....each.					
(Distinguishing between the various classes of Capital.)					
Issued Capital .. shares of Rs. . . each					
(*) Shares issued as fully paid up pursuant to any contract without payments being received in cash .. shares of Rs.....each.					
(**) Shares issued for payments in cash.....shares of Rs.....each.					
Subscribed Capital shares of Rs .....each.					

Amount called up at Rs. per share									
Less—Calls unpaid—									
(i) due from Managing Agents ..	..	..	..	..	..	..	..	..	..
(ii) due from others ..	..	..	..	..	..	..	..	..	..
Add—Forfeited shares (amount paid up).	..	..	..	..	..	..	..	..	..
Note.—Where circumstances permit issued and subscribed capital and amount called up may be shown as one item, e.g.,	..	..	..	..	..	..	..	..	..
Issued and Subscribed Capital.. shares of Rs. each, Rs. paid up.	..	..	..	..	..	..	..	..	..
RESERVES									
DEBENTURES stating the nature of security ..	..	..	..	..	..	..	..	..	..
ANY SINKING FUND ..	..	..	..	..	..	..	..	..	..
ANY OTHER FUND CREATED OUT OF NET PROFITS, including any development fund.	..	..	..	..	..	..	..	..	..
ANY PENSION OR INSURANCE FUND ..	..	..	..	..	..	..	..	..	..
PROVISION FOR BAD AND DOUBTFUL DEBTS									
LOANS—									
(a) Secured—									
(i) loans on mortgages or fixed assets ..	..	..	..	..	..	..	..	..	..
(ii) loans on debentures ..	..	..	..	..	..	..	..	..	..
(iii) loans from banks, stating the nature of security ..	..	..	..	..	..	..	..	..	..
(iv) liabilities to subsidiary companies	..	..	..	..	..	..	..	..	..
reduction or revaluation shall show the reduced figures, with the date of and the amount of the reduction made.)	..	..	..	..	..	..	..	..	..
PRELIMINARY EXPENSES ..	..	..	..	..	..	..	..	..	..
COMMISSION OR BROKERAGE ..	..	..	..	..	..	..	..	..	..
(Commission or Brokerage paid for underwriting or placing or subscribing shares or debentures until written off.)	..	..	..	..	..	..	..	..	..
DISCOUNT ALLOWED ON THE ISSUE OF SHARES or so much as has not been written off at the date of the balance-sheet.	..	..	..	..	..	..	..	..	..
STORES AND SPARE PARTS ..	..	..	..	..	..	..	..	..	..
LOOSE TOOLS ..	..	..	..	..	..	..	..	..	..
LIVE-STOCK AND VEHICLES ..	..	..	..	..	..	..	..	..	..
STOCK IN TRADE ..	..	..	..	..	..	..	..	..	..
(Stating mode of valuation, e.g., cost or market value.)	..	..	..	..	..	..	..	..	..
BILLS OF EXCHANGE ..	..	..	..	..	..	..	..	..	..
BOOK DEBITS ..	..	..	..	..	..	..	..	..	..
(Distinguishing between those considered good and in respect of which the company is fully secured and those holds no security other than the debtor's personal security, and distinguishing between debts considered good and debts considered doubtful or bad. Debts due by directors or other officers	..	..	..	..	..	..	..	..	..

(v) other

CAPITAL AND LIABILITIES— <i>contd.</i>	PROPERTY AND ASSETS— <i>contd.</i>
<p>LOANS—<i>contd.</i></p>	<p>BOOK DEBITS—<i>contd.</i></p>
<p>(a) Secured—<i>contd.</i></p>	<p>of the company or any of them either</p>
<p>(v) other secured loans, stating the</p>	<p>severally or jointly with any other per-</p>
<p>nature of security</p>	<p>sons to be separately stated.)</p>
<p>(vi) interest accrued on mortgages,</p>	<p>ADVANCES</p>
<p>debentures or other secured loans</p>	<p>(Recoverable in cash or in kind or for</p>
<p>.. .. .</p>	<p>value to be received, <i>eg.</i>, Rates, Taxes,</p>
<p>(b) Unsecured—</p>	<p>Insurance, etc., showing separately—</p>
<p>(i) loans from banks</p>	<p>(t) loans given to subsidiary companies</p>
<p>(ii) fixed deposits</p>	<p>(***) loans including temporary advan-</p>
<p>(iii) short-term loans</p>	<p>ces made at any time during the</p>
<p>(iv) advances by directors or mana-</p>	<p>year to directors or managers of the</p>
<p>gers and managing agents</p>	<p>company)</p>
<p>(v) interest accruing but not due and</p>	<p>INVESTMENTS</p>
<p>interest accrued and due</p>	<p>(Showing nature of investments and mode</p>
<p>(vi) liabilities to subsidiary companies</p>	<p>of valuation, <i>eg.</i>: Cost or Market</p>
<p>.. .. .</p>	<p>value and distinguishing—</p>
<p>UNCLAIMED DIVIDENDS</p>	<p>(†) investments in Government or trust</p>
<p>LIABILITIES—</p>	<p>securities</p>
<p>For Goods supplied</p>	<p>(**) investments in shares, debentures</p>
<p>For Expenses</p>	<p>or bonds (showing separately shares</p>
<p>For Acceptances</p>	<p>fully paid up and partly paid up)</p>
<p>For Other Finance</p>	<p>(***) investments in shares, debentures</p>
<p>ADVANCE PAYMENTS AND UNEXPIRED DIS-</p>	<p>or bonds of subsidiary companies</p>
<p>COUNTS</p>	<p>(iv) immovable properties</p>

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<p>(For the portion for which value has still to be given, e.g., in the case of the following classes of companies— Newspaper, Fire Insurance, Theatre, Club, Banking, Steamship Companies, etc.)</p> <p>PROFIT AND LOSS</p> <p>CONTINGENT LIABILITIES—</p> <p>Claims against the company not acknowledged as debts</p> <p>Money for which the company is contingently liable (Showing separately the amount of any guarantees given by the company on behalf of directors or officers of the company.)</p> <p>Arrears of Cumulative Preference Dividends</p>	<p>INTEREST ACCRUED ON INVESTMENTS</p> <p>CASH AND OTHER BALANCES</p> <p>Amount in hand</p> <p>Balances with Agents and Bankers (in detail showing whether on deposit, or current account, etc.)</p> <p>Profit and Loss</p>
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The information required to be given under any of the items or sub-items in this Form if not included in the Balance-Sheet itself shall be furnished in a separate Schedule or Schedules to be attached to and to form part of the Balance-Sheet.;

(b) after

(b) after Form G the following shall be inserted as Form H, namely:—

“FORM H.

(See section 277.)

INFORMATION TO BE SUPPLIED IN OR IN ADDITION TO THE INFORMATION CONTAINED IN THE BALANCE-SHEET OF A COMPANY REFERRED TO IN PART X.

Liabilities.

1. *Summary of Authorised Share Capital and Issued Share Capital.*
2. *Redeemable Preference Shares, stating date on or before which the shares are or are liable to be redeemed.*
3. *Debentures stating the nature of the Security.*
4. *Redeemed debentures which the Company has power to re-issue.*
5. *Loans (a) secured, stating the nature of the Security; (b) unsecured.*
6. *Loans from Banks:—*
 - (a) *Secured, stating nature of security,*
 - (b) *Unsecured.*
7. *Profit and Loss Account, showing (unless disclosed in a separate account):—*
 - Balance as per previous Balance-Sheet.*
 - Appropriation thereof.*
 - Profit since last Balance-Sheet.*
8. *Contingent Liabilities.*
9. *Arrears of Cumulative Preference Dividend.*

Assets.

1. *Fixed Assets, with sufficient particulars to disclose their general nature, and stating how their values are arrived at.*
2. *Preliminary expenses, so far as not written off.*
3. *Any expenses incurred in connection with any issue of Share Capital or Debentures, so far as not written off.*

4. *If*

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4. *If it is shown as a separate item in or is otherwise ascertainable from the books of the Company, or from any contract for the sale or purchase of any property to be acquired by the Company, or from any documents in the possession of the Company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property the amount of the goodwill and of any patents and trade marks as so shown or ascertained.*
5. *Interest paid on Capital, so far as not written off, showing the Share Capital on which and the rate at which interest has been paid out of Capital during the period to which the accounts relate.*
6. *Discount allowed on Shares issued, so far as not written off.*
7. *Commission paid or allowed in respect of any shares or debentures, so far as not written off.*
8. *Loans outstanding to enable employees or trustees on their behalf to purchase shares in the Company.*
9. *Particulars showing :—*
 - (a) *the amount of any loans which during the period to which the accounts relate have been made either by the Company or by any other person under a guarantee from or on a security provided by the Company to any director or officer of the Company, including any such loans which were repaid during the said period ;*
and
 - (b) *the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof ;*
and
 - (c) *the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages, or other emoluments, paid to or receivable by them by or from the Company or by or from any subsidiary Company.*

Note (1).—There shall not be required to be shown :—

- (a) *in the case of a Company the ordinary business of which includes the lending of money,*

loans

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loans made by the Company in the ordinary course of its business ;

or

- (b) *loans made by the Company to any employee of the Company if the loan does not exceed twenty thousand rupees and is certified by the directors of the Company to have been made in accordance with any practice adopted or about to be adopted by the Company with respect to loans to its employees.*

Note (2).—The foregoing shall not apply in relation to a Managing Director of the Company, and in the case of any other director who holds any salaried employment or office in the Company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees.

(Where a company is a holding company then the Balance-Sheet shall disclose the particulars required by section 132A.)'