

ACT No. II OF 1938.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 26th  
February, 1938.)

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

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

1. This Act may be called the Indian Companies Short title.  
(Amendment) Act, 1938.

2. In the first proviso to sub-section (2) of section 17 Amendment of  
section 17, Act  
VII of 1913.  
of the Indian Companies Act, 1913 (hereinafter  
referred to as the said Act), for the word and figure  
“regulation 78” the words and figures “regulations  
78, 79, 80, 81 and 82” shall be substituted.

3. In sub-section (1) of section 34 of the said Act, Amendment of  
section 34,  
Act VII of  
1913.  
for the word, brackets and figure “sub-section (4)”  
the word, brackets and figure “sub-section (7)” shall  
be substituted.

4. In clause (a) of sub-section (1) of section 86I of Amendment of  
section 86I,  
Act VII of  
1913.  
the said Act, for the figure “84” the figure “85”  
shall be substituted.

5. In sub-section (1) of section 86D of the said Act, Amendment of  
section 86D, Act  
VII of 1913.  
for the words “or to a private company of which such  
director is a director” the words “or to a private  
company of which such director is a member or direct-  
or” shall be substituted.

6. In sub-section (1) of section 87D of the said Act, Amendment of  
section 87D,  
Act VII of  
1913.  
for the words “or to any director of the private com-  
pany” the words “or to any member or director of  
the private company” shall be substituted.

7. In sub-sections (1) and (2) of section 102 of the Amendment of  
section 102,  
Act VII of  
1913.  
said Act, for the word and figure “section 101” the  
words and figures “section 98 or section 101” shall be  
substituted.

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Amendment of  
section 130,  
Act VII of  
1913.

8. In section 130 of the said Act, sub-section (3) shall be re-numbered as sub-section (4) and the following shall be inserted as sub-section (3), namely:—

“(3) Where a company has a branch office, the company shall be deemed to have complied with the provisions of sub-section (1) and sub-section (2) if proper books of account relating to the transactions effected at the branch office are kept at the branch office and proper summarised returns, made up to dates at intervals of not more than two months, are sent by the branch office to the registered office of the company or other place referred to in sub-section (2).”

Amendment of  
section 134,  
Act VII of  
1913.

9. In section 134 of the said Act,—

(a) in sub-section (1),—

(i) after the words “profit and loss account” the words “or the income and expenditure account as the case may be” shall be inserted; and

(ii) for the words “a copy of the balance-sheet” the words “three copies thereof” shall be substituted;

(b) in sub-section (2), for the word “copy” the word “copies” shall be substituted.

Amendment of  
section 153A,  
Act VII of  
1913.

10. In sub-section (5) of section 153A of the said Act, for the word, brackets and figure “sub-section (4)” the word, brackets and figure “sub-section (6)” shall be substituted.

Amendment of  
section 237,  
Act VII of  
1913.

11. In section 237 of the said Act,—

(a) in sub-section (6), the words beginning with “and it shall be the duty of” and ending “which he is reasonably able to give”, and the words beginning with “For the purposes of this sub-section” and ending “whether that person is or is not an officer of the company” shall be omitted;

(b) after sub-section (6) the following sub-section shall be inserted, namely:—

“(7) Notwithstanding anything contained in the Indian Evidence Act, 1872, when any proceedings are instituted under this section it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably

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

- (c) existing sub-section (7) shall be re-numbered as sub-section (8), and in that sub-section as so re-numbered, for the word, brackets and figure "sub-section (6)" the word, brackets and figure "sub-section (7)" shall be substituted.

12. In section 277 of the said Act,—

Amendment of  
Section 277,  
Act VII of  
1913.

- (a) in sub-section (1),—

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

"(e) the full address of that office of the company in British India which is to be deemed the principal place of business in British India of the company;" ; and

(ii) for the words "or in such address" the words "or in any such address" shall be substituted ;

- (b) in sub-section (3),—

(i) in sub-clause (i), for the words "a copy of that balance-sheet" the words "three copies of that balance-sheet" shall be substituted, and after the words "such supplementary statements" the words "in triplicate" shall be inserted ;

(ii) in sub-clause (ii), after the words "such a statement" the words "in triplicate" shall be inserted.

13. Section 277D of the said Act shall be re-numbered as sub-section (1) of that section and to the sub-section so re-numbered the following shall be added, namely :—

Amendment of  
Section 277D,  
Act VII of  
1913.

" Provided that references in the said sections to the registrar shall be deemed to be references to the registrar of the province in which the principal place of business in British India of such company is situated, and references to the registered office of the company shall be deemed to be references to the principal place of business in British India of the company :

Provided

Provided further that, where a charge is created outside British India or the completion of the acquisition of property takes place outside British India, sub-clause (i) of the proviso to sub-section (1) of section 109 and the proviso to sub-section (1) of section 109A shall apply as if the property wherever situated were situated outside British India.

(2) This section shall be deemed not to have come into force until the commencement of the Indian Companies (Amendment) Act, 1938 :

Provided that where the provisions of section 109 and sections 117 to 120 have not been complied with in respect of any charge or mortgage created since the 15th day of January, 1937, as required by this Act, those provisions shall be complied with within four weeks from the commencement of the Indian Companies (Amendment) Act, 1938."

Amendment of section 277E, Act VII of 1913.

14. To section 277E of the said Act the following shall be added, namely :—

" Provided that references in the said section to the registrar shall be deemed to be references to the registrar of the province in which the principal place of business in British India of such company is situated, and references to the registered office of the company shall be deemed to be references to the principal place of business in British India of the company."

Amendment of section 277F, Act VII of 1913.

15. In clause (2) of section 277F of the said Act, after the words "managing agent" the words "of a company not being a banking company" shall be inserted.

Amendment of section 277L, Act VII of 1913.

16. In sub-section (1) of section 277L of the said Act, before the words "a statement" the words "three copies of" shall be inserted.

Amendment of section 277M, Act VII of 1913.

17. (1) Section 277M of the said Act shall be re-numbered as sub-section (1) of that section and, in the said section so re-numbered, for the words "A banking company shall not form or hold shares in any subsidiary company except a subsidiary company of its own" the words "A banking company shall not form any subsidiary company except a subsidiary company" shall be substituted.

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

" (2) Save as provided in sub-section (1), a banking company shall not hold shares in any company whether as pledgee, mortgagee or absolute owner of an amount exceeding forty per cent. of the issued share capital of that company :

Provided

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Provided that nothing in this sub-section shall apply to shares held by a banking company before the commencement of the Indian Companies (Amendment) Act, 1936."

XXII of 1936.

18. For section 284 of the said Act the following section shall be substituted, namely :—

Substitution of new section for section 284, Act VII of 1913.

"284. The provisions with respect to winding up contained in this Act as amended by the Indian Companies (Amendment) Act, 1936, shall not apply to any company of which the winding up has commenced before the commencement of the Indian Companies (Amendment) Act, 1936, but every such company shall be wound up in the same manner and with the same incidents as if the Indian Companies (Amendment) Act, 1936, had not been passed."

Saving of pending proceedings for winding up.

XXII of 1936.

XXII of 1936.

XXII of 1936.

19. In the First Schedule to the said Act, in Table

Amendment of First Schedule, Act VII of 1913.

A,—

(a) in regulation 56, for the words "by at least three members" the following shall be substituted, namely :—

"in accordance with the provisions of clause (c) of sub-section (1) of section 79 of the Indian Companies Act, 1913,";

VII of 1913.

(b) in clause (a) of regulation 77, for the figure "84" the figure "85" shall be substituted;

(c) in regulation 106, after the words "such profit and loss accounts" the words "income and expenditure accounts" shall be inserted;

(d) in regulation 109, for the word "seven" the word "fourteen" shall be substituted; and

(e) in regulation 116, the words "No other persons shall be entitled to receive notices of general meetings" shall be omitted.

20. In the Second Schedule to the said Act, in the last entry of the left hand column of Form I, for the word "amounts" the word "accounts" shall be substituted.

Amendment of Second Schedule, Act VII of 1913.

21. In the Third Schedule to the said Act, for the entry "BOOK DEBITS" in the right hand column of Form F the entry "BOOK DEBTS" shall be substituted.

Amendment of Third Schedule, Act VII of 1913.