

## THE INDIAN CONTRACT ACT, 1872

2. Interpretation-clause. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :-

(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal:

(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise:

(c) The person making the proposal is called the "promisor and the person accepting the proposal is called the promisee ":

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such Act or abstinence or promise is called a consideration for the promise :

(e), Every promise and every set of promises, forming the consideration for each other, is an agreement:

(f) Promises, which form the consideration or part, of the consideration for each other are called reciprocal promises:

(g) An agreement not enforceable by law is said to be void:

**\*\*\* (h) An agreement enforceable by law is a contract:**

(i) **An agreement which is enforceable by law at the option of one or more of the parties- thereto, but not at the option of the other or others is a voidable contract**

(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

### CHAPTER I

#### COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

3. Communication, acceptance and revocation of proposals.-The communication of proposals the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of\_ the party proposing, accepting or revoking by which he intends to communicate such pro- posal acceptance or revocation, or which., has the effect of communicating it.

**\*\*4.** Communication when complete.-The, communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,--

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor; as against the acceptor, when it comes to the, knowledge, of the proposer.

The communication of a revocation is complete,--

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as "to be out of the power of the person who makes it; as against the person. to whom it is made, when it comes to his knowledge.

#### Illustrations

(a) A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

(b) B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete, as against A when the letter is posted as against B, when the letter is received by.A.

(c) A revokes his proposal by telegram. The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

**\*\*\*5.** Revocation of proposals and acceptances.-**A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.**

**An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.**

Illustrations A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

**\*\*6.Revocation how made.-A proposal is revoked-**

(1) by the communication of notice of revocation by the proposer to the other party  
(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance ; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

7. Acceptance must be absolute.-In order to convert a proposal into a promise, the acceptance must (1) be absolute and unqualified

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

8.Acceptance by performing conditions, or receiving consideration.-Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

9.Promises, express and implied.-In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

## CHAPTER II CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS

**\*\*\*10.What agreements are contracts.-All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.**

Nothing herein contained shall affect any law in force in India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

11. Who are competent to contract.-Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

\*12.What is a sound mind for the purposes of contracting.-A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

13. "Consent" defined.-Two or more persons are said to consent when they agree upon the same thing in the same sense.

**\*\*\*14. "Free consent" defined.-Consent is said to be free when it is not caused by-**

- (1) coercion, as defined in section 15, or**
- (2) undue influence, as defined in section 16, or**
- (3) fraud, as defined in section 17, or**
- (4) misrepresentation, as defined in section 18, or**
- (5) mistake, subject to the provisions of sections 20, 21 and 22.**

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

15. "Coercion" defined.-"Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.-It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

**\*\*\*Illustration**

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code. A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when or place where the act was done.

16. "Undue influence" defined.-(1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a **position to dominate** the will of the other and uses that **position to obtain an unfair** advantage over the other.

**\*\*\***(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-

(a) where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other ; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section III of the Indian Evidence Act, 1872.

**\*\*\*Illustrations**

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

17. "Fraud" defined.-"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:-

- (1) **the suggestion**, as a fact, of that which is not true, by one who does not believe it to be true ;
- (2) the active **concealment** of a fact by one having knowledge or belief of the fact ;
- (3) a **promise made without any intention** of performing it
- (4) any other act fitted to **deceive** ;
- (5) any such act or omission as the **law specially declares to be fraudulent**.

Explanation.-Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

\*\*\*Illustrations

- (a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.
- (b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse, is unsound.
- (c) B says to A--"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.
- (d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

\*\*\*18. "Misrepresentation" defined.-"Misrepresentation" means and includes-

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true
- (2) any breach, of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;
- (3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

19. Voidability of agreements without free consent.-When consent to an agreement is **caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.**

**A party to a contract whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and he shall be put in the position in which he would have been if the representations made had been true.**

Exception.-If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.-A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

\*\*\*\*Illustrations

- (a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.
- (b) A, by a misrepresentation, leads B erroneously to believe that, five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.
- (c) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage debt redeemed.
- (d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.
- (e) A is entitled to succeed to an estate at the death of B ; B dies: C, having received intelligence of B's death, prevents the intelligence reaching A and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

19A. Power to set aside contract induced by undue influence.- When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

\*\*\*\*20. Agreement void where both parties are under mistake as to matter of fact. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.-**An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.**

\*\*\*\*Illustrations

(a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. Effect of mistakes as to law.-A contract **is not voidable because it was caused by a mistake as to any law in force in India; but a mistake as to a law not in force in India has the same effect as a mistake of fact.**

Illustration

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: the contract is not voidable.

22. Contract caused by mistake of one party as to matter of fact.- A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

\*\*\*23. What considerations and objects are lawful and what not.-The consideration or object of an agreement is lawful, unless it is forbidden by law ; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent ; or involves or implies injury to the person or property of another or ; the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

\*\*\*Illustrations

(a) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party and they are lawful considerations.

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment and B's payment is the consideration for A's promise and these are lawful considerations.

(d) A promises to maintain B's child and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment, by A, on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing, the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect a purchase by the defaulter, and would so defeat the object of the law.

(j) A, who is B's mukhtar, promises to exercise his influence as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

### **Void agreements**

\*\*\*\*24. Agreement void, if considerations and objects unlawful in part.-If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

#### **Illustration**

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.-An agreement made without consideration is void, unless-

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love

and affection between parties standing in a near relation to each other ; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do ; or unless

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.-Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.-An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate ; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

#### **Illustrations**

(a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(c) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

**26. Agreement in restraint of marriage void.-Every agreement in restraint of the marriage of any person, other than a minor, is void.**

27. Agreement in restraint of trade void.-Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. Saving of agreement not to carry on business of which good-will is sold.-

\*\*\*Exception 1.-One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

28. Agreements in restraint of legal proceedings void.- Every agreement,-

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.

Saving of contract of refer to arbitration dispute that may arise.-Exception 1.-This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Suits barred by such contracts.-When such a contract has been made, a suit may be brought for its specific performance) and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party, in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.

Saving of contract to refer questions that have already arisen.-

Exception 2.-Nor shall this section render, illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

29. Agreements **void for uncertainty**.-Agreements, the meaning of which is not certain, or capable of being made certain, are void.

\*\*\*Illustrations (a) A agrees to sell to B " a hundred tons of oil ". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell to B one hundred tons of oil of a specified' description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(c) A, who is a dealer in cocoanut-oil only, agrees to sell to B "one hundred. tons of oil". The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(d) A agrees to sell to B " all the grain in my granary at Ramnagar ". There is no uncertainty here to make the agreement void.

(e) A agrees to sell B " one thousand maunds of rice at a price to be fixed by C ". As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f) A agrees to sell to B " my white horse for rupees five hundred or rupees one thousand". There I is nothing to show which of the two prices was to be given. The agreement is void,

30. Agreements by way of **wager void**.-Agreements by way of wager are void ; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

**Exception in favour of certain prizes for horse-racing.**-This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

Section 294A of the Indian Penal Code not affected.-Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply.

### CHAPTER III CONTINGENT CONTRACTS

31."Contingent contract" defined.-A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Illustration

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

32.Enforcement of contracts contingent on an event happening.- Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

\*\*\*Illustrations (a) A makes a contract with B to buy B's horse if A survives C.

This contract cannot be enforced by law unless and until C dies in A's lifetime.

(b) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

33. Enforcement of contracts contingent on an event not happening.- Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

\*\*Illustration A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

34.When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.-If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustration A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

35.When contracts become void which are contingent on happening of specified event within fixed time.-Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time.-Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened or, before the time fixed has expired, if it becomes certain that such event will not happen.

Illustrations (a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.



36. Agreement **contingent on impossible events void**.-Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations

(a) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

#### CHAPTER IV. THE PERFORMANCE OF CONTRACTS

##### **Contracts which must be performed**

37. Obligation of parties to contracts.-The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Illustrations (a) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

38. Effect of refusal to accept offer of performance.-Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for nonperformance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions:-

(1) it must be unconditional;

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver. An offer to one of several joint promisees has the same legal consequences as an offer to all of them,

Illustration A contracts to deliver to B at his warehouse, on the 1st March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

39. Effect of refusal of party to perform promise wholly.-When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

\*\*\*Illustrations (a) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

##### **By whom contracts must be performed**

40. Person by whom promise is to be performed.-If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

\*\*\*Illustrations (a) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another ; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b) A promises to paint a picture for B. A must perform this promise personally.

\*\*\*41. Effect of accepting performance from third person.-When a promisee accepts performance of the promise from a third person, he **cannot afterwards enforce it against the promisor.**

42. Devolution of joint liabilities.-When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

**43. Any one of joint promisors may be compelled to perform.**-When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors, to perform the whole of the promise. Each promisor may compel contribution. Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution.-If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation.-Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

\*\*\*Illustrations (a) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(c) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay any thing, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Effect of release of one joint promisor.-Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors ; neither does it free the joint promisors so released from responsibility to the other joint promisor or joint promisors.

45. Devolution of joint rights.-When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person. Jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration A, in consideration of 5,000 rupees, lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

46. Time for performance of promise, when no application is to be made and no time is specified.-Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. Explanation.-The question " what is a reasonable time " is, in each particular case, a question of fact.

47. Time and place for performance of promise, where time is specified and no application to be made.-When promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

48. Application for performance on certain day to be at proper time and place.-When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.-The question " what is a proper time and place. " is, in each particular case, a question of fact.

49. Place for performance of promise, where no application to be made and no place fixed for performance.-When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

50. Performance in manner or at time prescribed or sanctioned by promisee.-The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

\*\*\*Illustrations (a) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of goods operates as a part payment.

(d) A desires B who owes him Rs.100, to send him a note for Rs.100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A

### **Performance of reciprocal promises**

51. Promisor not bound to perform, unless reciprocal promise ready and willing to perform. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations (a) A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery. B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery. A need not deliver, unless B is ready and willing to pay the first instalment on delivery. B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

52. Order of performance of reciprocal promises.-Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations (a) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house Must be performed before B's promise to pay for it.

(b) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

53. Liability of party preventing event on which the contract is to take effect.-When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Illustration A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B ; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

54. Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.-When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

\*\*\*Illustrations (a) A hires B's ship to take in and convey, from Calcutta to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

55. **Effect of failure to perform at fixed time**, in contract in which time is essential.-When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

**Effect of such failure when time is not essential.**-If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time ; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

**Effect of acceptance of performance at time other than that agreed upon.** If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so.

56. Agreement to do impossible act. An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful.-A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the Promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.-Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations

- (a) A agrees with B to discover treasure by magic. The agreement is void,
- (b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.
- (c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy, A must make compensation to B for the loss caused to her by the non-performance of his promise.
- (d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.
- (e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

57. Reciprocal promise to do things legal, and also other things illegal.-Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Illustration A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

58. Alternative promise, one branch being illegal.-In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Illustration

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium. This is a valid contract to deliver rice, and a void agreement as to the opium.

### **Appropriation of payments**

59. Application of payment where debt to be discharged is indicated.-Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

\*\*\*Illustrations (a) A owes B, among other debts, 1,000 rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b) A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. **Application of payment where debt to be discharged is not indicated.**-Where the debtor has omitted to intimate and there are no other circumstances, indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

61. **Application of payment where neither party appropriates.**- Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

### **Contracts which need not be performed**

62. Effect of novation, rescission, and alteration of contract.- If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

\*\*\*Illustrations (a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

63. **Promisee may dispense with or remit performance of promise.**- Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

\*\*Illustrations (a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(d) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(e) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a composition of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

64. Consequences of rescission of voidable contract.-When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.'

\*\*\*\*\*65. **Obligation of person who has received advantage under void agreement, or contract that becomes void.**-When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

\*\*\*\*Illustrations (a) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

(c) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation, to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

66. Mode of communicating or revoking rescission of voidable contract.-The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

67. Effect of neglect of promisee to afford promisor reasonable facilities for performance.- If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration A contracts with B to repair B's house. B neglects or refuses to point out to A the places in which his house requires repair. A is excused for the nonperformance of the contract if it is caused by such neglect or refusal.

#### \*\*\*\*\*CHAPTER V CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT

68. **Claim for necessities supplied** to person incapable of contracting, or on his account. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another, person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

\*\*\*Illustrations (a) A supplies B, a lunatic, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b) A supplies the wife and children of B, a lunatic, with necessities suitable to their condition in life. A is entitled to be reimbursed from B's property.

69. **Reimbursement of person paying money due by another**, in payment of which he is interested.-A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

\*\*Illustration B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

70. **Obligation of person enjoying benefit of non-gratuitous act**.- Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

\*\*\*Illustrations (a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

71. **Responsibility of finder of goods**.-A person who finds goods belonging to another, and takes them into his custody, is subject to the same **responsibility as a bailee**.

72. **Liability of person to whom money is paid or thing delivered by mistake or under coercion**.-A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

\*\*Illustrations (a) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

#### CHAPTER VI THE CONSEQUENCES OF BREACH OF CONTRACT

73. Compensation for loss or damage caused by breach of contract.- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby,

which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.- When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.-In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

\*\*\*\*Illustrations (a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo which A is to provide and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rises, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the Mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.



(j) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 180 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation. A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day; B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(q) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being in consequence detained in Calcutta for some time and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

#### **Compensation for breach of contract where penalty stipulated for.**

74. Compensation for breach of contract where penalty stipulated for.-When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, **whether or not actual damage or loss is proved to have been caused thereby**, to receive from the party who has broken the contract

reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.-A stipulation for increased interest from the date of default may be a stipulation by way of penalty. Exception.-When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.-A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

\*\*\*Illustrations (a) A contracts with B to pay B Rs. 1,000, if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to (recover from A such compensation, not exceeding Rs.1,000, as the Court considers reasonable.

(b) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(c) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

(d) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e) A, who owes money to B a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

(f) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments, with a stipulation that "in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

**75. Party rightfully rescinding contract entitled to compensation.**- A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the nonfulfilment of the contract.

\*\*\*Illustration A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

Note : 1. Darkened sentences - possible objective question.

2. \*\* Important areas / illustrations .

3\*\*\* Most Important areas / illustrations.

4 Illustration may be asked as straight question with /without alteration

5 Questions like may be asked "which of the following, with regard to definition for a terminology, is not true". Hence all the options should be read and understood properly and to delete the wrong answer all the relevant points requires to be kept in mind

Best wishes

## TRANSFER OF PROPERTY ACT ITI/TO EXAMS

### CHAPTER II TRANSFERS OF PROPERTY BY ACT OF PARTIES

(A) Transfer of property, whether movable or immovable

#### **5. Transfer of property defined**

"transfer of property" means

an act by which a **living person** conveys property, in present or in future, to one or more other living persons, or to himself and one or more **other living persons**; and "to transfer property" is to perform such act.

"living person includes a company or association or body of individuals, whether incorporated or not.

#### **\*\*\* 6. What may be transferred**

Property of any kind may be transferred, except as otherwise provided by this Act or by any other law.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.

(e) A mere right to sue cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military, naval, air-force and civil pensioners of the government and political pensions cannot be transferred.

(h) No transfer can be made (1) insofar as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or (3) to a person legally disqualified to be transferee.

(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

#### **7. Persons competent to transfer**

Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part,

#### **\*\*\*8. Operation of transfer**

Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property.

Such incidents include, when the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the movable parts thereof; and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debtor other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

#### **9. Oral transfer**

A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

**10. Condition restraining alienation**

Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:

PROVIDED that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

**11. Restriction repugnant to interest created**

Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, **he shall be entitled to receive and dispose of such interest as if there were no such direction.**

**Exception ; Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.**

**44. Transfer by one co-owner**

Where one of two or more co-owners of immovable property legally competent transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same' but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred.

**Exception ; Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.**

**45. Joint transfer for consideration**

Where immovable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

**46. Transfer for consideration by persons having distinct interests**

Where immovable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

**Illustrations**

(a) A, owning a moiety, and B and C, each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in the mauza.

(b) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money, B and C to receive Rs. 400.

**47. Transfer by co-owners of share in common property**

Where several co-owners of immovable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

**Illustration**

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half-an-anna share from each of the shares of B and C.

**48. Priority of rights created by transfer**

Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

**49. Transferee's right under policy**

Where immovable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

**50. Rent bona fide paid to holder under defective title**

No person shall be chargeable with any rents or profits of any immovable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

**Illustration**

**A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.**

**51. Improvements made by bona fide holders under defective titles**

When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell interest in the property to the transferee at the then market value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

**Doctrine of Sub Judice 52. Transfer of property pending suit**

During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

Explanation : the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution.

**53. Fraudulent transfer**

(1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

**53A. Part performance**

Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

PROVIDED that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

**CHAPTER III SALES OF IMMOVABLE PROPERTY****54. "Sale" defined**

**"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.**

Sale how made: Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale: A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.

**\*\*\*55. Rights and liabilities of buyer and seller**

In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the following liabilities, and have the rights

(1) The seller is bound-

(a) to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property ;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

PROVIDED that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

PROVIDED that,

(a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and,

(b) where the whole of such property is sold to different buyers, the buyers of the lot of greatest value is entitled to such documents.

But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled-

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

(5) The buyer is bound-

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs:

**PROVIDED that, where the property is sold free from encumbrances, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;**

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled-

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a) and paragraph (5), clause (a), is fraudulent.

#### **56. Marshalling by subsequent purchaser**

If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, **entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend**, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties.

## DISCHARGE OF ENCUMBRANCES ON SALE

### 57. Provision by court for encumbrances and sale freed therefrom

(a) Where immovable property subject to any encumbrances, whether immediately payable or not, is sold by the court or in execution of a decree, or out of court, the court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into court,-

(1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property-of such amount as, when invested in securities of the Central Government, the court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property- of the amount sufficient to meet the encumbrance and any interest due thereon.

But in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investment not exceeding one-tenth part of the original amount to be paid in, unless the court for special reasons (which it shall record) thinks fit to require a large additional amount.

(b) Thereupon the court may, if it thinks fit, and after notice to the encumbrances, unless the court, for reasons to be recorded in writing thinks fit to dispense with such notice, declare the property to be freed from the encumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in court.

(c) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

In this section "court" means (1) a High Court, (2) the court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other court which the State Government may by notification in the Official Gazette, declare to be competent to exercise the jurisdiction.

## CHAPTER IV MORTGAGES OF IMMOVABLE PROPERTY AND CHARGES

### \*\*\*\* 58. "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgaged" defined.

(a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Simple mortgage-Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied in payment of the mortgage-money, the transaction is called a simple mortgage.

(c) Mortgage by conditional sale-Where, the mortgagor ostensibly sells the mortgaged property- on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

**PROVIDED that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.**

(d) Usufructuary mortgage-Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called a usufructuary mortgage.

(e) English mortgage-Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.



(f) Mortgage by deposit of title-deeds-Where a person in any of the following towns, namely, the towns of Calcutta, Madras, and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

(g) Anomalous mortgage-A mortgage which is not a simple mortgage, a mortgage by conditional sale, a usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.

**\*\*\*\*59. Mortgage when to be by assurance**

Where the principal money secured is one hundred rupees or upwards, a mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by a registered instrument signed and attested as aforesaid or (except in the case of a simple mortgage) by delivery of the property.

**59A. References to mortgagors and mortgagees to include persons deriving title from them**

Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively.

**69. Power of sale when valid**

(1) A mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section have power to sell or concur in selling the mortgaged property or any part thereof, in default of payment of the mortgage-money, without the intervention of the court, in the following cases and in no others, namely,-

(a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Mohammedan or Buddhist or a member of any other race, sect, tribe or class from time to time specified in this behalf by the State Government, in the Official Gazette;

(b) where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage-deed and the mortgagee is the government;

(c) where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage-deed and the mortgaged property or any part thereof was, on the date of the execution of the mortgage-deed, situate within the towns of Calcutta, Madras, Bombay, or in any other town or area which the State Government may, by notification in the Official Gazette, specify in this behalf.

**(2) No such power shall be exercised unless and until-**

(a) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(b) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

(3) When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(4) The money which is received by the mortgagee, arising from the sale, after discharge of prior encumbrances, if any, to which the sale is not made subject, or after payment into court under section 57 of a sum to meet any prior encumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

**73. Right to proceeds of revenue sale or compensation on acquisition**

(1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears or revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale-proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894 (1 of 1894), or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation.

(3) Such claims shall prevail against all other claims except those of prior encumbrances, and may be enforced notwithstanding the principal money on the mortgage has not become due.

## **CHARGES**

### **100. Charges**

Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge

## **NOTICE AND TENDER**

### **102. Service or tender on or to agent**

Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power of attorney from such person or otherwise duly authorised to accept such service or tender shall be deemed sufficient.

Where no person or agent on whom such notice should be served can be found or is known to the person required to serve the notice, the latter person may apply to any court in which a suit might be brought for redemption of the mortgaged property, and such court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient:

PROVIDED that, in the case of a notice required to section 83, in the case of a deposit, the application shall be made to the court in which the deposit has been made.

Where no person or agent to whom such tender should be made can be found or is known to the person desiring to make the tender, the latter person may deposit in any court in which a suit might be brought for redemption of the mortgaged property the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

### **103. Notice, etc., to or by person incompetent to contract**

Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of court by, any person incompetent to contract, such notice may be served on or by or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any court in which a suit might be brought for the redemption of the mortgage to appoint a guardian

## **CHAPTER V LEASES OF IMMOVABLE PROPERTY**

### **105. Lease defined**

A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined : The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

### **106. Duration of certain leases in absence of written contract or local usage**

In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

**\*\*\*\*107. Leases how made**

A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

PROVIDED that the State Government from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

**108. Rights and liabilities of lessor and lessee**

In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:-

(A) Rights and liabilities of the lessor

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;

(b) the lessor is bound on the lessee's request to put him in possession of the property;

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit shall go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and liabilities of the lessee

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease;

(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

PROVIDED that, if the inquiry be occasioned by the wrongful act or default of the lessee, he shall be entitled to avail himself of the benefit of this provision;

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor;

(h) the lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased but not afterwards all things which he has attached to the earth; provided he leaves the property in the state in which he received it;

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them;

(j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee;

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take of which the lessee is, and the lessor is not aware, and which materially increases the value of such interest;

(1) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

(n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

## **CHAPTER VI : GIFTS**

### **122. "Gift" defined**

"Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made-Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

### **123. Transfer how effected**

For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

### **124. Gift of existing and future property**

A gift comprising both existing and future property is void as to the latter.

### **125. Gift to several of whom one does not accept**

A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

### **126. When gift may be suspended or revoked**

The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

### **\*\*\*Illustrations**

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds goods as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

### **127. Onerous gifts**

Where a gift in the form of a single transfer to the same person of several things of which one is, and the others are not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift to disqualified person: A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

#### **\*\*\*Illustrations**

(a) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b) A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

### **128. Universal donee**

Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised therein.

### **129. Saving of donations mortis causa and Mohammedan Law**

Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Mohammedan law.

## **CHAPTER VIII : OF TRANSFERS OF ACTIONABLE CLAIMS**

### **130. Transfer of actionable claim**

(1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instruments, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not:

PROVIDED that every dealing with the debtor other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceeding and without making him a party thereto.

#### **Illustrations**

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with an insurance company and assigns it to a bank for securing the payment of an existing or future debt. If A dies, the bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130 and to provisions of section 132.

**NOTE: The Symbol \*\*\* denotes most important**

**The underlined and Blocked portions are to be studied thoroughly**

**BEST WISHES**

## **COMPANIES ACT 1956**

3. Definitions of "Company", "Existing Company", "Private Company" and "Public Company".

(1) In this Act, unless the context otherwise requires, the expressions "company", "existing company", "private company" and "public company" shall, subject to the provisions of sub-section (2), have the meanings specified below:- (i) "company" means a company formed and registered under this Act or an existing company as defined in clause (ii); (ii) "existing company" means a company formed and registered under any of the previous companies laws (2) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956). 1[in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968 (25 of 1968) in so far as other corporations are concerned]; (iii) "private company" means a company which, by its articles,- (a) restricts the right to transfer its shares, if any; (b) limits the number of its members to fifty not including- (i) persons who are in the employment of the company, and (ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased; (c) prohibits any invitation to the public to subscribe for any shares in, 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; (iv) "public company" means a company which is not a private company.

(2) Unless the context otherwise requires, the following companies, shall not be included within the scope of any of the expressions defined in clauses (i) to (iv) of sub-section (1), and such companies shall be deemed, for the purposes of this Act, to have been formed and registered outside India:-- (a) a company the registered office where of is in Burma, Aden or Pakistan, and which immediately before the separation of that country from India was a company as defined in clause (i) of subsection (1)

4. Meaning of "holding company" and "subsidiary". (1) For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to be a subsidiary of another if, but only if,-- (a) that other controls the composition of its Board of directors ; or 2[(b) that other- (i) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company; (ii) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital ; or] (c) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

Illustration Company B is a subsidiary of Company A, and Company C is a subsidiary of Company B. Company C is a subsidiary of Company A, by

virtue of clause (c) above. If Company D is a subsidiary of Company C, Company D will be a subsidiary of Company B and consequently also of Company A, by virtue of clause (c) above; and so on.

(2) For the purposes of sub-section (1), the composition of a company's Board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships ; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say- (a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid; (b) that a person's appointment thereto follows necessarily from his appointment as director, managing agent, secretaries and treasurers, or manager of, or to any other office or employment in, that other company; or (c) that the directorship is held by an individual nominated by that other company or a subsidiary thereof ;

(3) In determining whether one company is a subsidiary of another- (a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to the provisions of clauses (c) and (d), any shares held or power exercisable- (i) by any person as a nominee for that other company (except where that other is concerned only in a fiduciary capacity) ; or (ii) by, or by a nominee for, a subsidiary of that other company, not, being a subsidiary which is concerned only in a fiduciary capacity; shall be treated as held or exercisable by that other company

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first- mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded-,

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary [not being held or exercisable as mentioned in clause (c); shall be treated as not held or exercisable by that other, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) For the purposes of this Act, a company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary.

(5) In this section, the expression "company" includes any body corporate and the expression "equity share capital" has the same meaning as in sub-section (2) of section 85.

(6) In the case of a body corporate which is incorporated in a country outside India, a subsidiary or holding company of the body corporate under the law of such country shall be deemed to be a subsidiary or holding company of the body corporate within the meaning and for the purposes of this Act also, whether the requirements of this section are fulfilled or not.

(7) A private company, being a subsidiary of a body corporate incorporated outside India, which, if incorporated in India, would be a public company within the meaning of this Act, shall be deemed for the purposes of this Act to be a subsidiary of a public company if the entire share capital in that private company is not held by that body corporate whether alone or together with one or more other bodies corporate incorporated outside India.] 4A. Public financial institutions.

4A. Public financial institutions. (1) Each of the financial institutions specified in this subsection shall be regarded, for the purposes of this Act, as a public financial institution, namely:- (i) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (ii) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948); (iii) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964); (iv) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956); (v) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963).

(2) Subject to the provisions of sub-section (1), the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution: Provided that no institution shall be so specified unless- (i) it has been established or constituted by or under any Central Act, or (ii) not less than fifty one per cent. of the paid-up share capital of such institution is held or controlled by the Central Government.]

## PART II INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

### 11. Prohibition of associations and partnerships exceeding certain number.

(1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law.

(3) This section shall not apply to a joint family as such carrying on a business; and where a business is carried on by two or more joint families, in computing the number of persons for the purposes of sub-sections (1) and (2), 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) Every person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine which may extend to one thousand rupees. Memorandum of Association



## **Mode of forming incorporated company.**

12. Mode of forming incorporated company. (1) Any seven or more persons, or where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) Such a company may be either- (a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed " a company limited by shares"

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up (in this Act termed "a company limited by guarantee");

(c) a company not having any limit on the liability of its members (in this Act termed " an unlimited company ".

## **Form of memorandum.**

13. Requirements with respect to memorandum. (1) The memorandum of every company shall state- (a) the name of the company with " Limited " as the last word of the name in the case of a public limited company, and with "Private Limited" as the last word of the name in the case of a private limited company; (b) the State in which the registered office of the company is to be situate;

(c) in the case of a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965, the objects of the company ;

(d) in the case of a company formed after such commencement,- (i) the main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects ; (ii) other objects of the company not included in sub-clause (i); and

(e) in the case of companies (other than trading corporations), with objects not confined to one State, the States to whose territories the objects extend.

(2) The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee shall also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company, or of such debts and liabilities of the company as may have been contracted before he ceases to be a member, as the case may be, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital- (a) unless the company is an unlimited company, the memorandum shall also state the amount of share capital which the company is to be registered and the division thereof into shares of a fixed amount; (b) no subscriber of the memorandum shall take less than one share; and (c) each subscriber of the memorandum shall write opposite to his name the number of shares he takes.

16. Alteration of memorandum. (1) A company shall not alter the conditions contained in its memorandum except in the cases, in the mode, and to the extent, for which express provision is made in this Act.

(2) Only those provisions which are required by section 13 or by any other specific provision contained in this Act, to be stated in the memorandum of the company concerned shall be deemed to be conditions contained in its memorandum.

(3) Other provisions contained in the memorandum, including those relating to the appointment of a managing director, managing agent, secretaries and treasurers or manager, may be altered in the same manner as the articles of the company, but if there is any express provision in this Act permitting of the alteration of such provisions in any other manner, they may also be altered in such other manner.

(4) All references to the articles of a company in this Act shall be construed as including references to the other provisions aforesaid contained in its memorandum.

Special resolution and confirmation by Company Law Board required for alteration of memorandum. 17. Special resolution and confirmation by Company Law Board required for alteration of memorandum. (1) A company may, by special resolution, alter the provisions of its memorandum so as to change the place of its registered office from one State to another, or with respect to the objects of the company so far as may be required to enable it- (a) to carry on its business more economically or more efficiently; (b) to attain its main purpose by new or improved means; (c) to enlarge or change the local area of its operations; (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; (e) to restrict or abandon any of the objects specified in the memorandum; (f) to sell or dispose of the whole, or any part, of the undertaking, or of any of the undertakings, of the company; or (g) to amalgamate with any other company or body of persons.

(2) The alteration shall not take effect until, and except in so far as, it is confirmed by the Company Law Board on petition.

(3) Before confirming the alteration, the Company Law Board must be satisfied- (a) that sufficient notice has been given to every holder of the debentures of the company, and to every other person or class of persons whose interests will, in the opinion of the Company Law Board, be affected by the alteration; and (b) that, with respect to every creditor who, in the opinion of the Company Law Board, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Company Law Board, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the 1

Company Law Board : Provided that the Company Law Board may, in the case of any person or class of persons, for special reasons, dispense with the notice required by clause (a). The Company Law Board shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also be given a reasonable opportunity to appear before the Company Law Board and state his objections and suggestions, if any, with respect to the confirmation of the alteration.

(5) The Company Law Board may make an order confirming the alteration either wholly or in part, and on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper.

(6) The Company Law Board shall, in exercising its powers under this section, have regard to the rights and interests of the members of the company and of every class of them, as well as to the rights and interests of the creditors of the company and of every class of them.

(7) The Company Law Board]may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the 2[Company Law Board] for the purchase of the interests of dissentient members; and may give such directions and make such orders as it thinks fit for facilitating, or carrying into effect, any such arrangement : Provided that no part of the capital of the company may be expended in any such purchase.

18.Alteration to be registered within three months.(1) A certified copy of the order of the Company Law Board made under sub-section (5) of section 17 confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the Registrar who shall register the same and certify the registration under his hand within one month from the date of the filing of such documents.)

(2)The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company.

(3)Where the alteration involves a transfer of the registered office from, one state to another, a certified copy of the order confirming the alteration shall be filed by the company with the Registrar of each of the States, and the Registrar of each such State shall register the same, and shall certify under his hand the registration thereof; and the Registrar of the State from which such office is transferred shall send to the Registrar of the other State all documents relating to the company registered, recorded or filed in his office.

(4) The Company Law Board may, at any time, by order, extend the time for the filing of documents or for the registration of the alteration under this section by such period as it thinks proper.

26.Articles prescribing regulations. There may in the case of a public company limited by shares, and there shall in the case of an unlimited company or a company limited by guarantee or a private company limited by shares, be registered with the memorandum, articles of association signed by the subscribers of the memorandum, prescribing regulations for the company.

27.Regulations required in case of unlimited company, company limited by guarantee or private company limited by shares.(1) In the case of an unlimited company, the articles shall state the number of members with which the company is to be registered and, if the company has a share capital, the amount of share capital with which the Company is to be registered.

(2)In the case of a company limited by guarantee, the articles shall state the number of members with which the company is to be registered.

(3)In the case of a private company having a share capital, the articles shall contain provisions relating to the matters specified in sub-clauses (a), (b) and (c) of clause (iii) of sub-section (1) of section 3; and in the case of any other private company, the articles shall contain provisions relating to the matters specified in the said sub-clauses (b) and (c).

**31.Alteration of articles by special resolution.**(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may, by special resolution, alter its articles: 1[Provided that no alteration made in the articles under this subsection which has the effect of converting a public company into a private company, shall have effect unless such alteration has been approved by the Central Government.]

(2)Any alteration so made shall, subject to the provisions of this Act, be as valid as if originally contained in the articles and be subject in like manner to alteration by special resolution. (2A) Where any alteration such as is referred to in the proviso

to sub-section (1) has been approved by the Central Government, a printed copy of the articles as altered shall be filed by the company with the Registrar within one month of the date of receipt of the order of approval.

(3) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. 19 of 1857 and Act No. 7 of 1360 or either of them, extend to altering any provisions in Table B annexed to Act 19 of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.  
Change of registration of companies

**33.Registration of memorandum and articles.**(1) There shall be presented for registration, to the Registrar of the State in which the registered office of the company is stated by the memorandum to be situate- (a) the memorandum of the company; (b) its articles, if any ; and 1[(c) the agreement, if any, which the company proposes to enter into with any individual for appointment as its managing or whole-time director or manager.]

(2) A declaration by an advocate of the Supreme Court or of a High Court, an attorney or a plader entitled to appear before a High Court,or "a secretary,or a chartered accountant,in whole-time practice in India" who is engaged in the formation of a company, or by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules there under have been complied with in respect of registration and matters precede- nt and incidental thereto, shall be filed with the Registrar; and the Registrar may accept such a declaration as sufficient evidence of such compliance. Explanation.-For the purposes of this sub-section, "chartered

accountant in whole-time practice in India" means a chartered accountant within the meaning of clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949), who is practising in India and who is not in fulltime employment.]

(3) If the Registrar is satisfied that all the requirements aforesaid have been complied with by the company and that it is authorised to be registered under this Act, he shall retain and register the memorandum, the articles, if any, and the agreement referred to in clause (c) of sub-section (1), if any.

**34. Effect of Registration.** (1) On the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.

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

**35. Conclusiveness of certificate of incorporation.** A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorised to be registered and duly registered under this Act.

**43. Consequences of default in complying with conditions constituting a company a private company.** Where the articles of a company include the provisions which, under clause (iii) of sub-section (1) of section 3, are required to be included in the articles of a company in order to constitute it a private company, 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 by or under this Act, and this Act shall apply to the company as if it were not a private company: Provided that the 1[Company Law Board] 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 1[Company Law Board] just and expedient, order that the company be relieved from such consequences as aforesaid.

**43A. Private company to become public company in certain cases.**

(1) Save as otherwise provided in this section, where not less than twenty-five per cent. of the paid-up share capital of a private company having a share capital, is held by one or more bodies corporate, the private company shall,- (a) on and from the date on which the aforesaid percentage is first held by such body or bodies corporate, or (b) where the aforesaid percentage has been first so held before the commencement of the Companies (Amendment) Act, 1960 (65 of 1960), on and from the expiry of the period of three months from the date of such commencement unless within that period the aforesaid percentage is reduced below twenty-five per cent. of the

paid-up share capital of the private company, become by virtue of this section a public company: Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven : Provided further that in computing the aforesaid percentage, account shall not be taken of any share in the private company held by a banking company, if, but only if, the following conditions are satisfied in respect of such share, namely:- (a) that the share- (i) forms part of the subject-matter of a trust, (ii) has not been set apart for the benefit of any body corporate, and (iii) is held by the banking company either as a trustee of that trust or in its own name on behalf of a trustee of that trust; or (b) that the share- (i) forms part of the estate of a deceased person, (ii) has not been bequeathed by the deceased person by his will to any body corporate, and (iii) is held by the banking company either as an executor or administrator of the deceased person or in its own name on behalf of an executor or administrator of the deceased person; and the Registrar may, for the purpose of satisfying himself that any share is held in the private company by a banking company as aforesaid, call for at any time from the banking company such books and papers as he considers necessary.

Explanation.- For the purposes of this sub-section, "bodies corporate" means public companies, or private companies which had become public companies by virtue of this section.

(1A) Without prejudice to the provisions of sub-section (1), where the average annual turnover of a private company, whether in existence at the commencement of the Companies (Amendment) Act or incorporated thereafter, is not, during the relevant period less than such amount as may be prescribed the private company shall, irrespective of its paid-up share capital, become, on and from the expiry of a period of three months from the last day of the relevant period during which the private company had the said average annual turnover, a public company by virtue of this sub-section : Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven.

(1B) Where not less than twenty-five per cent. of the paid-up share capital of a public company, having share capital, is held by a private company, the private company shall,- (a) on and from the date on which the aforesaid percentage is first held by it after the commencement of the Companies (Amendment) Act, 1974, (41 of 1974), or (b) where the aforesaid percentage has been first so held before the commencement of the Companies (Amendment) Act, 1974, (41 of 1974) on and from the expiry of the period of three months from the date of such commencement, unless within that period the aforesaid percentage is reduced below twenty-five per cent. of the paid-up share capital of the public company, become, by virtue of this sub-section, a public company, and thereupon all other provisions of this section shall apply thereto : Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven.

(1C) Where, after the commencement of the Companies (Amendment) Act, 1988, (31 of 1988) a private company accepts, after an invitation is made by an

advertisement, or renews, deposits from the public, other than its members, directors or their relatives, such private company shall, on and from the date on which such acceptance or renewal, as the case may be, is first made after such commencement, become a public company and thereupon all the provisions of this section shall apply thereto: Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be, reduced below seven.

(2) Within three months from the date on which a private company becomes a public company by virtue of this section, the company shall inform the Registrar that it has become a public company as aforesaid, and thereupon the Registrar shall delete the word "Private" before the word "Limited" in the name of the company upon the register and shall also make the necessary alterations in the certificate of incorporation issued to the company and in its memorandum of association. (3) Sub-section (3) of section 23 shall apply to a change of name under sub-section (2) as it applies to a change of name under section 21.

(4) A private company which has become a public company by virtue of this section shall continue to be a public company until it has, with the approval of the Central Government and in accordance with the provisions of this Act, again become a private company.

(5) If a company makes default in complying with sub-section (2), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(8) Every private company having a share capital shall, in addition to the certificate referred to in sub-section (2) of section 161, file with the Registrar along with the annual return a second certificate signed by both the signatories of the return, stating either- (a) that since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the private company, no body or bodies corporate has or have held twenty-five per cent. or more of its paid-up share capital, (c) that the private company, irrespective of its paid-up share capital, did not have, during the relevant period, an average annual turnover of 3[such amount as is referred to in such-section (1A) or more."(d) that the private company did not accept or renew deposits from the public.

(9) Every private company, having share capital, shall file with the Registrar along with the annual return a certificate signed by both the signatories of the return, stating that since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the private company, it did not hold twenty-five per cent. or more of the paid-up share capital of one or more public companies.

(10) Subject to the other provisions of this Act, any reference in this section to accepting, after an invitation is made by an advertisement, or renewing deposits from the public shall be construed as including a reference to accepting, after an invitation is made by an advertisement, or renewing deposits from any section of the public and the provisions of section 67 shall, so far as may be, apply, as if the reference to invitation to the public to subscribe for shares or

debentures occurring in that section, includes a reference to invitation from the public for acceptance of deposits

Explanation.-For the purposes of this section,-- (a)"relevant period" means the period of three consecutive financial years,- (i)immediately preceding the commencement of the Companies (Amendment) Act, 1974, (41 of 1974), or (ii)a part of which immediately preceded such commencement and the other part of which immediately, followed such commencement, or (iii)immediately following such commencement or at any time thereafter; (b) "turnover", of a company, means the aggregate value of the realisation made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year."(c) "deposit" has the same meaning as in section 58A.

45.Members severally liable for debts where business carried on with fewer than seven, or in the case of a private company, two members.If at any time the number of members of a company is reduced,in the case of a public company, below seven, or in the case of a private company, below two, and the company carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than seven members or two 86 members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor. Contracts and deeds, investments, seal, etc.

### **PART III PROSPECTUS AND ALLOTMENT, AND OTHER MATTERS RELATING TO ISSUE OF SHARES OR DEBENTURES**

#### **Prospectus**

55. **Dating of prospectus.**A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall,unless the contrary is proved, be taken as the date of publication of the prospectus.

#### **56.Matters to be stated and reports to be set out in prospectus.**

(1) Every prospectus issued- (a) by or on behalf of a company, or (b)by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule ; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements 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) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied 1[by memorandum containing such salient features or a prospectus as may be prescribed] which complies with the requirements of this section: 1[Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him: Provided further that this 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 punishable with fine which may extend to five thousand rupees.

(4) A director or other person responsible for the prospectus shall not incur any liability by reason of any non-compliance with, or contravention of, any of the requirements of this section, if- (a)as regards any matter not disclosed, he proves that he had no knowledge 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 was 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 no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the matters specified in clause 18 of Schedule II, unless it is proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply- (a)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; or (b)to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange ; but, subject as aforesaid, this section shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.

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

**60.Registration of prospectus.**(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto- (a)any consent to the issue of the prospectus required by section 58 from any person as an expert; and (b)in the case of a prospectus issued generally, also- (i)a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and (ii)where the persons making any report required by Part II of that Schedule have made therein, or, have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons there for.

(2) Every prospectus to which sub-section (1) applies shall, on the face of it,- (a)state that a copy has been delivered for registration as required by this section; and (b)specify any documents required by this section to be endorsed on or attached to the copy so delivered, or refer to statements included in the prospectus which specify those documents,

(3) The Registrar shall not register a prospectus unless the requirements of sections 55, 56, 57 and 58 and sub-sections (1) and (2) of this section have been

complied with and the prospectus is accompanied by the consent in writing of the person, if any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity.

(4) No prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration; and if a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered under this section to the Registrar.

(5) If a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which may extend to five thousand rupees.

**61. Terms of contract mentioned in prospectus or statement in lieu of prospects, not to be varied.** A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of, or except on authority given by, the company in general meeting.

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

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

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

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

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

Provided that where, under section 58, the consent of a person is required to the issue of a prospectus and he has given that consent, or where, under sub-section(3)of section 60, the consent of a person named in a prospectus is required and he has given that consent, he shall not, by reason of having given such consent, be liable under this sub-section as a person who has authorised the issue of the prospectus except in respect of an untrue statement, if any, purporting to be made by him as an expert.

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

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

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

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

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

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation ; and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that that person had given the consent required by section 58 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder: and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the document: Provided that this sub-section shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 58, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this sub-section, would, under sub-section (1), be liable by reason of his having given a consent required of him by section 58 as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert shall not be so liable, if he proves-

(a) that, having given his consent under section 58 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration ;

(b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent 97 in writing and gave reasonable public notice of the withdrawal and of the reason therefor; or

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

(4) Where-- (a) the prospectus specifies the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not

consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or

(b) the consent of a person is required under section 58 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus; the directors of the company excluding those without whose knowledge or consent the prospectus was issued, and every other person who authorised the issue thereof, shall be liable to indemnify the person referred to in clause (a) or clause (b), as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any suit or legal proceeding brought against him in respect thereof: Provided that a person shall not be deemed for the purposes of this sub-section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 58 to the inclusion therein of a statement purporting to be made by him as an expert.

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

(6) For the purposes of this section-- (a) the expression " promoter" means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and

(b) the expression "expert" has the same meaning as in section 58.

**63. Criminal liability for mis-statements in prospectus.** (1) Where a prospectus issued after the commencement of this Act includes any untrue statement, every person who authorised the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did, up to the time of the issue of the prospectus believe, that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given- (a) the consent required by section 58 to the inclusion therein of a statement purporting to be made by him as an expert, or

(b) the consent required by sub-section (3) of section 60.

**69. Prohibition of allotment unless minimum subscription** received.

(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 of the Board of directors, must be raised by the issue of share capital in order to provide for the matters specified in clause 5 of Schedule II has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the

company, whether in cash or by a cheque or other instrument which has been paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in money, and is in this Act referred to as " the minimum subscription".

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) All moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank- (a) until the certificate to commence business is obtained under section 149 ; or (b) Where such certificate has already been obtained, until the entire amount payable on applications for shares in respect of the minimum subscription has been received by the company, and where such amount has not been received by the company within the time or the expiry of which the moneys received from the applicants for shares are required to be repaid without interest under sub-section

(5), all moneys received from applicants for shares shall be returned in accordance with the provisions of that sub-section. In the event of any contravention of the provisions of this sub- section, every promoter, director or other person who is knowingly responsible for such contravention shall be punishable with fine which may extend to five thousand rupees.]

(5) If the conditions aforesaid have not been complied with on the expiry of one hundred and twenty days after the first issue of the prospectus, all moneys received from applicants for shares shall be forthwith repaid to them without interest; and if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of six per cent. per annum from the expiry of the one hundred and thirtieth day: Provided that a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) Any condition purporting to require or bind any applicant for shares to waive compliance with any requirement of this section shall be void.

(7) This section, except sub-section (3) thereof, shall not apply in relation to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

70. Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar. (1) A company having a share capital, which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures, there has been delivered to the Registrar for registration a statement in lieu of prospectus signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in Part I of Schedule III and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule. 103

(2) Every statement in lieu of prospectus delivered under sub-section (1), shall, where the persons making any such report as aforesaid have made therein, or have without giving the reasons indicated therein, any such adjustments as are mentioned in clause 5 of Schedule III, have endorsed thereon or attached thereto a written statement signed by those persons, setting out the adjustments and giving the reasons thereof.

(3) This section shall not apply to a private company.

(4) If a company acts in contravention of sub-section (1) or (2), the company, and every director of the company who wilfully authorises or permits the contravention, shall be punishable with fine which may extend to one thousand rupees.

(5) Where a statement in lieu of prospectus delivered to the

Registrar under sub-section (1) includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the delivery for registration of the statement in lieu of prospectus believe, that the statement was true.

(6) For the purposes of this section- (a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(b) where the omission from a statement in lieu of prospectus of any matter is calculated to mislead, the statement in lieu of prospectus shall be deemed, in respect of such omission, to be a statement in lieu of prospectus in which an untrue statement is included.

(7) For the purposes 'of sub-section (5) and clause (a) of sub-section (6), the expression "included", when used with reference to a statement in lieu of prospectus, means included in the statement in lieu of prospectus itself or contained in any report or memorandum appearing on the face thereof, or by reference incorporated therein, or issued therewith.

71. Effect of irregular allotment. (1) An allotment made by a company to an applicant in contravention of the provisions of section 69 or 70 shall be voidable at the instance of the applicant-

(a) within two months after the holding of the statutory meeting of the company, and not later, or

(b) 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 two months after the date of the allotment, and not later.

(2) The allotment shall be voidable as aforesaid, notwithstanding that the company is in course of being wound up.

(3) If any director of a company knowingly contravenes, or wilfully authorises or permits the contravention of, any of the provisions of section 69 or 70 with

respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby : Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

72. Applications for, and allotment of, shares and debentures. (1) (a) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally, and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the fifth day after that on which the prospectus is first so issued or such later time, if any, as may be specified in the prospectus: Provided that where, after a prospectus is first issued generally, a public notice is given by some person responsible under section 62 for the prospectus which has the effect of excluding, limiting or diminishing his responsibility, no allotment shall be made until the beginning of the fifth day after that on which such public notice is first given.

(b) Nothing in the foregoing proviso shall be deemed to exclude, limit or diminish any liability that might be incurred in the case referred to therein under the general law or this Act.

(c) The beginning of the fifth day or such later time as is mentioned in the first paragraph of clause (a), or the beginning of the fifth day mentioned in the second paragraph of that clause, as the case may be, is hereinafter in this Act referred to as "the time of the opening of the subscription lists".

(2) In sub-section (1), the reference to the day on which the prospectus is first issued generally shall, be construed as referring to the day on which it is first so issued as a newspaper advertisement: Provided that, if it is not so issued as a newspaper advertisement before the fifth day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(3) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section; but, in the event of any such contravention, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

(4) In the application of this section to a prospectus offering

shares or debentures for sale, sub-sections (1) to (3) shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who is knowingly guilty of, or wilfully authorises or permits, the contravention.

(5) An application for shares in, or debentures of, a company, which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the fifth day after the time of the opening of the subscription lists, or the giving, before the expiry of the said fifth day by some person responsible under section 62 for the prospectus, of a public notice having the effect under that section of excluding, limiting or diminishing the responsibility of the person giving it.

73 Allotment of shares and debentures to be dealt in on stock exchange. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange. 1A Where a prospectus, whether issued generally or not, state that an 3[application under sub-section (1) has been] made for permission for the shares or debentures offered thereby to be dealt in one or more recognized stock exchanges, such prospectus, shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists: Provided that where an appeal against the decision of any recog- nized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(2) Where the permission has not been applied under sub-section(1) or, such permission, having been applied for, has not been granted as aforesaid], the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent. and not more than fifteen per cent., as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(2A) Where permission has been granted by the recognized stock exchange or stock exchanges for dealing in any shares or debentures in such stock exchange or each such stock exchange and the moneys received from applicants for shares or debentures are in excess of the aggregate of the application moneys relating to the shares or debentures in respect of which allotments have been made, the company shall repay the moneys to the extent of such excess forthwith without interest, and if such money is not repaid within eight days, from the day the company becomes liable to pay it, 1[the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent. and not more than fifteen per cent., as may be prescribed, having regard to the length of the period of delay in making the repayment of such money (2B) If default is made in complying with the provisions of sub- section (2A ), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees, and where repayment is not made within six months from the expiry of the eighth day, also with imprisonment for a term which may extend to one year.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 1[until the permission has been granted, or where an appeal has been preferred against the refusal to grant such. permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as



aforesaid or has not been granted, be repaid within the time and in the manner specified in sub-section (2)]; and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees. 2[(3A) Moneys standing to the credit of the separate bank account referred to in sub-section (3) shall not be utilised for any purpose other than the following purposes, namely :- (a) adjustment against allotment of shares, where the shares have been permitted to be dealt in on the stock exchange or each stock exchange specified in the prospectus; or (b) repayment of moneys received from applicants in pursuance of the prospectus, where shares have not been permitted to be dealt in on the stock exchange or each stock exchange specified in the prospectus, as the case may be, or, where the company is for any other reason unable to make the allotment of share.

(4) Any condition purporting to require or bind any applicant for shares or debentures to waive compliance with any of the requirements of this section shall be void.

(5) For the purposes of this section, it shall be deemed that permission has not been granted if the application for permission, where made, has not been disposed of within the time specified in sub-section (1).

(6) This section shall have effect- (a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus, as if he had applied therefor in pursuance of the prospectus; and (b) in relation to a prospectus offering shares for sale, with the following modifications, namely:- (i) references to sale shall be substituted for references to allotment; (ii) the persons by whom the offer is made, and not the company, shall be liable under sub-section (2) to 'repay money received from applicants, and references to the company's liability under that sub-section shall be construed accordingly; and

(iii) for the reference in sub-section (3) to the company and every officer of the company who is in default, there shall be substituted a reference to any person by or through whom the offer is made and who is knowingly guilty of, or wilfully authorises or permits, the default.

(7) No prospectus shall state that application has been made for permission for the shares or debentures offered thereby to be dealt in on any stock exchange, unless it is a recognised stock exchange.

74. Manner of reckoning fifth, eighth and tenth days in sections 72 and 73. In reckoning for the purposes of sections 72 and 73, the fifth day or the eighth day another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881, shall be disregarded, and if the fifth, or eighth day (as so reckoned) is itself such a public holiday, there shall for the said purposes be substituted the first day thereafter which is not such a holiday.

75. Return as to allotments. (1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within thirty days thereafter,- (a) file with the Registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and occupations of the allottees, and the amount, if any, paid or due and payable on each share: Provided that the company shall not show in such return any shares as having been allotted for cash if cash has not actually been received in respect of such allotment. (b) in the case of shares (not being

bonus shares) allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the Registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or a contract for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and file with the Registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted ; and (c) file with the Registrar- (i)in the case of bonus shares, a return stating the number and nominal amount of such shares comprised in the allotment and the names, addresses and occupations of the allottees and a copy of the resolution authorising the issue of such shares; (ii)in the case of issue of shares at a discount a copy of the resolution passed by the company authorising such issue together with a copy of the order of the Court sanctioning the issue and where the maximum rate of discount exceeds ten per cent., a copy of the orders of the Central Government permitting the issue at the higher percentage.

(2) Where a contract such as is mentioned in clause (b) of sub-section (1) is not reduced to writing, the company shall, within 2[thirty days] after the allotment, file with the Registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing; and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899, and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

(3) If the Registrar is satisfied that in the circumstances of any particular case the period of thirty days specified in subsections (1) and (2) for compliance with the requirements of this section 3[is or was inadequate, he may, on application made in that behalf by the company, whether before or after the expiry of the said period, extend that period as he thinks fit ; and if he does so, the provisions of sub-sections (1) and (2) shall have effect in that particular case as if for the said period of thirty days the extended period allowed by the Registrar were substituted.

(4) If default is made in complying with this section, every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues :  
Provided that in case of contravention of the proviso to clause (a) of sub-section (1), every such officer, and every promoter of the company who is guilty of the contravention shall be punishable with fine which may extend to five thousand rupees.

(5) 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. Commissions and Discounts

76. Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc. (1) A company may pay a commission to any person in consideration of-

(a) his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in, or debentures of, the company, or

(b) his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in, or debentures of, the company, if the following conditions are fulfilled, namely:-

(i) the payment of the commission is authorised by the articles ;

(ii) the commission paid or agreed to be paid does not exceed in the case of shares, five per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is less, and in the case of debentures, two and a half per cent. of the price at which the debentures are issued or the amount or rate authorised by the articles, whichever is less;

(iii) the amount or rate per cent. of the commission paid or agreed to be paid is- in the case of shares or debentures offered to the public for subscription, disclosed in the prospectus ; and in the case of shares or debentures not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed before the payment of the commission with the Registrar and, where a circular or notice, not being a prospectus inviting subscription for the shares or debentures, is issued, also disclosed in that circular or notice ;

(iv) the number of shares or debentures which persons have agreed for a commission to subscribe absolutely or conditionally is disclosed in the manner aforesaid and

(V) a copy of the contract for the payment of the commission is delivered to the Registrar at the time of delivery of the prospectus or the statement in lieu of prospectus for registration.

(2) Save as aforesaid and save as provided in section 79, no company shall allot any of its shares or debentures or apply any of its moneys, either directly or indirectly, in payment of any commission, discount or allowance, to any person in consideration of- (a) his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in, or debentures of, the company, or (b) his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in, or debentures of, the company, whether the shares, debentures or money be so allotted or applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise. (3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in shares, debentures or money from, a company shall have and shall be deemed always to have had power to apply any part of the shares, debentures or money so received in payment of any commission the payment of which, if made directly by the company, would have been legal under this section. (4A) For the removal of doubts it is hereby declared that no commission shall be paid under clause (a) of sub-section (1) to any person on shares or debentures which are not offered to the public for subscription: Provided that where a person has subscribed or agreed to subscribe under clause (a) of sub-section (1) for any shares in, or debentures of, the company and before the issue of the prospectus or statement in lieu thereof any other person or persons has or have subscribed for any or all of those shares or debentures and that fact together with the

aggregate amount of commission payable under this section in respect of such subscription is disclosed in such prospectus or statement, then, the company may pay commission to the first-mentioned person in respect of such subscription.

(5) If default is made in complying with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

77. Restrictions on purchase by company or loans by company for purchase, of its own or its holding company's shares. (1) No company limited by shares, and no company limited by guarantee and having a share capital, shall have power to buy own shares, unless the consequent reduction of capital is effected and sanctioned in pursuance of sections 100 to 104 or of section 402.

(2) No public company, and no private company which is a subsidiary 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 or subscription made or to be made by any person or for any shares in the company or in its holding company : Provided that nothing in this sub-section shall be taken to prohibit- (a) the lending of money by a banking company in the ordinary course of its business; or (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried office or employment in the company; or (c) the making by a company of loans, within the limit laid down in sub-section (3), to persons (other than directors, managing agents, secretaries and treasurers or managers) bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

(3) No loan made to any person in pursuance of clause (c) of the foregoing proviso shall exceed in amount his salary or wages at that time for a period of six months.

(4) If a company acts in contravention of sub-sections (1) to

(3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees.

(5) Nothing in this section shall affect the right of a company to redeem any shares issued under section 80 or under any corresponding provision in any previous companies law.

78. Application of premiums received on issue of shares. (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called "the share premium account"; 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 share premium account were paid-up share capital of the company.

(2) The share premium account may, notwithstanding anything in sub-section (1), be applied by the company- (a)in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares; (b) in writing off the preliminary expenses of the company; (c)in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; or (d)in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company.

(3) Where a company has, before the commencement of this Act, issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act : Provided that any part of the premiums which has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves within the meaning of Schedule VI, shall be disregarded in determining the sum to be included in the share premium account.

79. Power to issue shares at a discount. (1) A company shall not issue shares at a discount except as provided in this section.

(2) A company may issue at a discount shares in the company of a class already issued, if the following conditions are fulfilled, namely:- (i)the issue of the shares at a discount is authorised by a resolution passed by the company in general meeting, and sanctioned by the Company Law Board; (ii) the resolution specifies the maximum, rate of discount at which the shares are to be issued: 2[Provided that no such resolution shall be sanctioned by the Company Law Board if the maximum rate of discount specified in the resolution exceeds ten per cent., unless that Board is of opinion that a higher percentage of discount may be allowed in the special circumstances of the case;] (iii)not less than one year has at the date of the issue elapsed since the date on which the company was entitled to commence business; and (iv) the shares to be issued at a discount are issued within two months after the date on which the issue is sanctioned by the Company Law Board or within such extended time as the Company Law Board may allow.

(3) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Company Law Board for an order sanctioning the issue; and on any such application, the Company Law Board, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(4) Every prospectus relating to the issue of the shares shall 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 prospectus. If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

80. Power to issue redeemable preference shares. (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; (b)no such shares shall be redeemed unless they are fully

paid; (c) the premium, if any, payable on redemption shall have been provided for out of the profits of the company or, out of the company's share premium account, before the shares are redeemed; (d) 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 account], a sum equal to the nominal amount of the shares redeemed; 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 account were paid-up share capital of the company.

(2) 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.

(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of its authorised share capital.

(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 611, 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) The capital redemption reserve account may, notwithstanding anything in this section, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

(5A) Notwithstanding anything contained in this Act, no company limited by shares shall, after the commencement of the Companies (Amendment) Act, 1988, issue any preference share which is irredeemable or is redeemable after the expiry of a period of ten years from the date of its issue

(6) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default shall be punishable with fine which may extend to one thousand rupees.

80A. Redemption of irredeemable preference shares, etc. (1) Notwithstanding anything contained in the terms of issue of any preference shares, every preference share issued before the commencement of the Companies (Amendment) Act, 1988,- (a) which is irredeemable, shall be redeemed by the company within a period not exceeding five years from such commencement, or (b) which is not redeemable before the expiry of ten years from the date of issue there-on in accordance with the terms of its issue and which had not been redeemed before such commencement, shall be redeemed by the company on the date on which such share is due for redemption or within a period not exceeding ten years from such commencement, whichever is earlier: Provided that where a company is not in a position to redeem any such share within the period aforesaid and to pay the dividend, if any, due thereon (such shares being hereinafter referred to as unredeemed preference shares), it may, with the consent of the Company Law Board, on a petition made by it in this behalf and notwithstanding anything contained in this Act, issue further redeemable

preference shares equal to the amounts due (including the dividend thereon), in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed shares shall be deemed to have been redeemed.

(2) Nothing contained in section 106 or any scheme referred to in sections 391 to 395, or in any scheme made under section 396, shall be deemed to confer power on any class of shareholders by resolution or on any court or the Central Government to vary or modify the provisions of this section.

(3) If any default is made in complying with the provisions of this section,- (a) the company making such default shall be punishable with fine which may extend to one thousand rupees for every day during which such default continues; and (b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

81. Further issue of capital. (1) Where at any time after the expiry of two years from the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, it is proposed to increase the subscribed capital of the company by allotment of further shares, then, (a) such 3[~~further~~] shares shall be offered to the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid up on those shares at that date ; (b) the offer aforesaid shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days from the date of the offer within which the offer, if not accepted, will be deemed to have been declined ; (c) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (b) shall contain a statement of this right ; (d) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of directors may dispose of them in such manner as they think most beneficial to the company.

Explanation.-In this sub-section, " equity share capital " and equity shares " have the same meaning as in section 85.

(1A) Notwithstanding anything contained in sub-section (1), the further shares aforesaid may be offered to any persons whether or not those persons include the persons referred to in clause (a) of subsection (1)] in any manner whatsoever- (a) if a special resolution to that effect is passed by the company in general meeting, or (b) where no such special resolution is passed, if the votes cast (whether on a show of hands, or on a poll, as the case may be) in favour of the proposal contained in the resolution moved in that general meeting (including the casting vote, if any, of the Chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the proposal by members so entitled and voting and the Central Government is satisfied, on an application made by the Board of directors in this behalf, that the proposal is most beneficial to the company.

(2) Nothing in clause (c) of sub-section (1) shall be deemed- (a) to extend the time within which the offer should be accepted, or (b) to authorise any person to

exercise the right of renunciation for a second time, on the ground that the person in whose favour the renunciation was first made has declined to take the shares comprised in the renunciation.

(3) Nothing in this section shall apply- (a) to a private company; or (b) to the increase of the subscribed capital of a public company caused by the exercise of an option attached to debentures issued or loans raised by the company- (i) to convert such debentures or loans into shares in the company, or (ii) to subscribe for shares in the company: Provided that the terms of issue of such debentures or the terms of such loans include a term providing for such option and such term- (a) either has been approved by the Central Government before the issue of debentures or the raising of the loans or is in conformity with the rules, if any, made by that Government in this behalf; and (b) in the case of debentures or loans other than debentures issued to, or loans obtained from, the Government or any institution specified by the Central Government in this behalf, has also been approved by a special resolution passed by the company in general meeting before the issue of the debentures or the raising of the loans.

(4) Notwithstanding anything contained in the foregoing provisions of this section, where any debentures have been issued to, or loans have been obtained from, the Government by a company, whether such debentures have been issued or loans have been obtained before or after the commencement of the Companies (Amendment) Act, 1963, the Central Government may, if in its opinion it is necessary in the public interest so to do, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include a term providing for an option for such conversion.

(5) In determining the terms and conditions of such conversion, the Central Government shall have due regard to the following circumstances, that is to say, the financial position of the company, the terms of issue of the debentures or the terms of the loans, as the case may be, the rate of interest payable on the debentures or the loans, the capital of the company, its loan liabilities, its reserves, its profits during the preceding five years and the current market price of the shares in the company.

(6) A copy of every order proposed to be issued by the Central Government under sub-section (4) shall be laid in draft before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

(7) If the terms and conditions of such conversion are not acceptable to the company, the company may, within thirty days from the date of communication to it of such order or within such further time as may be granted by the Court, prefer an appeal to the Court in regard to such terms and conditions and the decision of the Court on such appeal and, subject only to such decision, the order of the Central Government under sub-section (4) shall be final and conclusive.

**PART IV SHARE CAPITAL AND DEBENTURES Nature, Numbering and Certificate of Shares**



82. Nature of shares. The shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

84. Certificate of shares. (1) A certificate, under the common seal of the company, specifying any shares held by any member, shall be prima facie evidence of the title of the member to such shares.

(2) A certificate may be renewed or a duplicate of a certificate may be issued if such certificate- (a) is proved to have been lost or destroyed, or (b) having been defaced or mutilated or torn is surrendered to the company.

(3) If a company with intent to defraud renews a certificate or issues a duplicate thereof, the company shall be punishable with fine which may extend to ten thousand rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

(4) Notwithstanding anything contained in the articles of association of a company, the manner of issue or renewal of a certificate or issue of a duplicate thereof, the form of a certificate (original or renewed) or of a duplicate thereof, the particulars to be entered in the register of members or in the register of renewed or duplicate certificates, the form of such registers, the fee on payment of which, the terms and conditions, if any (including terms and conditions as to evidence and indemnity and the payment of out-of-pocket expenses incurred by a company in investigating evidence) on which a certificate may be renewed or a duplicate thereof may be issued, shall be such as may be prescribed

### **Kinds of Share Capital**

85. Two kinds of share capital.

(1) " Preference share capital " means, with reference to any company limited by shares, whether formed before or after the commencement of this Act , that part of the share capital of the company which fulfils both the following requirements, namely:-

(a) that as respects dividends, it carries or will carry a preferential right to be paid a fixed amount or an amount calculated at a fixed rate, which may be either free of or subject to income-tax ; and

(b) that as respects capital, it carries or will carry, on a winding up or repayment of capital, a preferential right to be repaid the amount of the capital paid up or deemed to have been paid up, whether or not there is a preferential right to the payment of either or both of the following amounts, namely: -  
(i) any money remaining unpaid, in respect of the amounts specified in clause (a), up to the date of the winding up or repayment of capital; and (ii) any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company.

Explanation.-Capital shall be deemed to be preference, capital, notwithstanding that it is entitled to, either or both of the following rights, namely: - (i) that, as respects dividends, in addition to the preferential right to the amount specified in clause (a), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid; (ii) that as respects capital, in addition to the preferential right to the repayment, on a winding up,

of the amounts specified in clause (b), it has a right to participate, 119 whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

(2) " Equity share capital " means, with reference to any such company, all share capital which is not preference share capital.

(3)The expressions " preference share " and " equity share " shall be construed accordingly.

86.New issues of share capital to be only of two kinds. The share capital of a company limited by shares formed after the commencement of this Act, or issued after such commencement, shall be of two kinds only, namely:- (a) equity share capital; and (b) preference share capital.

87.Voting rights.(1) Subject to the provisions of section 89 and sub-section (2) of section 92- (a) every member of a company limited by shares and holding any equity share capital therein shall have a right to vote, in respect of such capital, on every resolution placed before the company ; and (b)his voting right on a poll shall be in proportion to his share of the paid up equity capital of the company.

(2) (a) Subject as aforesaid and save as provided in clause (b) of this sub-section, every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares. Explanation.-Any resolution for winding up the company or for the repayment or reduction of its share capital shall be deemed directly to affect the rights attached to preference shares within the meaning of this clause.

(b) Subject as aforesaid, every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, be entitled to vote on every resolution placed before the company at any meeting, if the dividend due on such capital or any part of such dividend has remained unpaid-

(i) in the case of cumulative preference shares, in respect of an aggregate period of not less than two years preceding the date of commencement of the meeting; and 120 (ii) in the case of non-cumulative preference shares, either in respect of a period of not less than two years ending with the expiry of the financial year immediately preceding the commencement of the meeting or in respect of an aggregate period of not less than three years comprised in the six years ending with the expiry of the financial year aforesaid.

Explanation.-For the purposes of this clause, dividend shall be deemed to be due on preference shares in respect of any period, whether a dividend has been declared by the company on such shares for such period or not,- (a) on the last day specified for the payment of such dividend for such period, in the articles or other instrument executed by the company in that behalf ; or (b) in case no day is so specified, on the day immediately following such period. (c) Where the holder of any preference share has a right to vote on any resolution in accordance with the provisions of this sub- section, his voting right on a poll, as the holder of such share, shall, subject to the provisions of section 89 and sub-section (2) of section 92, be in the same proportion as the capital paid up in

respect of the preference share bears to the total paid up equity capital of the company.

88. Prohibition of issue of shares with disproportionate rights. No company formed after the commencement of this Act, or issuing any share capital after such commencement, shall issue any shares (not being preference shares) which carry voting rights or rights in the company as to dividend, capital or otherwise which are disproportionate to the rights attaching to the holders of other shares (not being preference shares).

89. Termination of disproportionately excessive voting rights in existing companies. (1) If at the commencement of this Act any shares, by whatever name called, of any existing company limited by shares carry voting rights in excess of the voting rights attaching under sub-section (1) of section 87 to equity shares in respect of which the same amount of capital has been paid up, the company shall, within a period of one year from the commencement of this Act, reduce the voting rights in respect of the shares first mentioned so as to bring them into conformity with the voting rights attached to such equity shares under sub-section (1) of section 87.

(2) Before the voting rights are brought into such conformity, the holders of the shares in question shall not exercise in respect thereof voting rights in excess of what would have been exercisable by them if the capital paid up on their shares had been equity share capital, in respect of the following resolutions placed before the company, namely:- (a) any resolution relating to the appointment or reappointment of a director or of a managing agent or secretaries and treasurers, or to any variation in the terms of an agreement between the company and a managing or whole-time director thereof or its managing agent or secretaries and treasurers; (b) any resolution relating to the appointment of buying or selling agents; (c) any resolution relating to the grant of a loan or to the giving of a guarantee or any other financial assistance, to any other body corporate having any person as managing agent or secretaries and treasurers who is also either the managing agent or the secretaries and treasurers of the company or an associate of such managing agent or secretaries and treasurers.

(3) If, by reason of the failure of the requisite proportion of any class of members to agree, it is not found possible to comply with the provisions of subsection (1), the company shall, within one month of the expiry of the period of one year mentioned in that sub-section apply to the Court for an order specifying the manner in which the provisions of that sub-section shall be complied with, and any order made by the Court in this behalf shall bind the company and all its shareholders. If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees.

(4) The Central Government may, in respect of any shares issued by a company before the 1st day of December, 1949, exempt the company from the requirements of sub-sections (1), (2) and (3), wholly or in part, if in the opinion of the Central Government the exemption is required either in the public interest or in the interests of the company or of any class of shareholders therein or of the creditors or any class of creditors thereof. 122 Every order of exemption made by the Central Government under this sub-section shall be laid before both Houses of Parliament as soon as may be after it is made.

90. Savings. (1) Nothing in sections 85, 86, 88 and 89 shall, in the case of any shares issued by a public company before the commencement of this Act, affect

any voting rights attached to the shares save as otherwise provided in section 89, or any rights attached to the shares as to dividend, capital or otherwise.

(2) Nothing in sections 85 to 89 shall apply to a private company, unless it is a subsidiary of a public company.

(3) For the removal of doubts, it is hereby declared that on and from the commencement of the Companies (Amendment) Act, 1974, the provisions of section 87 shall apply in relation to the voting rights attached to preference shares issued by a public company before the 1st day of April, 1956, as they apply to the preference shares issued by a public company after that date.

Explanation.-For the purposes of this section references to a public company shall be construed as including references to a private company which is a subsidiary of a public company.

#### Miscellaneous provisions as to share capital

91.Calls on shares of same class to be made on uniform basis. Where after the commencement of this Act, any calls for further share capital are made on shares, such calls shall be made on a uniform basis on all shares falling under the same class. Explanation.-For the purposes of this section, shares of the same nominal value on which different amounts have been paid up shall not be deemed to fall under the same class.

92.Power of company to accept unpaid share capital, although not called up. (1) A company may, if so authorised by its articles, accept from any member the whole or a part of the amount remaining un- paid on any shares held by him, although no part of that amount has been called up.

(2) The member shall not however be entitled, where the company is one limited by shares, to any voting rights in respect of the moneys so paid by him until the same would. but for such payment, become presently payablePayment of dividend in proportion to amount paid up. 93.Payment of dividend in proportion to amount paid up. A company may, if so authorised by its articles, pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others..

94.Power of limited company to alter its share capital. (1) A limited company having a share capital, may, if so authorised by its articles, alter the conditions of its memorandum as follows, that is to say, it may-- (a) increase its share capital by such amount as it thinks expedient by issuing new shares; (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares; (c) convert all or any of its fully paid up shares into stock, and reconvert that stock into fully paid up shares of any denomination; (d) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however. that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section shall be exercised by the company in general meeting and shall not require to be confirmed by the Court.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

94A. Share capital to stand increased where an order is made under section 81(4). (1) Notwithstanding anything contained in this Act, where the Central Government has, by an order made under sub-section (4) of section 81, directed that any debenture or loan or any part thereof shall be converted into shares in a company, the conditions contained in the memorandum of such company shall, where such order has the effect of increasing the nominal share capital of the company, stand altered and the nominal share capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

(2) Where, in pursuance of an option attached to debentures issued or loans raised by the company, any public financial institution proposes to convert such debentures or loans into shares in the company, the Central Government may, on the application of such public financial institution, direct that the conditions contained in the memorandum of such company shall stand altered and the nominal share capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

(3) Where the memorandum of a company becomes altered, whether by reason of an order made by the Central Government under sub-section

(4) of section 81 or sub-section (2) of this section, the Central Government shall send a copy of such order to the Registrar and also to the company and on receipt of such order, the company shall file in the prescribed form, within thirty days from the date of such receipt, a return to the Registrar with regard to the increase of share capital and the Registrar shall, on receipt of such order and return, carry out the unnecessary alterations in the memorandum of the company.

95. Notice to Registrar of consolidation of share capital conversion of shares into stock, etc. (1) If a company having a share capital has- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; (b) converted any shares into stock; (c) re-converted any stock into shares; (d) sub-divided its shares or any of them; (e) redeemed any redeemable preference shares; or (f) cancelled any shares, otherwise than in connection with a reduction of share capital under sections 100 to 104; the company shall within 1 [thirty days] after doing so give notice thereof to the Registrar specifying, as the case may be, the shares, consolidated, divided, converted, sub-divided, redeemed or cancelled, or the stock reconverted.

(2) The Registrar shall thereupon record the notice, and make any alterations which may be necessary in the company's memorandum or articles or both.

(3) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

96. Effect of conversion of shares into stock. Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the Registrar, all the provisions of this Act which are applicable

to shares only, shall cease to apply as to so much of the share capital as is converted into stock.

97. Notice of increase of share capital or of members. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the authorised capital, and where a company, not being a company limited by shares, has increased the number of its members beyond the registered number, it shall file with the Registrar, notice of the increase of capital or of members within 2[thirty] days after the passing of the resolution authorising the increase; and the Registrar shall record the increase and also make any alterations which may be necessary in the company's memorandum or articles or both.

(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 have been or are to be issued.

(3) If default is made in complying with this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

98. Power of unlimited company to provide for reserve share capital on re-registration. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely :- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up; (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the 125 event and for the purposes of the company being wound up.

99. Reserve liability of limited company. A limited company may, by special resolution, determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in that event and for those purposes. Reduction of Share Capital

108. Transfer not to be registered except on production of instrument of transfer. (1) A company shall not register a transfer of shares in, or debentures of, the company, unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company along with the certificate relating to the shares or debentures, or if no such certificate is in existence, along with the letter of allotment of the shares or debentures: Provided that where, on an application in writing made to the company by the transferee and bearing the stamp required for an instrument of transfer, it is proved to the satisfaction of the Board of directors that the instrument of transfer signed by or on behalf of the transferor and by or on behalf of the transferee has been lost, the company may register the transfer on such terms as to indemnity as the Board may think fit: Provided further that nothing in this section shall prejudice any power of the company to register as shareholder 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. 2[3[(1A) Every instrument of transfer of shares shall be in such form as

may be prescribed, and- (a) every such form shall, before it is signed by or on behalf of the transferor and before any entry is made therein, be presented to the prescribed authority, being a person already in the service of the Government, who shall stamp or otherwise endorse thereon the date on which it is so presented, and (b) every instrument of transfer in the prescribed form with the date of such presentation stamped or otherwise endorsed thereon shall, after it is executed by or on behalf of the transferor and the transferee and completed in all other respects, be delivered to the company,- (i) in the case of shares dealt in or quoted on a recognised stock exchange, at any time before the date on which the register of members is closed, in accordance with law, for the first time after the date of the presentation of the prescribed form to the prescribed authority under clause (a) or within 1[twelve months] from the date of such presentation, whichever is latter; (ii) in any other case, within two months from the date of such presentation. (1B) Notwithstanding anything contained in sub-section (1A),-an instrument of transfer of shares, executed before the commencement of section 13 of the Companies (Amendment) Act, 1965, or executed after such commencement in a form other than the prescribed form, shall be accepted by a company,- (a) in the case of shares dealt in or quoted on a recognised stock exchange, at any time not later than the expiry of six months from such commencement or the date on which the register of members is closed, in accordance with law, for the first time after such commencement, whichever is later; (b) in any other case, at any time not later than the expiry of six months from such commencement. (1C) Nothing contained in sub-sections (1A) and (1B) shall apply to- (A) any share- (i) which is held by a company in any other body corporate in the name of a director or nominee in pursuance of sub-section

(2), or as the case may be, sub-section(3), of section 49, or (ii) which is held by a corporation, owned or controlled by the Central Government or a State Government, in any other body corporate in the name of a director or nominee, or (iii) in respect of which a declaration has been made to the Public Trustee under section 153B, if-

(1) the company or corporation, as the case may be, stamps or otherwise endorses, on the form of transfer in respect of such share, the date on which it decides that such share shall not be held in the name of the said director or nominee or, as the case may be, in the case of any share in respect of which any such declaration has been made to the Public Trustee, the Public Trustee stamps or otherwise endorses, on the form of transfer in respect of such share under his seal, the date on which the form is presented to him, and

(2) the instrument of transfer in such form, duly completed in all respects, is delivered to the- (a) body corporate in, whose share such company or corporation has made investment in the name of its director or nominee, or (b) company in which such share is held in trust, within two months of the date so stamped or otherwise endorsed ; or (B) any share deposited by any person with- (i) the State Bank of India, or (ii) any scheduled bank, or (iii) any banking company (other than a scheduled bank) or financial institution approved by the Central Government by notification in the Official Gazette (and any such approval may be accorded so as to be retrospective to any date not earlier than the 1st day of April, 1966), or (iv) the Central Government or a State Government or any corporation owned or controlled by the Central Government or a State Government, by way of security for the repayment of any loan or advance to, or for the performance of any obligation undertaken by, such person, if-

(1) the bank, institution, Government or corporation, as the case may be, stamps or otherwise endorses on the form of transfer of such share- (a)the date on which such share is returned by it to the depositor, or 130c (b)in the case of failure on the part of the depositor to repay the loan or advance or to perform the obligation, the date on which such share is released for sale by such bank. institution, Government or corporation, as the case may be, or (c)where the bank, institution, Government or corporation, as the case may be, intends to get such share registered in its own name, the date on which the instrument of transfer relating to such share is executed by it; and

(2)the instrument of transfer in such form, duly completed in all respects, is delivered to the company within two months from the date so stamped or endorsed. Explanation.-Where any investment by a company or a corporation in the name of its director or nominee referred to in clause (A) (i) or clause (A) (ii), or any declaration referred to in clause (A) (iii), or any deposit referred to in clause (B), of this sub-section is made after the expiry of the period or date mentioned in clause (a) of sub-section (1B) or after the expiry of the period mentioned in clause (b) of that sub-section, as the case may be, the form of transfer, in respect of the share which is the subject of such investment, declaration or deposit, means the prescribed form; or (C) any share which is held in any company by the Central Government or a State Government in the name of its nominee, except that every instrument of transfer which is executed on or after the 1st day of October, 1966, in respect of any such share shall be in the prescribed form.] (1D) Notwithstanding anything in sub-section (1A) or sub-section (1B) 1[or sub-section (1C)], where in the opinion of the Central Government it is necessary so to do to avoid hardship in any case, that Government may on an application made to it in that behalf, extend the periods mentioned in those sub-sections by such further time as it may deem fit whether such application is made before or after the expiry of the periods aforesaid]; and the number of extensions granted hereunder and the period of each such extension shall be shown in the annual report laid before the Houses of Parliament under section 638.

(2) In the case of a company having no share capital, sub-section (1) shall apply as if the references therein to shares were references instead to the interest of the member in the company.

(3) Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository

108A. Restriction on acquisition of certain shares.(1) Except with the previous approval of the Central Government, no individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management, shall jointly or severally acquire or agree to acquire, whether in his or its own name or in the name of any other person, any equity shares in a public company, or a private company which is a subsidiary of a public company, if the total nominal value of the equity shares intended to be so acquired exceeds, or would, together with the total nominal value of any equity shares already held in the company by such individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management, exceed twenty-five per cent. of the paid-up equity share capital of such company.

(2) Where any individual, firm, group constituent of a group, body corporate or bodies corporate under the same management (hereafter in this Act referred to as the acquirer), is prohibited, by sub-section



(1), from acquiring or agreeing to acquire except with the previous approval of the Central Government, any share of a public company or a private company which is a subsidiary of the company, no- (a) company in which not less than fifty-one per cent of the share capital is held by the Central Government; or (b) corporation (not being a company) established by or under any Central Act; or (c) financial institution, shall transfer or agree to transfer any share to such acquirer unless such acquirer has obtained the previous approval of the Central Government for the acquisition, or agreement for the acquisition, of such share.

108B. Restriction on transfer of shares. (1) Every body corporate or bodies corporate under the same management, holding, whether singly or in the aggregate, ten per cent. or more of the nominal value of the subscribed equity share capital of any other company shall, before transferring one or more of such shares, give to the Central Government an intimation of its or their proposal to transfer such share, and every such intimation shall include a statement as to the particulars of the share proposed to be transferred, the name and address of the person to whom the share is proposed to be transferred, the share holding, if any, of the proposed transferee in the concerned company and such other particulars as may be prescribed.

(2) Where, on receipt of an intimation given under sub-section

(1) or otherwise, the Central Government is satisfied that as a result of such transfer, a change in the composition of the Board of directors of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, it may, by order, direct that- (a) no such share shall be transferred to the proposed transferee: Provided that no such order shall preclude the body corporate or bodies corporate from intimating in accordance

with the provisions of sub-section (1), to the Central Government its or their proposal to transfer the share to any other person, or (b) where such share is held in a company engaged in any industry specified in Schedule XV, such share shall be transferred to the Central Government or to such corporation owned or controlled by that Government as may be specified in the direction.

(3) Where a direction is made by the Central Government under

clause (b) of sub-section (2), the share referred to in such direction shall stand transferred to the Central Government or to the Corporation specified therein, and the Central Government or the specified corporation, as the case may be, shall pay, in cash, to the body corporate or bodies corporate from which such share stands transferred, an amount equal to the market value of such share, within the time specified in sub-section (4). Explanation.--In this sub-section, "market value" means, in the case of a share which is quoted on any recognised stock exchange, value quoted at such stock exchange on the date immediately preceding the date on which the direction is made, and, in any other case, such value as may be mutually agreed upon between the holder of the share and the Central Government or the specified corporation, as the case may be, or in the absence of such agreement, as may be determined by the court.

(4) The market value referred to in sub-section (3) shall be given forthwith, where there is no dispute as to such value or where such value has been mutually agreed upon, but where there is a dispute as to the market value, such value as is estimated by the Central Government or the corporation, as the case

may be, shall be given forthwith and the balance, if any, shall be given within thirty days from the date when the market value is determined by the court.

(5) If the Central Government does not make any direction under sub-section (2) within sixty days from the date of receipt by it of the intimation given under sub-section (1), the provisions contained in sub-section (2) with regard to the transfer of such share shall not apply.

108C. Restriction on the transfer of shares of foreign companies. No body corporate or bodies corporate under the same management, which holds, or hold in the aggregate, ten per cent. or more of the nominal value of the equity share capital of a foreign company, having an established place of business in India, shall transfer any share in such foreign company to any citizen of India or any body corporate incorporated in India except with the previous approval of the Central Government and such previous approval shall not be refused unless the Central Government is of opinion that such transfer would be prejudicial to the public interest.

108D. Power of Central Government to direct companies not to give effect to the transfer. (1) Where the Central Government is satisfied that as a result of the transfer of any share or block of shares of a company, a change in the controlling interest of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, that Government may direct the company not to give effect to the transfer of any such share or block of shares and- (a) where the transfer of such share or block of shares has already been registered, not to permit the transferee or any nominee or proxy of the transferee, to exercise any voting or other rights attaching to such share or block of shares; and (b) where the transfer of such share or block of shares has not been registered, not to permit any nominee or proxy of the transferor to exercise any voting or other rights attaching to such share or block of shares.

(2) Where any direction is given by the Central Government under sub-section (1), the share or the block of shares referred to therein shall stand retransferred to the person from whom it was acquired, and thereupon the amount paid by the transferee for the acquisition of such share or block of shares shall be refunded to him by the person to whom such share or block of shares stands or stand retransferred.

(3) If the refund referred to in sub-section (2) is not made within the period of thirty days from the date of the direction referred to in sub-section (1), the Central Government shall, on the application of the person entitled to get the refund, direct, by order, the refund of such amount and such order may be enforced as if it were a decree made by a civil court.

(4) The person to whom any share or block of shares stands or stand retransferred under sub-section (2) shall, on making refund under sub-section (2) or sub-section (3), be eligible to exercise voting or other rights attaching to such share or block of shares.

108E. Time within which refusal to be communicated. Every request made to the Central Government for according its approval to the proposal for the acquisition of any share referred to in section 108A or the transfer of any share referred to in section 108C shall be presumed to have been granted unless, within a period of sixty days from the date of receipt of such request, the

Central Government communicates to the person by whom the request was made, that the approval prayed for cannot be granted.

108F. Nothing in sections 108A to 108D to apply to Government companies, etc. Nothing contained in section 108A [except sub-section (2) thereof] shall apply to the transfer of any share to, and nothing in section 108B or section 108C or section 108D shall apply to the transfer of any share by- (a) any company in which not less than fifty-one per cent. of the share capital is held by the Central Government; (b) any corporation (not being a company) established by or under any Central Act; (c) any financial institution.

108G. Applicability of the provisions of sections 108A to 108F. The provisions of sections 108A to 108F (both inclusive) shall apply to the acquisition or transfer of shares or share capital by, or to, an individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management, who or which- (a) is, in case of acquisition of shares or share capital, the owner in relation to a dominant undertaking and there would be, as a result of such acquisition, any increase- (i) in the production, supply, distribution or control of any goods that are produced, supplied, distributed or controlled in India or any substantial part thereof by that dominant undertaking, or (ii) in the provision or control of any services that are rendered in India or any substantial part thereof by that dominant undertaking; or (b) would be, as a result of such acquisition or transfer of shares or share capital, the owner of a dominant undertaking; or (c) is, in case of ,transfer of shares or share capital, the owner in relations to a dominant undertaking. 108H Penalty for acquisition or transfer of share in contravention of sections 108A to 108D. 108H. Construction of certain expressions used in sections 108A to 108G. The expressions "group", "same management", "financial institution", "dominant undertaking" and "owner" used in sections 108A to 108G (both inclusive), shall have the meanings respectively assigned to them in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969). 3[108-I. Penalty for acquisition or transfer of share in contravention of sections 108A to 108D. (1) Any person who acquires any share in contravention of the provisions of section 108A shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(2) (a) Every body corporate which makes any transfer of shares without giving any intimation is required by section 108B, shall be punishable with fine which may extend to five thousand rupees. (b) Where any contravention of the provisions of section 108B has been made by a company, every officer of the company. who in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(3) (a) Every body corporate which makes any transfer of shares in contravention of the provisions of section 108C, shall be punishable with fine which may extend to five thousand rupees. (b) Where any contravention of the provisions of section 108C has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(4) (a) Every person who transfers any share in contravention of any order made by the Central Government under section 108B, or gives effect to any transfer of shares made in contravention of any direction made by the Central Government under section 108D, or who exercises any voting right in respect

of any share in contravention of any direction made by the Central Government under section 108D, shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine. (b) If any company gives effect to any voting or other right exercised in relation to any share acquired in contravention of the provisions of section 108B, or which gives effect to any voting right in contravention of any direction made by the Central Government under section 108D the company shall be punishable with fine which may extend to five thousand rupees, and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

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

110. Application for transfer. (1) An application for the registration of a transfer of the shares or other interest of a member in a company may be made either by the transferor or by the transferee.

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

(3) For the purposes of sub-section (2), notice to the transferee shall be deemed to have been duly given if it is despatched by pre-paid registered post to the transferee at the address given in the instrument of transfer and shall be deemed to have been duly delivered at the time at which it would have been delivered in the ordinary course of post.

111. Power to refuse registration and appeal against refusal. (1) If a company refuses, whether in pursuance of any power of the company under its articles or otherwise, to register, the transfer of, or the transmission by operation of law of the right to, any shares or interest of a member in, or debentures of, the company, it shall, within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the Company Law Board against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in subsection (1), either to register the transfer or transmission or to send notice of its refusal to register the same.

(3) An appeal under sub-section (2) shall be made within two months of the receipt of the notice of such refusal or, where no notice has been sent by the company, within four months from the date on which the instrument of transfer, or the intimation of transmission, as the case may be, was delivered to the company.

(4) If- (a) the name of any person- (i) is, without sufficient cause, entered in the register of members of a company, or (ii) after having been entered in the

register, is, without sufficient cause, omitted therefrom; or (b) default is made, or unnecessary delay takes place, in entering in the register the fact of any person having become, or ceased to be, a member [including a refusal under sub-section (1)], the person aggrieved, or any member of the company, or the company, may apply to the Company Law Board for rectification of the register.

(5) The Company Law Board, while dealing with an appeal preferred under sub-section (2) or an application made under sub-section (4) may, after hearing the parties, either dismiss the appeal or reject the application, or by order- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within ten days of the receipt of the order; or (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6) The Company Law Board, while acting under sub-section (5), may, at its discretion make- (a) such interim orders, including any orders as to injunction or stay, as it may deem fit and just; (b) such orders as to costs as it thinks fit; and (c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

(7) On any application under this section, the Company Law Board- (a) may decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register; (b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(8) The provisions of sub-sections (4) to (7) shall apply in relation to the rectification of the register of debenture-holders as they apply in relation to the rectification of the register of members.

(9) If default is made in giving effect to the orders of the Company Law Board under this section, the company and every officer of the company who is in default shall be punishable with fine which may extend to one thousand rupees, and with a further fine which may extend to one hundred rupees for every day after the first day after which the default continues.

(10) Every appeal or application to the Company Law Board under sub-section (2) or sub-section (4) shall be made by a petition in writing and shall be accompanied by such fee as may be prescribed.

(11) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interest of a member in, or debentures of, the company is transmitted by a sale thereof held by a court or other public authority, the provisions of sub-sections (4) to (7) shall apply as if the company were a public company: Provided that the Company Law Board may, in lieu of an order under sub-section (5), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid within such time as may, be allowed for the purpose by the order, on payment to the purchaser of the price paid by him therefore or such other sum as the Company Law Board may determine to be a reasonable compensation for the right in all the circumstances of the case.

(12) If default is made in complying with any of the provisions of this section, the company and every officer of the company who is in default, shall be

punishable with fine which may extend to fifty rupees for every day during which the default continues.

(13) Nothing in this section and section 108, 109 or 110 shall prejudice any power of a private company under its articles to enforce the restrictions contained therein against the right to transfer the shares of such company.

(14) In this section "company" means a private company and includes a private company which had become a public company by virtue of section 43A of this Act

111A. Rectification of register of transfer. (1) In this section, unless the context otherwise requires, "company" means a company other than a company referred to in sub-section (14) of section 111 of this Act.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable.

(3) The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of transmission was delivered to the company, as the case may be, after such enquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992), or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 .

(4) The Company Law Board while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 111 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section

112. Certification of transfers. (1) The certification by a company of any instrument of transfer of shares in, or debentures of, the company, shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a prima facie title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

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

(3) For the purposes of this section- (a) an instrument of transfer shall be deemed to be certificated if it bears the words " certificate lodged " or words to the like effect ; (b) the certification of an instrument of transfer shall be deemed to be made by a company, if- (i) the person issuing the certificated instrument is a person authorised to issue such instruments of transfer on the company's behalf ; and (ii) the certification is signed by any officer or servant of the company or any other person, authorised to certificate transfers on the company's behalf, or if a body corporate has been so authorised, by any officer or servant of that body corporate; (c) a certification shall be deemed to be signed by any person, if it purports to be authenticated by his signature unless it is shown that the signature was placed there neither by himself nor by any person authorised to use the signature for the purpose of certificating transfers on the company's behalf.

## PART VI MANAGEMENT AND ADMINISTRATION CHAP GENERAL PROVISIONS CHAPTER I.-GENERAL PROVISIONS Registered Office and Name

146. Registered office of company. (1) A company shall, as from the day on which it begins to carry on business, or as from the 1 [thirtieth] day after the date of its incorporation, whichever is 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 every change there in, shall be given within 2 [thirty] days after the date of the incorporation of the company or after the date of the change, as the case may be, to the Registrar who shall record the same: Provided that except on the authority of a special resolution passed by the company, the registered office of the company shall not be removed- (a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act, or where it may be situated later by virtue of a special resolution passed by the company; and (b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated, or where it may be situated later by virtue of a special resolution passed by the company.

(3) The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by sub-section (2).

(4) If default is made in complying with the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

147. Publication of name by Company. (1) Every company- (a) shall paint or affix its name and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible; and if the characters employed therefore are not those of the language, or of one of the languages, in general use in that locality, also in the characters of that language or of one of those languages; (b) shall have its name engraven in legible

characters on its seal ; and (c) shall have its name and the address of its registered office mentioned in legible characters in all its business letters, in all its bill heads and letter paper, and in all its notices, and other official publications; and also have its name so mentioned in all bills of exchange, hundies, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

(2) If a company does not paint or affix its name and the address of its registered office, or keep the same painted or affixed

in the manner directed by clause (a) of sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for not so painting or affixing its name 1[and the address of its registered office, and for every day during which its name 1[and the address of its registered office, is not so kept painted or affixed.

(3) If a company fails to comply with clause (b) or clause (c) of sub-section (1), the company shall be punishable with fine which may extend to five hundred rupees.

(4) If an officer of a company or any person on its behalf- (a) uses, or authorises the use of, any seal purporting to be a seal of the company whereon its name is not engraved in the manner, aforesaid; (b) issues, or authorises the issue of, any business letter, bill, head, letter paper, notice or other official publication of the company wherein its name and the address of its registered office are] not mentioned in the manner aforesaid; (c) signs, or authorises to be signed, on behalf of the company, any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in the manner aforesaid; or (d) issues, or authorises the issue of, any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in the manner aforesaid; such officer or person shall be punishable with fine which may extend to five hundred rupees, and shall further be personally liable to the holder of the bill of exchange, hundi, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

148. Publication of authorised as well as subscribed and paid-up capital. (1) Where any notice, advertisement or other official publication, or any business letter, bill head or letter paper, of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letter, bill head or letter paper, shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid up.

(2) If default is made in complying with the requirements of subsection (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees. Restrictions on Commencement of Business

149. Restrictions on commencement of business. (1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless- (a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole



than the minimum subscription; (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; (c) no money is, or may become, liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for, or to obtain, permission for the shares or debentures to be dealt in on any recognized stock exchange ; and (d) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole-time practice in the prescribed form, that clauses (a), (b) and (c) of this sub-section, have been complied with.

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless- (a) there has been filed with the Registrar a statement in lieu of prospectus ; (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and (c) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole-time practice] in the prescribed form, that clause (b) of this sub-section has been complied with.

(2A) Without prejudice to the provisions of sub-section (1) and sub-section (2) a company having a share capital, whether or not it has issued a prospectus inviting the public to subscribe for its shares, shall not at any time commence any business- (a) if such company is a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965 (31 of 1965), in relation to any of the objects stated in its memorandum in pursuance of clause (c) of sub-section (1) of section 13 ; (b) if such company is a company formed after such commencement, in relation to any of the objects stated in its memorandum in pursuance of sub-clause (ii) of clause (d) of sub-section (1) of the said section unless- (i) the company has approved of the commencement of any such business by a special resolution passed in that behalf by it in general meeting; and (ii) there has been filed with the Registrar a duly verified declaration by 1[one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole-time practice],in the prescribed form, that clause (i) or as the case may be, sub-section (2B) has been complied with; and if the company commences any such business in contravention of this sub-section, every person who is responsible for the contravention shall, without prejudice to any other liability, be punishable with fine which may extend to five hundred rupees for every day during which the contravention continues.

Explanation.-A company shall be deemed to commence any business within the meaning of clause (a) if and only if it commences any new business which is not germane to the business which it is carrying on at the commencement of the Companies (Amendment) Act, 1965 (31 of 1965), in relation to any of the objects referred to in the said clause. (2B) notwithstanding anything contained in sub-section (2A) where no such special resolution as is referred to in that sub-section is passed but the votes cast (whether on a show of hands or, as the case may be, on a poll) in favour of the proposal to commence any business contained in the resolution moved in that general meeting (including the casting

vote, if any, of the chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the proposal by members so entitled and voting, the Central Government may on an application made to it by the Board of directors in this behalf allow the company to commence such business as if the proposal had been passed by a special resolution by the company in general meeting.

(3) The Registrar shall, on the filing of a duly verified declaration in accordance with the provisions of sub-section (1) or sub-section (2), as the case may be, and, in the case of a company which is required by sub-section (2) to file a statement in lieu of prospectus, also of 'such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on applications for debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be punishable with fine which may extend to five hundred rupees for every day during which the contravention continues.

(7) Nothing in this section shall apply to- (a) a private company; or (b) a company registered before the first day of April, 1914, which has not issued a prospectus inviting the public to subscribe for its shares.

150. Register of members. (1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars:- (a) the name and address, and the occupation, if any, of each member; (b) in the case of a company having a share capital, the shares held by each member, 2\* \* \* and the amount paid or agreed to be considered as paid on those shares; (c) the date at which each person was entered in the register as a member; and (d) the date at which any person ceased to be a member: Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each of the members concerned instead of the shares so converted which were previously held by him.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

151. Index of members. (1) Every company having more than fifty members shall, unless the register of members is in such a form as in itself to constitute an index, keep an index (which may be in the form of a card 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 the necessary alteration in the index.

(2) The index shall, in respect of each member, contain a sufficient indication to enable the entries relating to that member in the register to be readily found.

(3) The index shall, at all times, be kept at the same place as the register of members.

(4) If default is made in complying with sub-section (1), (2) or

(3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

152. Register and index of debenture holders. (1) Every company shall keep in one or more books a register of the holders of its debentures and enter therein the following particulars, namely: - (a) the name and address, and the occupation, if any, of each debenture holder ; (b) the debentures held by each holder, and the amount paid or agreed to be considered as paid on those debentures; (c) the date at which each person was entered in the register as a debenture holder ; and (d) the date at which any person ceased to be a debenture holder.

(2) (a) Every company having more than fifty debenture holders shall, unless the register of debenture holders is in such a form as in itself to constitute an index, keep an index (which may be in the form of a card index) of the names of the debenture holders of the company and shall, within fourteen days after the date on which any alteration is made in the register of debenture holders, make the necessary alteration in the index. (b) The index shall, in respect of each debenture holder, contain a sufficient indication to enable the entries relating to that holder in the register to be readily found.

(3) If default is made in complying with sub-section (1) or (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

(4) Sub-sections (1) to (3) shall not apply with respect to debentures which, ex facie, are payable to the bearer thereof.

152A. Register and index of beneficial owners. The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be an index of members and register and index of debenture holders, as the case may be, for the purposes of this Act.

153. Trusts not to be entered on register. No notice of any trust, express, implied or constructive, shall be entered on the register of members or of debenture holders

153A. Appointment of public trustee. The Central Government may, by notification in the Official Gazette, appoint a person as public trustee to discharge the functions and to exercise the rights and powers conferred on him by or under this Act. 153B Declaration as to shares and debentures held in trust.

153B. Declaration as to shares and debentures held in trust. (1) Notwithstanding anything contained in section 153, where any shares in, or debentures of, a company are held in trust by any person (hereinafter referred to as the trustee), the trustee shall, within such time and in such form as may be prescribed, make a declaration to the public trustee.

(2) A copy of the declaration made under sub-section (1) shall be sent by the trustee to the company concerned, within twenty-one days, after the declaration has been sent to the public trustee.

(3) (a) If a trustee fails to make a declaration as required by this section, he shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing failure, with a further fine which may extend to one hundred rupees for every day during which the failure continues. (b) If a trustee makes in a declaration aforesaid any statement which is false and which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to two years and also with fine.

(4) The provisions of this section and section 187B shall not apply in relation to a trust- (a) where the trust is not created by instrument in writing; or (b) even if the trust is created by instrument in writing, 4[where the value of the shares in, or debentures of, a company held in trust- (i) does not exceed one lakh of rupees, or (ii) exceeds one lakh of rupees but does not exceed either five lakhs of rupees or twenty-five per cent. the paid-up share capital of the company, whichever is less.

Explanation.-The expression " the value of the shares in, or debentures of, a company " in clause (b) means,- (i) in the case of shares or debentures acquired by way of allotment or transfer for consideration, the cost of acquisition thereof, and (ii) in any other case, the paid-up value of the shares or debentures.

154. Power to close register of members of debenture holders. (1) A company may, after giving not less than seven days' previous notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members or the register of debenture holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time.

(2) If the register of members or of debenture holders is closed without giving the notice provided in sub-section (1), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the register is so closed.

157. Power for company to keep foreign register of members of debenture holders. (1) A company which has a share capital or which has issued debentures may, if so authorised by its articles, keep in any State or country outside India a branch register of members or debenture holders resident in that State or country (in this Act called a " foreign register ").

(2) The company shall, within 1[thirty days] from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office where such register is kept ; and in the event of any change in the situation of such office or of its discontinuance, shall, within 1[thirty days] from the date of such change or discontinuance, as the case may be, file notice with the Registrar of such change or discontinuance.

(3) If default is made in complying with the requirements of sub-section (2), the company, and every officer of the company who is in default, shall be

punishable with fine which may extend to fifty rupees for every day during which the default continues.

158. Provisions as to foreign registers. (1) A foreign register shall be deemed to be part of the company's register (in this section called the " principal register ") of members or of debenture holders, as the case may be.

(2) A foreign register shall be kept, shall be open to inspection and may be closed, and extracts may be taken therefrom and copies thereof may be required, in the same manner, mutatis mutandis, as is applicable to the principal register under this Act, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the foreign register is kept.

(3) (a) The Central Government may, by notification in the Official Gazette, direct that the provisions of clause (b) shall apply, or cease to apply, to foreign registers kept in any State or country outside India. (b) If a foreign register is kept by a company in any State or country to which a direction under clause (a) applies for the time being, the decision of any competent Court in that State or country in regard to the rectification of the register shall have the same force and effect as if it were the decision of a competent Court in India

(4) The company shall- (a) transmit to its registered office in India a copy of every entry in any foreign register as soon as may be after the entry is made ; and (b) keep at such office a duplicate of every foreign register duly entered up from time to time.

(5) Every such duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(6) Subject to the provisions of this section with respect to duplicate registers, the shares or debentures registered in any foreign register shall be distinguished from the shares or debentures registered in the principal register and in every other foreign register and no transaction with respect to any shares or debentures registered in a foreign register shall, during the continuance of that registration, be registered in any other register.

(7) The company may discontinue the keeping of any foreign register; and thereupon all entries in that register shall be transferred to some other foreign register kept by the company in the same part of the world or to the principal register.

(8) Subject to the provisions of this Act, a company may, by its articles, make such regulations as it thinks fit in regard to its foreign registers.

(9) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default shall be punishable with fine which may extend to fifty rupees..

159. Annual return to be made by company having a share capital. (1) Every company having a share capital shall, within sixty days from the day on which each of the annual general meetings referred to in section 166 is held, prepare and file with the Registrar a return containing the particulars specified in Part I of Schedule V, as they stood on that day, regarding- (a) its registered office, (b) the register of its members, (c) the register of its debenture holders, (d) its shares and debentures, (e) its indebtedness (f) its members and debenture

holders, past and present, and (g) its directors, managing directors, managing agents, secretaries and treasurers, 1 [managers and secretaries], past and present : 2 [Provided that if 3 [any of the five] immediately preceding returns has given as at the date of the annual general meeting with reference to which it was submitted, the full particulars required as to past and present members and the shares held and transferred by them, the return in question may contain only such of the particulars as relate to persons ceasing to be or becoming members since that date and to shares transferred since that date or to changes as compared with that date in the number of shares held by a member.

Explanation.-Any reference in this section or in section 160 or 161 or in any other section or in Schedule V to the day on which an annual general meeting is held or to the date of the annual general meeting shall, where the annual general meeting for any year has not been held, be construed as a reference to the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.

(2) The said return shall be in the Form set out in Part II of Schedule V or as near thereto as circumstances admit 2 [and where the return is filed even though the annual general meeting has not been held on or before the latest day by which it should have been held in with the return a statement specifying the reasons for not holding the annual general meeting]: (c) the conditions subject to which any manufacturing into stock and given notice of the conversion to the Registrar. the list referred to in paragraph 5 of Part I of Schedule V shall state the amount of stock held by each of the members concerned instead of the shares so converted previously held by him.

160. Annual return to be made by company not having a share capital. (1) Every company not having a share capital shall, within under section 65. Meetings referred to in section 166 is held, prepare and file with the Registrar a return stating the following particulars as they stood on that day: - (a) the address of the registered office of the company; 1 [(aa) the names of members and the respective dates on which they became members and the names of persons who ceased to be members since the date of the annual general meeting of the immediately preceding year, and the dates on which they so ceased;] (b) all such particulars with respect to the persons who, at the date of the return, were the directors of the company, its managing agent, its secretaries and treasurers, its manager and its secretary as are set out in section 303.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company as on the day aforesaid in respect of all charges which are or were required to be registered with the Registrar under this Act or under any previous companies law, or which would have been required to be registered under this Act if they had been created after the com- mencement of this Act.

161. Further provisions regarding annual return and certificate to be annexed thereto. (1) The copy of the annual return filed with the Registrar under section 159 or 160, as the case may be, shall be signed both by a director and by the manager or secretary of the company, or where there is no managing agent, secretaries and treasurers, manager or secretary, by two directors of the company, one of whom shall be the managing director where there is one: Provided that where the annual return is filed by a company whose shares are listed on a recognised stock exchange, the copy of such annual return shall also be signed by a secretary in whole-time practice.

(2) There shall also be filed with the Registrar along with the return a certificate signed by the signatories of the return, stating-- (a) that the return states the facts as they stood on the day of the annual general meeting aforesaid, correctly and completely ; (aa) that since the date of the last annual return the transfer of all shares and debentures and the issue of all further certificates of shares and debentures have been appropriately recorded in the books maintained for the purpose; and (b) in the case of a private company also, (i) that the company has not, since the date of the annual general meeting with reference to which the last return was submitted, 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 (ii) that, where the annual return discloses the fact that the number of members of the company exceeds fifty, the excess consists wholly of persons who under sub-clause (b) of clause (iii) of sub-section. (1) of section 3 are not to be included in reckoning the number of fifty.

162. Penalty and interpretation. (1) If a company fails to comply with any of the provisions contained in section 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(2) For the purposes of this section and sections 159, 160, and 161, the expressions " officer " and " director " shall include any person in accordance with whose directions or instructions the Board of directors of the Company is accustomed to act. General provisions regarding registers and returns

163. Place of keeping, and inspection of, registers and returns. (1) The register of members commencing from the date of the registration of the company, the index of members, the register and index of debenture holders, and copies of all annual returns prepared under sections 159 and 160, together with the copies of certificates and documents required to be annexed thereto under sections 160 and 161, shall be kept at the registered office of the company: 1[Provided that such registers, indexes, returns and copies of certificates and documents or any or more of them may, instead of being kept at the registered office of the company, be kept at any other place within the city, town or village in which the registered office is situate, if-- (i) such other place has been approved for this purpose by a special resolution passed by the company in general meeting, (iii) the Registrar has been given in advance a copy of the proposed special resolution.

(1A) Notwithstanding anything contained in sub-section (1), the Central Government may make rules for the preservation and for the disposal, whether by destruction or otherwise, of the registers, indexes, returns, and copies of certificates and other documents referred to in sub-section (1).

(2) The registers, indexes, returns, and copies of certificates and other documents referred to in sub-section (1) shall, except when the register of members or debenture holders is closed under the provisions of this Act, be open during business hours (subject to such reasonable restrictions, as the company may impose, so that not less than two hours in each day are allowed for inspection) to the inspection-- (a) of any member or debenture holder, without fee; and (b) of any other person, on payment of 1[such sum as may be prescribed] each inspection.

(3) Any such member, debenture holder or other person may- (a) make extracts from any register, index, or copy referred to in sub-section (1) without fee or

additional fee, as the case may be ; or (b) require a copy of any such register, index or copy or of any part thereof, on payment of such sum as may be prescribed for every one hundred words or fractional part thereof required to be copied.

(4) The company shall cause any copy required by any person under clause (b) of sub-section (3) to be sent to that person within a period of ten days, exclusive of non-working days, commencing on the day next after the day on which the requirement is received by the company.

(5) If any inspection, or the making of any extract required under this section, is refused, or if any copy required under this section is not sent within the period specified in sub-section (4), the company, and every officer of the company who is in default, shall be punishable, in respect of each offence, with fine which may extend to fifty rupees for every day during which the refusal of default continues.

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

164.Registers, etc., to be evidence. The register of members, the register of debenture holders, and the annual returns, certificates and statements referred to in sections 159, 160 and 161 shall be prima facie evidence of any matters directed or authorised to be inserted therein by this Act. Meetings and Proceedings

165.Statutory meeting and statutory report of company. (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 Board of 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 ") to every member of the company: Provided that if the statutory report is forwarded later than is required above, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed to by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall set out- (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 ; (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 there out, 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 there out, 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 or to be paid on the issue or sale of shares or debentures ; (d) the names, addresses and occupations of the directors of the company and of its auditors ; and also, if there be any, of its managing



agent, secretaries and treasurers, manager, and secretary; and the changes, if any which 165 have occurred in such names, addresses and occupations since the date of the incorporation of the company ; (e) the particulars of any contract which, or the modification or the proposed modification of which, is to submitted to the meeting for its approval, together in the latter case with the particulars of the modification or proposed modification ; (f) the extent, if any, to which each under-writing contract, if any, has not been carried out, and the reasons therefore ; (g) the arrears, if any, due on calls from every director ; from the managing agent, every partner of the managing agent, every firm in which the managing agent is a partner, and where the managing agent is a private company, every director thereof ; from the secretaries and treasurers ; where they are a firm, from every partner therein ; and where they are a private company, from every director thereof ; and from the manager, and (h) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director; to the managing agent, any partner of the managing agent, any firm in which the managing agent is a partner; and where the managing agent is a private company, to any director thereof ; to the secretaries and treasurers ; where they are a firm, to any partner therein ; and where they are a private company, to any director thereof; or to the manager.

(4) The statutory report shall be certified as correct by not less than two directors of the company one of whom shall be a managing director, where there is one. After the statutory report has been certified as aforesaid, the auditors of the company shall, in so far as the report relates to the shares allotted by the company, the cash received in respect of such shares and the receipts and payments of the company 1\* \* \*, certify it as correct.

(5) The Board shall cause a copy of the statutory report certified as is required by this section to be delivered to the Registrar for registration forthwith, after copies thereof have been sent to the members of the company. The words " on capital account " omitted by Act 65 of 1960, s.166

(6) The Board shall cause a list showing the names, addresses and occupations of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the statutory 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 may be passed of which notice has not been given in accordance with the provisions of this Act.

(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 provisions of this Act, whether before or after the former meeting, may be passed ; and the adjourned meeting shall have the same powers as an original meeting.

(9) If default is made in complying with the provisions of this section, every director or other officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees.

(10) This section shall not apply to a private company.

166. Annual general meeting. (1) Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it ; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next: Provided that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation ; and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year: Provided further that the Registrar may, for any special reason, extend the time within which any annual general meeting (not being the first annual general meeting) shall be held, by a period not exceeding three months.

(2) Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday, and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate :

Provided that the Central Government may exempt any class of companies from the provisions of this sub-section subject to such conditions as it may impose: Provided further that- (a) a public company or a private company which is a subsidiary of a public company, may by its articles fix the time for its annual general meetings and may also by a resolution passed in one annual general meeting fix the time for its subsequent annual general meetings; and (b) a private company which is not a subsidiary of a public company, may in like manner and also by a resolution agreed to by all the members thereof, fix the times as well at the place for its annual general meeting.

167. Power of company Law Board to call annual general meeting. (1) If default is made in holding an annual general meeting in accordance with section 166, the Company Law Board may, notwithstanding anything in this Act or in the articles of the company, the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the [Company Law Board] thinks expedient in relation to the calling, holding and conducting of the meeting. Explanation.-The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Company Law Board be deemed to be an annual general meeting of the company.

168. Penalty for default in complying with section 166 or 167. If default is made in holding a meeting of the company in accordance with section 166, or in complying with any directions of the Central Government under sub-section (1) of section 167, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees [and in the case of a continuing default, with a further fine which may extend to two hundred and fifty rupees for every day after the first during which such default continues.

169. Calling of extraordinary general meeting on requisition. (1) The Board of directors of a company shall, on the requisition of such number of members of the company as is specified in sub-section (4), forthwith proceed duly to call an extraordinary general meeting of the company.

(2) The requisition shall set out the matters for the consideration of which the meeting is to be called, shall be signed by the requisitionists, and shall be deposited at the registered office of the company.

(3) The requisition may consist of several documents in like form, each signed by one or more requisitionists.

(4) The number of members entitled to requisition a meeting in regard to any matter shall be- (a) in the case of a company having a share capital, such number of them as hold at the date of the deposit of the requisition, not less than one-tenth of such of the paid-up capital of the company as at that date carries the right of voting in regard to that matter ; (b) in the case of a company not having a share capital, such number of them as have at the date of deposit of the requisition not less than one-tenth of the total voting power of all the members having at the said date a right to vote in regard to that matter.

(5) Where two or more distinct matters are specified in the requisition, the provisions of sub-section (4) shall apply separately in regard to each such matter; and the requisition shall accordingly be valid only in respect of those matters in regard to which the condition specified in that sub-section is fulfilled.

(6) If the Board does not, within twenty-one days from the date of the deposit of a valid requisition in regard to any matters, proceed duly to call a meeting for the consideration of those matters on a day not later than forty-five days from the date of the deposit of the requisition, the meeting may be called- (a) by the requisitionists themselves, (b) in the case of a company having a share capital, by such of the requisitionists as represent either a majority in value of the paid-up share capital held by all of them or 169 not less than one-tenth of such of the paid-up share capital of the company as is referred to in clause (a) of sub-section

(4), whichever is less ; or (c) in the case of a company not having a share capital, by such of the requisitionists as represent not less than one-tenth of the total voting power of all the members of the company referred to in clause (b) of sub-section (4). Explanation.-For the purposes of this sub-section, the Board shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by sub-section (2) of section 189.

(7) A meeting called under sub-section (6) by the requisitionists or any of them- (a) shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by the Board; but (b) shall not be held after the expiration of three months from the date of the deposit of the requisition. Explanation.-Nothing in clause (b) shall be deemed to prevent a meeting duly commenced before the expiry of the period of three months, aforesaid, from adjourning to some day after the expiry of that period.

(8) Where two or more persons hold any shares or interest in a company jointly, a requisition, or a notice calling a meeting, signed by one or some only of them shall, for the purposes of this section, have the same force and effect as if it had been signed by all of them.

(9) Any reasonable expenses incurred by the requisitionists by reason of the failure of the Board duly to call 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.

[198. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits. (1) The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company, to its directors and its managing agent, secretaries and treasurers or manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in sections 349, 350 and 351, except that the remuneration of the directors shall not be deducted from the gross profits : Provided that nothing in this section shall affect the operation of sections 352 to 354 and 356 to 360.

(2) The percentage aforesaid shall be exclusive of any fees payable to directors under sub-section (2) of section 309.

(3) Within the limits of the maximum remuneration specified in sub-section (1), a company may pay a monthly remuneration to its managing or whole-time director in accordance with the provisions of section 309 or to its manager in accordance with the provisions of section 387.

2[ (4) Notwithstanding anything contained in sub-sections (1) to (3), but subject to the provisions of section 269, read with Schedule XIII, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum [exclusive of any fees payable to directors under sub-section (2) of section 309], except with the previous approval of the Central Government

Explanation.-For the purposes of this section and sections 309, 310, 311, 348, 352, 381 and 387, "remuneration" shall include,- (a) any expenditure incurred by the company in providing any rent-free accommodation, or any other benefit or amenity in respect of accommodation free of charge, to any of the persons specified in sub-section (1); (b) any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the persons aforesaid ; (c) any expenditure incurred by the company in respect of any obligation or service which, but for such expenditure by the company, would have been incurred by any of the persons aforesaid ; and (d) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for, any of the persons aforesaid or his spouse or child.]

199. Calculation of commission, etc., in certain cases. (1) Where any commission or other remuneration payable to any officer or employee of a company (not being a director, the managing agent, secretaries and treasurers or a manager) is fixed at a percentage of, or is otherwise based on, the net profits of the company, such profits shall be calculated in the manner set out in sections 349, 350 and

(2) Any provision in force at the commencement of this Act for the payment of any commission or other remuneration in any manner based on the net profits of a company, shall continue to be in force for a period of one year from such commencement; and thereafter shall become subject to the provisions of sub-section (1).

200. Prohibition of tax-free payments. (1) No company shall pay to any officer or employee thereof, whether in his capacity as such or otherwise, remuneration free of any tax, or otherwise calculated by reference to, or varying with, any tax payable by him, or the rate or standard rate of any such tax, or the amount thereof. Explanation.-In this sub-section, the expression "tax" comprises any kind of income-tax including super-tax.

(2) Where by virtue of any provision in force immediately before the commencement of this Act, whether contained in the company's articles, or in any contract made with the company, or in any resolution passed by the company in general meeting or by the company's Board of directors, any officer or employee of the company holding any office at the commencement of this Act is entitled to remuneration in any of the modes prohibited by sub-section (1), such provision shall have effect during the residue of the term for which he is entitled to hold such office at such commencement, as if it provided instead for the payment of a gross sum subject to the tax in question, which, after deducting such tax, would yield the net sum actually specified in such provision.

(3) This section shall not apply to any remuneration- (a) which fell due before the commencement of this Act, or (b) which may fall due after the commencement of this Act, in respect of any period before such commencement.

201. Avoidance of provisions relieving liability of officers and auditors of company. (1) Save as provided in this section, any provision, whether contained in the articles of a company or in an agreement with a company or in any other instrument, for exempting any officer of the company or any person employed by the company as auditor from, or indemnifying him against, any liability which, by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, misfeasance, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void; Provided that a company may, in pursuance of any such provision as aforesaid indemnify any such 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 discharged or in connection with any application under section 633 in which relief is granted to him by the Court.

(2) Nothing contained in the proviso to sub-section (1) shall apply to the constituted attorney of the managing agent of a company, unless such attorney is, or is deemed to be, an officer of the company.

205. Dividend to be paid only out of profits. (1) No dividend shall be declared or paid by a company for any financial year except out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2) or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with those provisions and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government'

Provided that- (a) if the company has not provided for depreciation for any previous financial year or years which falls or fall after the commencement of the Companies (Amendment) Act, 1960, (65 of 1960.) it shall, before declaring

or paying dividend for any financial year provide for such depreciation out of the profits of that financial year or out of the profits of any other previous financial year or years; (b) if the company has incurred any loss in any previous financial year or years, which falls or fall after the commencement of the Companies (Amendment) Act, 1960, (65 of 1960.) then, the amount of the loss or an amount which is equal to the amount provided for depreciation for that year or those years whichever is less, shall be set off against the profits of the company for the year for which dividend is proposed to be declared or paid or against the profits of the company for any previous financial year or years, arrived at in both cases after providing for depreciation in accordance with the provisions of subsection (2) or against both; (c) the Central Government may, if it thinks necessary so to do in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year or any previous financial year or years without providing for depreciation : Provided further that it shall not be necessary for a company to provide for depreciation as aforesaid where dividend for any financial year is declared or paid out of the profits of any previous financial year or years which falls or fall before the commencement of the companies (Amendment) Act, 1960.

(2) For the purpose of sub-section (1), depreciation shall be provided either- (a) to the extent specified in section 350; or (b) in respect of each item of depreciable asset, for such an amount as is arrived at by dividing ninety-five per cent. of the original cost thereof to the company by the specified period in respect of such asset; or 194A (c) on any other basis approved by the Central Government which has the effect of writing off by way of depreciation ninety-five per cent. of the original cost to the company of each such depreciable asset on the expiry of the specified period; or (d) as regards any other depreciable asset for which no rate of depreciation has been laid down by 1 [this Act or any rules made thereunder], on such basis as may be approved by the Central Government by any general order published in the Official Gazette or by any special order in any particular case : Provided that where depreciation is provided for in the manner laid down in clause (b) or clause (c), then, in the event of the depreciable asset being sold, discarded, demolished or destroyed the written down value thereof at the end of the financial year in which the asset is sold, discarded, demolished or destroyed, shall be written off in accordance with the proviso to section 350.

(2A) Notwithstanding anything contained in sub-section (1), on and from the commencement of the Companies (Amendment) Act, 1974, no dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of subsection (2), except after the transfer to the reserves of the company of such percentage of its profits for that year, not exceeding ten per cent., as may be prescribed : Provided that nothing in this sub-section shall be deemed to prohibit the voluntary transfer by a company of a higher percentage of its profits to the reserves in accordance with such rules as may be made by the Central Government in this behalf. (2B) A company which fails to comply with the provisions of section 80A shall not, so long as such failure continues, declare any dividend on its equity shares.

(3) No dividend shall be payable except in cash: Provided that nothing in this sub-section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.

(4) Nothing in this section shall be deemed to affect in any manner the operation of section 208.

(5) For the purposes of this section- (a) "specified period" in respect of any depreciable asset shall mean the number of years at the end of which at least ninety-five per cent. of the original cost of that asset to the company will have been provided for by way of depreciation if depreciation were to be calculated in accordance with the provisions of section 350; (b) any dividend payable in cash may be paid by cheque or warrant sent through the post directed to the registered address of the shareholder entitled to the payment of the dividend or in the case of joint shareholders, to the registered address of that one of the joint shareholders which is first named on the register of members, or to such person and to such address as the shareholder or the joint shareholders may in writing direct

205A. Unpaid dividend to be transferred to special dividend account.

(1) Where, after the commencement of the Companies (Amendment) Act, 1974 a dividend has been declared by a company but has not been paid, or claimed] within forty-two days, from, the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of forty-two days, transfer the total amount of dividend which remains unpaid 2[or unclaimed] within the said period of forty-two days, to a special account to be opened by the company in that behalf in any scheduled bank, to be called "Unpaid Dividend Account of..... Company Limited/Company (Private) Limited". 3[Explanation.- In this sub-section, the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

(2) Where the whole or any part of any dividend, declared by a company before the commencement of the Companies (Amendment) Act, 1974, remains unpaid at such commencement, the company shall, within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (1).

(3) Where, owing to inadequacy or absence of profits in any year, any company proposes to declare dividend out of the accumulated profits earned by the company in previous years and transferred by it to the reserves, such declaration of dividend shall not be except in accordance with such rules as may be made by the Central Government in this behalf, and, where any such declaration is not in accordance with such rules, such declaration shall not be made except with the previous approval of the Central Government.

(4) If the default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the unpaid dividend account of the concerned company, the company shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum and the interest accruing on such amount shall enure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(5) Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of three years from the date of such transfer, shall be transferred by the company to the general revenue account of the Central Government but a claim to, any money so transferred to the general revenue account may be preferred to the

Central Government by the person to whom the money is due and shall be dealt with as if such transfer to the general revenue account had not been made, the order, if any, for payment of the claim being treated as an order for refund of revenue.

(6) The company shall, when making any transfer under sub-section (5) to the general revenue account of the Central Government any unpaid or unclaimed dividend, furnish to such officer as the Central Government may appoint in this behalf a statement in the prescribed form setting forth in respect of all sums included in such transfer, the nature of the sums, the names and last known addresses of the person entitled to receive the sum, the amount to which each person is entitled and the nature his claim thereto and such other particulars as may be prescribed.

(7) The company shall be entitled to a receipt from the Reserve Bank of India for any money transferred by it to the general revenue account of the Central Government and such receipt shall be an effectual discharge of the company in respect thereof.

(8) If a company fails to comply with any of the requirements of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the failure continues.

205B. Payment of unpaid or unclaimed dividend. Any person claiming to be entitled to any money transferred under sub-section (5) of section 205A to the general revenue account of the Central Government, may apply to the Central Government for an order for payment of the money claimed; and the Central Government may, if satisfied, whether on a certificate by the company or otherwise, that such person is entitled to the whole or any part of the money claimed, make an order for the payment to that person of the sum due to him after taking such security from him as it may think fit.

206. Dividend not to be paid except to registered shareholders or to their order or to their bankers. (1) No dividend shall be paid by a company in respect of any share therein, except- (a) to the registered holder of such share or to his order or to his bankers; or (b) in case a share warrant has been issued in respect of the share in pursuance of section 114, to the bearer of such warrant or to his bankers.

(2) Nothing contained in sub-section (1) shall be deemed to require the bankers of a registered shareholder to make a separate application to the company for the payment of the dividend.

206A. Right to dividend rights shares and bonus shares to be held in abeyance pending registration of transfer of shares. Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act,- (a) transfer the dividend in relation to such shares to the special account referred to in section 205A unless the company is authorised by the registered holder of such share in writing to pay such dividend to the transferee specified in such instrument of transfer; and (b) keep in abeyance in relation to such shares any offer of rights shares under clause (a) of sub-section (1) of section 81 and any issue of fully paid-up bonus shares in pursuance of sub-section (3) of section 205.



207. Penalty for failure to distribute dividends within forty-two days. Where a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted, within forty-two days from the date of the declaration, to any shareholder entitled to the payment of the dividend, every director of the company; its managing agent or secretaries and treasurers; and where the managing agent is a firm or body corporate, every partner in the firm and every director of the body corporate; and where the secretaries and treasurers are a firm, every partner in the firm and where they are a body corporate, every director thereof; shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to seven days and shall also be liable to fine: Provided that no offence shall be deemed to have been committed within the meaning of the foregoing provision in the following cases, namely:- (a) where the dividend could not be paid by reason of the operation of any law; (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with; (c) where there is a dispute regarding the right to receive the dividend; (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company. Payments of interest out of capital

208. Power of company to pay interest out of capital in certain cases. (1) Where any shares in a company are issued for the purpose of raising money to defray the expenses of the construction of any work or building, or the provision of any plant, which cannot be made profitable for a lengthy period, the company may- (a) pay interest on so much of that share capital as is for the time being paid up, for the period and subject to the conditions and restrictions mentioned in sub-sections (2) to (7) ; and (b) charge the sum so paid by way of interest, to capital as part of the cost of construction of the work or building or the provision of the plant.

(2) No such payment shall be made unless it is authorised by the articles or by a special resolution.

(3) No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Central Government. The grant of such sanction shall be conclusive evidence, for the purposes of this section, that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section.

(4) Before sanctioning any such payment, the Central Government may, at the expense of the company, appoint a person to inquire into, and report to the Central Government on, the circumstances of the case; and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry.

(5) The payment of interest shall be made only for such period as may be determined by the Central Government; and that period shall in no case extend beyond the close of the half year next after the half-year during which the work or building has been actually completed or the plant provided.

(6) The rate of interest shall in no case exceed four per cent. per annum or such other rate as the Central Government may, by notification in the Official Gazette, direct.

(7) The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

(8) Nothing in this section shall affect any company to which the Indian Railway Companies Act, 1895, or the Indian Tramways Act, 1902, applies.

209. Books of account to be kept by company. (1) Every company shall keep at its registered office 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 receipt and expenditure take place ; (b) all sales and purchases of goods by the company; (c) the assets and liabilities of the company ; 3[and] 3[(d) in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the books of Account: Provided that all or any of the books of account aforesaid may be kept at such other place in India as the Board of directors may decide and when the Board of directors so decides, the company shall, within seven days of the decision, file with the Registrar a notice in writing giving the full address of that other place.

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

(3) For the purposes of sub-sections (1) and (2), proper books of account shall not be deemed to be kept with respect to the matters specified therein,- (a) if there are not kept such books as are necessary to give a true and fair view of the state of affairs of the company or branch office, as the case may be, and to explain its transactions; and (b) if such books are not kept on accrual basis and according to the double entry system of accounting.

(4) The books of account and other books and papers shall be open to inspection by any director during business hours. (4A) The books of account of every company relating to a period of not less than eight years immediately preceding the current year together with the vouchers relevant to any entry in such books ,of account] shall be preserved in good order: Provided that in the case of a company incorporated less than eight years before the current year, the books of account for the entire period preceding the current year 5[together with the vouchers relevant to any entry in such books of account] shall be so preserved.

(5) If any of the persons referred to in sub-section (6) fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be punishable with 6 [imprisonment for a term. which may extend to six months, or with fine which may extend to one thousand rupees, or with both] : Provided that in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that

duty : 2[Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

(6) The persons referred to in sub-section (5) are the following, namely:- (a) where the company has a managing agent, secretaries and treasurers or managing director or manager, such managing agent, secretaries and treasurers or managing director or manager and all officers and other employees and agents as defined in sub-section (6) of section 240 but excluding bankers, auditors and legal advisers of such managing agent or secretaries and treasurers ; (b) where such managing agent or secretaries and treasurers are a firm, every partner in the firm; (c) where such managing agent or secretaries and treasurers are a body corporate, every director of such body corporate; (d) where the company has neither a managing agent nor 6[secretaries and treasurers nor managing director nor manager, every director of the company ; and (e) whether or not a company has a managing agent or secretaries and treasurers, every officer and other employee and agent (defined as aforesaid) of the company.

(7) If any person, not being a person referred to in sub-section (6), having been charged by the managing agent, secretaries and treasurers, managing director, manager or Board of directors the case may be, with the duty of seeing that the requirements of this section are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with 1[imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[209A. Inspection of books of account, etc., of companies (1) The books of account and other books and papers of every company shall be open to inspection during business hours- (i) by the Registrar, or (ii) by such officer of Government as may be authorised by the Central Government in this behalf: Provided that such inspection may be made without giving any previous notice to the company or any officer thereof.

(2) It shall be the duty of every director, other officer or employee of the company to produce to the person making inspection

under sub-section (1), all such books of account and other books and papers of the company in his custody or control and to furnish him with any statement, information or explanation relating to the affairs of the company as the said person may require of him within such time and at such place as he may specify.

(3) It shall also be the duty of every director, other officer or employee of the company to give to the person making inspection under this section all assistance in connection with the inspection which the company may be reasonably expected to give.

(4) The person making the inspection under this section may, during the course of inspection,- (i) make or cause to be made copies of books of account and other books and papers, or (ii) place or cause to be placed any marks of identification thereon in token of the inspection having been made.

(5) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, any person making an inspection under this section shall have the same powers, as are vested in a civil court under the Code of Civil Procedure 1908, while trying a suit, in respect of the following

matters, namely:- (i) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person; (ii) summoning and enforcing the attendance of persons and examining them on oath; (iii) inspection of any books, registers and other documents of the company at any place.

(6) Where an inspection of the books of account and other books and papers of the company has been made under this section, the person making the inspection shall make a report to the Central Government.

(7) Any officer authorised to make an inspection under this section shall have all the powers that a Registrar has under this Act in relation to the making of inquiries.

(8) If default is made in complying with the provisions of this section, every officer of the company who is in default shall be punishable with fine which shall not be less than five thousand rupees, and also with imprisonment for a term not exceeding one year.

(9) Where a director or any other officer of a company has been convicted of an offence under this section he shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified for holding such office in any company, for a period of five years from such date.]

210. Annual accounts and balance sheet. (1) At every annual general meeting of a company held in pursuance of section 166, the Board of directors of the company shall lay before the company- (a) a balance sheet as at the end of the period specified

in sub-section (3); and (b) a profit and loss account for that period.

(2) In the case of a company not carrying on business for profit, an income and expenditure account shall be laid before the company 198C at its annual general meeting instead of a profit and loss account, and all references to "profit and loss account", "profit" and "loss" in this section and elsewhere in this Act, shall be construed, in relation to such a company, as references respectively to the "income and expenditure account", "the excess of income over expenditure", and "the excess of expenditure over income".

(3) The profit and loss account shall relate- (a) in the case of the first annual general meeting of the company, to the period beginning with the incorporation of the company and ending with a day which shall not 199 precede the day of the meeting by more than nine months ; and (b) in the case of any subsequent annual general meeting of the company, to the period beginning with the day immediately after the period for which the account was last submitted and ending with a day which shall not precede the day of the meeting by more than six months, or in cases where an extension of time has been granted for holding the meeting under the second proviso to subsection (1) of section 166, by more than six months and the extension so granted.

(4) The period to which the account aforesaid relates is referred to in this Act as a " financial year " ; and it may be less or more than a calendar year, but it shall not exceed fifteen months : Provided that it may extend to eighteen months where special permission has been granted in that behalf by the Registrar.

(5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both: Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty: Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

(6) If any person, not being a director of the company, having been charged by the Board of directors with the duty of seeing that the provisions of this section are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both: Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

211. Form and contents of balance sheet and profit and loss account. (1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central Government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading " Notes " at the end of that Part: Provided that nothing contained in this subsection shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of balance sheet has been specified in or under the Act governing such class of company.

(2) Every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of Schedule VI, so far as they are applicable thereto : Provided that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of profit and loss account has been specified in or under the Act governing such class of company.

(3) The Central Government may, by notification in the Official Gazette, exempt any class of companies from compliance with any of the requirements in Schedule VI if, in its opinion, it is necessary to grant the exemption in the public interest. Any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

(4) The Central Government may, on the application or with the consent of the Board of directors of the company, by order, modify in relation to that company any of the requirements of this Act as to the matters to be stated in the company's balance sheet or profit and loss account for the purpose of adapting them to the circumstances of the company.

(5) The balance sheet and the profit and loss account of a company shall not be treated as not disclosing a true and fair view of the state of affairs of the

company, merely by reason of the fact that they do not disclose- (i) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 ; (ii) in the case of a banking company, any matters which are not required to be disclosed by the Banking Companies Act, 1949 ; (iii) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by both the Indian Electricity Act, 1910, and the Electricity (Supply) Act, 1948; (iv) in the case of a company governed by any other special Act for the time being in force, any matters which are not required to be disclosed by that special Act; or (v) in the case of any company, any matters which are not required to be disclosed by virtue of the provisions contained in Schedule VI or by virtue of a notification issued under sub-section (3) or an order issued under, subsection (4).

(6) For the purposes of this section, except where the context otherwise requires, any reference to a balance sheet or profit and loss account shall include any notes thereon or documents annexed thereto, giving information required by this Act, and allowed by this Act to be given in the form of such notes or documents.

(7) If any such person as is referred to in sub-section (6) of section 209 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both: Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section and the other requirements aforesaid were complied with and was in a position to discharge that duty: Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

(8) If any person, not being a person referred to in sub-section (6) of section 209, having been charged by the managing agent, secretaries and treasurers, [managing director or manager,] or Board of directors, as the case may be, with the duty of seeing that the provisions of this section and the other requirements aforesaid are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both: Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

212. Balance sheet of holding company to include certain particulars as to its subsidiaries. (1) There shall be attached to the balance sheet of a holding company having a subsidiary or subsidiaries at the end of the financial year as at which the holding company's balance sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be:- (a) a copy of the balance sheet of the subsidiary; (b) a copy of its profit and loss account ; (c) a copy of the report of its Board of directors (d) a copy of the report of its auditors ; (e) a statement of the holding company's interest in the subsidiary as specified in sub-section (3); the statement referred to in sub-section (5), if any ; and (g) the report referred to in sub-section (6), if any.

(2) (a) The balance sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of this Act,- (i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the holding company; (ii) as at the end of the financial year of the subsidiary last before that of the holding company where the financial year of the subsidiary does not coincide with that of the holding company;] (b) The profit and loss account and the reports of the Board of directors and of the auditors, referred to in clauses (b), (c) and (d) of subsection (1), shall be made out, in accordance with the requirements of this Act, for the financial year of the subsidiary referred to in clause (a). (c) 1[Where the financial year of the subsidiary does not coincide with that of the holding company, the financial year aforesaid] of the subsidiary shall not end on a day which precedes the day on which the holding company's financial year ends by more than six months. (d) Where the financial year of a subsidiary is shorter in duration than that of its holding company, references to the financial year of the subsidiary in clauses (a), (b) and (c) shall be construed as references to two or more financial years of the subsidiary the duration of which, in the aggregate, is not less than the duration of the holding company's financial year.

(3) The statement referred to in clause (e) of sub-section (1) shall specify- (a) the extent of the holding company's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-

section (2); (b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiary's profits after deducting its losses or vice versa- (i) for the financial year or years of the subsidiary aforesaid ; and (ii) for the previous financial years of the subsidiary since it became the holding company's subsidiary; (c) the net aggregate amount of the profits of the subsidiary after deducting its losses or vice versa- (i)for the financial year or years of the subsidiary aforesaid; (ii)for the previous financial years of the subsidiary since it became the holding company's subsidiary; so far as those profits are dealt with, or provision is made for those losses, in the company's accounts.

(4) Clauses (b) and (c) of sub-section (3) shall apply only to profits and losses of the subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for that or any other purpose) be treated as afore- said so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where- (a) the company itself the subsidiary of another body corporate ; and (b) the shares were acquired from that body corporate or a subsidiary of it ; and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(5) Where the financial year or years of a subsidiary referred to in sub-section (2) do not coincide with the financial year of the holding company, a statement containing information on the following matters shall also be attached to the balance sheet of the holding company:- (a) whether there has been any, and, if so, what change in the holding company's interest in the subsidiary between the

end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year; (b) details of any material changes which have occurred between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year in respect of- (i) the subsidiary's fixed assets 205 (ii) its investments (iii) the moneys lent by it; (iv) the moneys borrowed by it for any purpose other than that of meeting current liabilities.

(6) If, for any reason, the Board of directors of the holding company is unable to obtain information on any of the matters required

to be specified by sub-section (4), a report in writing to that effect shall be attached to the balance sheet of the holding company.

(7) The documents referred to in clauses (e), (f) and (g) of sub-section (1) shall be signed by the persons by whom the balance sheet of the holding company is required to be signed.

(8) The Central Government may, on the application or with the consent of the Board of directors of the company, direct that in relation to any subsidiary, the provisions of this section shall not apply, or shall apply only to such extent as may- be specified in the direction.

(9) If any such person as is referred to in sub-section (6) of section 209 fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both: Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty: Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

(10) If any person, not being a person referred to in sub-section (6) of section 209, having been charged by the managing agent, secretaries and treasurers, managing director, manager, or Board of directors, as the case may be, with the duty of seeing that the provisions of this section are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both: Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

213. Financial year of holding company and subsidiary. (1) Where it appears to the Central Government desirable for a holding company or a holding company's subsidiary, to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission of the relevant accounts to a general meeting, the Central Government may, on the application or with the consent of the Board of directors of the company whose financial year is to be extended, direct that in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return, shall not be required to be submitted, held or made, earlier than the dates specified in the direction, notwithstanding anything to the contrary in this Act or in any other Act for the time being in force.



(2) The Central Government shall, on the application of the Board of directors of a holding company or a holding company's subsidiary, exercise the powers conferred on that Government by sub-section (1) if it is necessary so to do, in order to secure that the end of the financial year of the subsidiary does not precede the end of the holding company's financial year by more than six months, where that is not the case at the commencement of this Act, or at the date on which the relationship of holding company and subsidiary comes into existence where that date is later than the commencement of this Act.

214. Rights of holding company's representatives and members. (1) A holding company may, by resolution, authorise representatives named in the resolution to inspect the books of account kept by any of its subsidiaries; and the books of account of any such subsidiary shall be open to inspection by those representatives at any time during business hours.

(2) The rights conferred by section 235 upon members of a company may be exercised, in respect of any subsidiary, by members of the holding company as if they alone were members of the subsidiary.

215. Authentication of balance sheet and profit and loss account.

(1) Save as provided by sub-section (2), every balance sheet and every profit and loss account of a company shall be signed on behalf of the Board of directors- (i) in the case of a banking company, by the persons specified in clause (a) or clause (b), as the case may be, of subsection (2) of section 29 of the Banking Companies Act, 1949; (ii) in the case of any other company, by its managing agent, secretaries and treasurers, manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director where there is one.

(2) In the case of a company not being a banking company, when only one of its directors is for the time being in India, the balance sheet and the profit and loss account shall be signed by such director; but in such a case there shall be attached to the balance sheet and the profit and loss account a statement signed by him explaining the reason for non-compliance with the provisions of subsection (1).

(3) The balance sheet and the profit and loss account shall be approved by the Board of directors before they are signed on behalf of the Board in accordance with the provisions of this section and before they are submitted to the auditors for their report thereon.

216. Profit and loss account to be annexed and auditors' report to be attached to balance sheet. The profit and loss account shall be annexed to the balance sheet and the auditors' report (including the auditors' separate special or supplementary report, if any) shall be attached thereto.

217. Board's report. (1) There shall be attached to every balance sheet laid before a company in general meeting, a report by its Board of directors, with respect to- (a) the state of the company's affairs; (b) the amounts, if any, which it proposes to carry to any reserves in such balance (c) the amount, if any, which it recommends should be paid by way of dividend; (d) material changes and commitments, if any; affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance sheet relates and the date of the report. (e) the conservation of

energy technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed.

(2) The Board's report shall, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the Board's opinion be harmful to the business of the company or of any of its subsidiaries, deal with any changes which have occurred during the financial year- (a) in the nature of the company's business: (b) in the company's subsidiaries or in the nature of the business carried on by them; and (c) generally in the classes of business in which the company has an interest. (2A) (a) The Board's report shall also include a statement showing the name of every employee of the company who- (i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than such sum as may be prescribed; or (ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than such sum per month as may be prescribed; or (iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two per cent., of the equity shares of the company. (b) The statement referred to in clause (a) shall also indicate,- (i) whether any such employee is a relative of any director or manager of the company and if so, the name of such director, and (ii) such other particulars as may be prescribed. Explanation.- "Remuneration" has the meaning assigned to it in the Explanation to section 198.

(3) The Board shall also be bound to give the fullest information and explanations in its report aforesaid, or in cases falling under the proviso to section 222, in an addendum to that report, on every reservation, qualification or adverse remark contained in the auditors' report.

(4) The Board's report and any addendum thereto shall be signed by its chairman if he is authorised in that behalf by the Board; and where he is not so authorised, shall be signed by such number of directors as are required to sign the balance sheet and the profit and loss account of the company by virtue of sub-sections (1) and (2) of section 215.

(5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of subsections (1) to (3), or being the chairman, signs the Board's report otherwise than in conformity with the provisions of sub-section (4), he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both : Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully:

Provided further that in any proceedings against a person in respect of an offence under sub-section (1), it shall be a defence to 209 prove that a competent and reliable person was charged with the duty of seeing that the provisions of that sub-section were complied with and was in a position to discharge that duty.

(6) If any person, not being a director, having been charged by the Board of directors with the duty of seeing that the provisions of sub-sections (1) to (3) are complied with, makes default in doing so, he shall, in respect of each

offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both: Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

218. Penalty for improper issue, circulation or publication of balance sheet or profit and loss account. (a) If any copy of a balance sheet or profit and loss account which has not been signed as required by section 215 is issued, circulated or published; or (b) If any copy of a balance sheet is issued, circulated or published without there being annexed or attached thereto, as the case may be, a copy each of (i) the profit and loss account, (ii) any accounts, reports or statements which, by virtue of section 212, are required to be attached to the balance sheet, (iii) the auditors' report, and (iv) the Board's report referred to in section 217 the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

219 Right of member to copies of balance sheet and auditors' report. (1) A copy of every balance sheet (including the profit and loss account, the auditors' report and every other document required by law to be annexed[ or attached, , as the case may be, to the balance sheet) which is to be laid before a company in general meeting shall, not less than twenty-one days, before the date of the meeting, be sent to every member of the company, 2[to every trustee for the holders of any debentures issued by the company, whether such member or trustee is or is not entitled to have notices of general meetings of the company sent to him, and to all persons other than such members or trustees, being persons so entitled:] Provided that- (a) in the case of a company not having a share capital, this sub-section shall not require the sending of a copy of the documents aforesaid to a member, or holder of debentures, of the company who is not entitled to have notices of general meetings of the company sent to him; (b) this sub-section shall not require a copy of the documents aforesaid to be sent- (i) to a member, or holder of debentures, of the company, who is not entitled to have notices of general meetings of the company sent to him and of whose address the company is unaware; (ii) to more than one of the joint holders of any shares or debentures none of whom is entitled to have such notices sent to him; 1\* \* \* (iii) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled to have such notices sent to them, to those who are not so entitled; 1\* \* \* 1[(iv) in the case of a company whose shares are listed on a recognised stock exchange, if the copies of the documents aforesaid are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents aforesaid, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting] (c) if the copies of the documents aforesaid are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to vote at the meeting.

(2) Any member or holder of debentures of a company and any person from whom the company has accepted a sum of money by way of deposit shall, on demand, be entitled to be furnished free of cost, with a copy of the last balance sheet of the company and of every document required by law to be annexed or attached thereto, including the profit and loss account and the auditors' report.

(3) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(4) If, when any person makes a demand for a copy of any document with which he is entitled to be furnished by virtue of sub-section (2), default is made in complying with the demand within seven days after the making thereof, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees, unless it is proved that that person had already made a demand for and been furnished with a copy of the document. The Company Law Board may, also by order, direct that the copy demanded shall forthwith be furnished to the person concerned.

(5) Sub-sections (1) to (4) shall not apply in relation to a balance sheet of a private company laid before it before the commencement of this Act; and in such a case the right of any person to have sent to him or to be furnished with a copy of the balance sheet, and the liability of the company in respect of a failure to satisfy that right, shall be the same as they would have been if this Act had not been passed.

220. Three copies of balance sheet, etc., to be filed with Registrar. (1) After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance sheet and the profit and loss account were so laid, or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act. (a) three copies of the balance sheet and the profit and loss account, signed by the managing director, managing agent, secretaries and treasurers, manager or secretary of the company, or if there be none of these, by a director of the company, together with three copies of all documents which are required by this Act to be annexed or attached to such balance sheet or profit and loss account : Provided that in the case of a private company, copies of the balance sheet and copies of the profit and loss account shall be filed with the Registrar separately: [Provided further that,- (i) in the case of a private company which is not a subsidiary of a public company, or (ii) in the case of a private company of which the entire paid-up share capital is held by one or more bodies corporate incorporated outside India, or (iii) in the case of a company which becomes a public company by virtue of section 43A, if the Central Government directs that it is not in the public interest that any person other than a member of the company shall be entitled to inspect, or obtain copies of, the profit and loss account of the company, no person other than a member of the company concerned shall be entitled to inspect, or obtain copies of, the profit and loss account of that company under section 610.

(2) If the annual general meeting of a company before which a balance sheet is laid as aforesaid does not adopt the balance sheet or is adjourned without adopting the balance sheet, or, if the annual general meeting of a company for any year has not been held, a statement of that fact and of the reasons therefor shall be annexed to the balance sheet and to the copies thereof required to be filed with the Registrar.

(3) If default is made in complying with the requirements of sub-sections (1) and (2), the company, and every officer of the company who is in default, shall

be liable to the like punishment as is provided by section 162 for a default in complying with the provisions of sections 159, 160 or 161.

221. Duty of officer to make disclosure of payments, etc. (1) Where any particulars or information is required to be given in the balance sheet or profit and loss account of a company or in any document required to be annexed or attached thereto, it shall be the duty of the concerned officer of the company to furnish without delay to the company, and also to the company's auditor whenever he so requires, those particulars or that information in as full a manner as possible. (2) Where the officer concerned is a firm or body corporate acting as managing agent or as secretaries and treasurers, the duty aforesaid shall extend to every partner in the firm, or to every director of the body corporate, as the case may be.

(3) The particulars or information referred to in sub-section (1) may relate to payments made to any director, managing agent, secretaries and treasurers, or other person by any other company, body corporate, firm or person.

(4) If any person knowingly makes default in performing the duty cast on him by the foregoing provisions of this section, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

222. Construction of references to documents annexed to accounts. References in this Act to documents annexed or required to be annexed to a company's accounts or any of them shall not include the Board's report, the auditors' report or any document attached or required to be attached to those accounts : Provided that any information which is required by this Act to be given in the accounts, and is allowed by it to be given in a statement annexed to the accounts, may be given in the Board's report instead of in the accounts; and if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation there to accordingly, except that the auditors shall report thereon only in so far as it gives the said information.

223. Certain companies to publish statement in the Form in Table F in Schedule I. (1) Every company which is a limited banking company, an insurance company, or a deposit, provident or benefit society, shall, before it commences business and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the Form in Table F in Schedule I. or in a Form as near thereto as circumstances admit.

(2) A copy of the statement, together with a copy of the last audited balance sheet laid before the members of the company, shall be displayed and until the display of the next following statement, shall be kept displayed, in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member, and every creditor, of the company shall be entitled, on payment of a sum of eight annas, to be furnished with a copy of the statement, within seven days of such payment.

(4) If default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(5) This section shall not apply, to a life assurance company or provident insurance society to which the provisions of the Insurance Act, 1938 (4 of 1938), as to the annual statements to be made by such company or society, apply with or without modifications, if the company or society complies with those provisions. Audit

224. Appointment and remuneration of auditors. 1[(1) Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within seven days of the appointment, give intimation thereof to every auditor so appointed .

Provided that before any appointment or re-appointment of auditor or auditors is made by any company at any annual general meeting, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the effect that the appointment or re-appointment, if made, will be in accordance with the limits specified in sub-section (1B).

(1A) Every auditor appointed under subsection (1), shall within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment. 3[(1B) On and from, the financial year next following the commencement of the Companies (Amendment) Act, 1974, no company or its Board of directors shall appoint or re-appoint any person who is in full time employment elsewhere] or firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of the specified number of companies or more than the specified number of companies: Provided that in the case of a firm of auditors, "specified number of companies" shall be construed as the number of companies specified for every partner of the firm who is not in full-time employment elsewhere Provided further that where any partner of the firm is also a partner of any other firm or firms of auditors, the number of companies which may be taken into account, by all the firms together, in relation to such partner shall not exceed the specified number in the aggregate: Provided also that where any partner of a firm of auditors is also holding office, in his individual capacity, as the auditor of one or more companies, the number of companies which may be taken into account in his case shall not exceed the specified number, in the aggregate.

(1C) For the purposes of enabling a company to comply with the provisions of sub-section (1B), a person or firm holding, immediately before the commencement of the Companies (Amendment) Act, 1974, appointment as the auditor of a number of companies exceeding the specified number, shall, within sixty days from such commencement, intimate his or its unwillingness to be re-appointed as the auditor from the financial year next following such commencement, to the company or companies of which he or it is not willing to be re-appointed as the auditor; and shall simultaneously intimate to the Registrar the names of the companies of which he or it is willing to be re-appointed as the auditor and forward a copy of the intimation to each of the companies referred to therein.

Explanation I.-For the purposes of sub-sections (1B) and (1C), "specified number" means,- (a) in the case of a person or firm holding appointment as auditor of a number of companies each of which has a paid-up share capital of less than rupees twenty-five lakhs, twenty such companies; (b) in any other case, twenty companies, out of which not more than ten shall be companies each of which has a paid-up share capital of rupees twenty-five lakhs or more.

Explanation II.-In computing the specified number, the number of companies in

respect of which or any part of which any person or firm has been appointed as an auditor, whether singly or in combination with any other person or firm., shall be taken into account.

(2) Subject to the provisions of sub-section (1B) and section 224A, at any annual general meeting, a retiring auditor, by whatsoever authority appointed, shall be re-appointed, unless- (a) he is not qualified for re-appointment; (b) he has given the company notice in writing of his unwillingness to be re-appointed; (c) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed; or (d) where notice has been given of an intended resolution to appoint some person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with.

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

(4) The company shall, within seven days of the Central Government's power under sub-section (3), becoming exercisable, give notice of, that fact to that Government; and, if a company fails to give such notice, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(5) The first auditor or auditors of a company shall be appointed by the Board of directors within one month of the date of registration of the company; and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting: Provided that- (a) the company may, at a general meeting, remove any such auditor or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and (b) if the Board falls to exercise its powers under this sub-section, the company in general meeting may appoint the first auditor or auditors.

(6) (a) The Board may fill any casual vacancy in the office of an auditor; but while any such vacancy continues, the remaining auditor or auditors, if any, may act : Provided that where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the company In general meeting. (b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

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

(8) The remuneration of the auditors of a company- (a) in the case of an auditor appointed by the Board or the Central Government, may be fixed by the Board or the Central Government, as the case may be; and (b) subject to clause (a), shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine. For the purposes of this sub-section, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

224A. Auditor not to be appointed except with the approval of the company by special resolution in certain cases. (1) In the case of a company in which not less than twenty-five per cent of the subscribed share capital is held, whether singly or in any combination, by- (a) a public financial institution or a Government company or Central Government or any State Government, or, (b) any financial or other institution established by any Provincial or State Act in which a State Government holds not less than fifty-one per cent. of the subscribed share capital, (c) a nationalised bank or an insurance company carrying on general insurance business, the appointment or reappointment at each annual general meeting of an auditor or auditors shall be made by a special resolution.

(2) Where any company referred to in sub-section (1) omits or fails to pass at its annual general meeting any special resolution appointing an auditor or auditors, it shall be deemed that no auditor or auditors had been appointed by the company at its annual general meeting, and thereupon the provisions of sub-section (3) of section 224 shall become applicable in relation to such company.

Explanation.-For the purposes of this section,- (a) "general insurance business" has the meaning assigned to it in the General Insurance (Emergency Provisions) Act, 1971; (b) "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

225. Provisions as to resolutions for appointing or removing auditors. (1) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed.

(2) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

(3) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representations by the company and if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting: Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the 1[Company Law Board] is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the 1[Company Law Board] may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(4) Sub-sections (2) and (3) shall apply to a resolution to remove the first auditors or any of them under sub-section (5) of section 224 or to the removal



of any auditor or auditors under sub-section (7) of that section, as they apply in relation to a resolution that a retiring auditor shall not be re-appointed.

226. Qualifications and disqualifications of auditors. (1) A person shall not be qualified for appointment as auditor of a company unless he is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (48 of 1949) : Provided that a firm whereof all the partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company, in which case any partner so practising may act in the name of the firm.

(2) (a) Notwithstanding anything contained in sub-section (1) but subject to the provisions of any rules made under clause (b), the holder of a certificate granted under a law in force in the whole or any portion of a Part B State immediately before the commencement of the Part B States (Laws) Act, 1951 or of the Jammu and Kashmir (Extension of Laws) Act, 1956, as the case may be,] entitling him to act as an auditor of companies in the territories which, immediately before the 1st November, 1956, were comprised in that State or any portion thereof, shall be entitled to be appointed to act as an auditor of companies registered anywhere in India. (b) The Central Government may, by notification in the Official Gazette, make rules providing for the grant, renewal, suspension or cancellation of auditors' certificates to persons in 4[the territories which, immediately before the 1st November, 1956, were comprised in Part- B States] for the purposes of clause (a), and prescribing conditions and restrictions for such grant, renewal, suspension or cancellation.

(3) None of the following persons shall be qualified for appointment as auditor of a company- (a) a body corporate; (b) an officer or employee of the company ; (c) a person who is a partner, or who is in the employment, of an officer or employee of the company ; (d) a person who is indebted to the company for an amount exceeding one thousand rupees, or who, has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees; (e) a person who is a director or member of a private company, or a partner of a firm, which is the managing agent or the secretaries and treasurers of the company; (f) a person who is a director or the holder of shares exceeding five per cent. in nominal value of the subscribed capital, of any body corporate which is the managing agent or the secretaries and treasurers, of the company: Provided that any shares held by such person as nominee or trustee for any third person and in which the holder has no beneficial interest shall be excluded in computing the percentage of shares held by him for the purpose of this clause.  
Explanation.-References in this sub-section to an officer or employee shall be construed as not including references to an auditor.

(4) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of sub-section (3), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(5) If an auditor becomes subject, after his appointment, to any of the disqualifications specified in subsections (3) and (4), he shall be deemed to have vacated his office as such.

227. Powers and duties of auditors. (1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the

company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the company such information and explanations as the auditor may think necessary for the performance of his duties as auditor.

(1A) Without prejudice to the provisions of sub-section (1), the auditor shall inquire- (a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members ; (b) whether transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company ; (c) where the company is not an investment company within the meaning of section 372 or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company; (d) whether loans and advances made by the company have been shown as deposits; (e) whether personal expenses have been charged to revenue account ; (f) where it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance-sheet is correct, regular and not misleading.

(2) The auditor shall make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit and loss account and on every other document declared by this Act to be part of or annexed to the balance sheet or profit and loss account, which are laid before the company in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view- (i) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and (ii) in the case of the profit and loss account, of the profit or loss for its financial year.

(3) The auditor's report shall also state- (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit; (b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him; 1[(bb) whether the report on the accounts of any branch office audited under section 228 by a person other than the company's auditor has been forwarded to him as required by clause (c) of sub-section (3) of that section and how he has dealt with the same in preparing the auditor's report (c) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns.

(4) Where any of the matters referred to in clauses (i) and (ii) of sub-section (2) or in clauses (a), (b), I [(bb)] and (c) of sub- section (3) is answered in the negative or with a qualification, the auditor's report shall state the reason' for the answer, (4A) The Central Government may, by general or special order, direct. that, in the case, of such class or description of companies as may be specified in the order, the auditor's report shall also include a statement on such matters as may be specified therein: Provided that before making any such order the Central Government may consult the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949,

(38 of 1949) in regard to the class or description of companies and other ancillary matters proposed to be specified therein unless the Government decides that such consultation is not necessary or expedient in the circumstances of the case.

(5) The accounts of a company shall not be deemed as not having been, and the auditor's report shall not state that those accounts have not been, properly drawn up on the ground merely that the company has not disclosed certain matters if- (a) those matters are such as the company is not required to disclose by virtue of any provisions contained in this or any other Act, and (b) those provisions are specified in the balance sheet and profit and loss account of the company.

228. Audit of accounts of branch office of company. (1) Where a company has a branch office, the accounts of that office shall, be audited by the company's auditor appointed under section 224 or by a person qualified for appointment as auditor of the company under section 226, or where the branch office is situate in a country outside India, either by the company's auditor or a person qualified as aforesaid] or by an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country. (2) Where the accounts of any branch office are audited by a person other than the company's auditor] the company's auditor- (a) shall be entitled to visit the branch office, if he deems it necessary to do so for the performance of his duties as auditor, and (b) shall have a right of access at all times to the books and accounts and vouchers of the company maintained at the branch office: Provided that in the case of a banking company having a branch office outside India, it shall be sufficient if the auditor is allowed access to such copies of, and extracts from, the books and accounts of the branch as have been transmitted to the principal office of the company in India.

(3) (a) Where a company in general meeting decides to have the accounts of a branch office audited otherwise than by the company's auditor, the company in that meeting shall for the audit of those accounts appoint a person qualified for appointment as auditor of the company under section 226, or where the branch office is situate in a country outside India, a person who is either qualified as aforesaid or an accountant duly qualified to act as an auditor, of the accounts of the branch office in accordance with the laws of that country, or authorise the Board of directors to appoint such a person in consultation with the company's auditor; (b) the person so appointed (hereafter in this section referred to as the branch auditor) shall have the same powers and duties in respect of audit of the accounts of the branch office as the company's auditor has in respect of the same ; (c) the branch auditor shall prepare a report on the accounts of the branch office examined by him and forward the same to the company's auditor who shall in preparing the auditor's report, deal with the same in such manner as he considers necessary; (d) the branch auditor shall receive such remuneration and shall hold his appointment subject to such terms and conditions as may be fixed either by the company in general meeting or by the Board of directors if so authorised by the company in general meeting.

(4) Notwithstanding anything contained in the foregoing provisions of this section, the Central Government 3[may make rules providing for the exemption of) any branch office from the provisions of this section to the extent specified in the rules and in making such rules the Central Government shall have regard to all or any of the following matters, namely :- (a) the arrangement made by the company for the audit of accounts of the branch office by a person otherwise qualified for appointment as branch auditor even though such person

may be an officer or employee of the company; (b) the nature and quantum of activity carried on at the branch office during a period of three years immediately preceding the date on which the branch office is exempted from the provisions of this section ; (c) the availability at a reasonable cost of a branch auditor for the audit of accounts of the branch office; (d) any other matter which in the opinion of the Central Government justifies the grant of exemption to the branch office from the provisions of this section.

229. Signature of audit report, etc. Only the person appointed as auditor of the company, or where a firm is so appointed in pursuance of the proviso to sub-section (1) of section 226, only a partner in the firm practising in India, may sign the auditor's report, or sign or authenticate any other document of the company required by law to be signed or authenticated by the auditor.

230. Reading and inspection of auditor's report. The auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

231. Right of auditor to attend general meeting. All notices of, and other communications relating to, any general meeting of a company which any member of the company is entitled to have sent to him shall also be forwarded to the auditor of the company; and the auditor shall be entitled to attend any general meeting and to be heard at any general meeting which he attends on any part of the business which concerns him as auditor.

232. Penalty for non-compliance with sections 225 to 231. If default is made by a company in complying with any of the provisions contained in sections 225 to 231, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

233. Penalty for non-compliance by auditor with sections 227 and 229. If any auditor's report is made, or any document of the company is signed or authenticated, otherwise than in conformity with the requirements of sections 227 and 229, the auditor concerned, and the person, if any, other than the auditor who signs the report or signs or authenticates the document, shall, if the default is wilful, be punishable with fine which may extend to one thousand rupees.

233A. Power of Central Government to direct special audit in certain cases. (1) Where the Central Government is of the opinion- (a) that the affairs of any company are not being managed in accordance with sound business principles or prudent commercial practices; or (b) that any company is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains; or (c) that the financial position of any company is such as to endanger its solvency; the Central Government may at any time by order direct that a special audit of the company's accounts for such period or periods as may be specified in the order, shall be conducted and may by the same or a different order appoint either a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 ( 38 of 1949.) (whether or not such chartered accountant is a chartered accountant in practice within the meaning of that Act), or the company's auditor himself to conduct such special audit.

(2) The chartered accountant or the company's auditor appointed under sub-section (1) to conduct a special audit as aforesaid is here- after in this section referred to as the special auditor.

(3) The special auditor shall have the same powers and duties in relation to the special audit as an auditor of a company has under section 227 : Provided that the special auditor shall, instead of making his report to the members of the company, make the same to the Central Government.

(4) The report of the special auditor shall, as far as may be, include all the matters required to be included in an auditor's report under section 227 and, if the Central Government so directs, shall also include a statement on any other matter which may be referred to him by that Government.

(5) The Central Government may by order direct any person specified in the order to furnish to the special auditor within such time as may be specified therein such information or additional information as may be required by the special auditor in connection with the special audit; and on failure to comply with such order such person shall be punishable with fine which may extend to five hundred rupees.

(6) On receipt of the report of the special auditor, the Central Government may take such action on the report as it considers necessary in accordance with the provisions of this Act or any other law for the time being in force : Provided that if the Central Government does not take any action on the report within four months from the date of its receipt, that Government shall send to the company either a copy of, or relevant extract from, the report with its comments thereon and require the company either to circulate that copy or those extracts to the members or to have such copy or extracts read before the company at its next general meeting.

(7) The expenses of, and incidental to, any special audit under this section (including the remuneration of the special auditor) shall be determined by the Central Government (which determination shall be final) and paid by the company and in default of such payment shall be recoverable from the company as an arrear of land revenue

233B. Audit of cost accounts in certain cases. (1) Where in the opinion of the Central Government it is necessary so to do in relation to any company required under clause (d) of sub-section (1) of section 209 to include in its books of account the particulars referred to therein, the Central Government may, by order, direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order by an auditor 2[who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959: Provided that if the Central Government is of opinion that sufficient number of cost accountants within the meaning of the Cost and Works Accountants Act, 1959, are not available for conducting the audit of the cost accounts, of companies generally, that Government may, by notification in the Official Gazette, direct that, for such period as may be specified in the said notification, such Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, as possesses the prescribed qualifications, may also conduct the audit of the cost accounts of companies, and thereupon a Chartered Accountant possessing the prescribed qualifications may be appointed to audit the cost accounts of the company.

(2) The auditor under this section shall be appointed by the Board of directors of the company in accordance with the provisions of sub-section (1B) of section 224 and with the previous approval of the Central Government: Provided that before the appointment of any auditor is made by the Board, a written certificate shall be obtained by the Board from the auditor proposed to

be so appointed to the effect that the appointment, if made, will be in accordance with the provisions of sub-section (1B) of section 224.

(3) An audit conducted by an auditor under this section shall be in addition to an audit conducted by an auditor appointed under section 224.

(4) An auditor shall have the same powers and duties in relation to an audit conducted by him under this section as an auditor of a

company has under sub-section (1) of section 227 and such auditor shall make his report to the Central Government] in such form and within such time as may be prescribed and shall also at the same time forward a copy of the report to the company.

(5) (a) A person referred to in sub-section (3) or sub-section (4) of section 226 shall not be appointed or re-appointed for conducting the audit of the cost accounts of a company. (b) A person appointed, under section 224, as an auditor of a company, shall not be appointed or re-appointed for conducting the audit of the cost accounts of that company. (c) If a person, appointed for conducting the audit of cost accounts of a company, becomes subject, after his appointment, to any of the disqualifications specified in clause (a) or clause (b) of this sub-section, he shall, on and from the date on which he becomes so subject, cease to conduct the audit of the cost accounts of the company.

(6) Upon receipt of an order under sub-section (1), it shall be the duty of the company to give all facilities and assistance to the person appointed for conducting the audit of the cost accounts of the company.

(7) The company shall, within thirty days from the date of receipt of a copy of the report referred to in sub-section (4), furnish the Central Government with full information and explanations or every reservation or qualification contained in such report.

(8) If, after considering the report referred to in sub-section

(4) and the information and explanations furnished by the company under sub-section (7), the Central Government is of opinion that any further information or explanation is necessary, that Government may call for such further information and explanation and thereupon the company shall furnish the same within such time as may be specified by that Government.

(9) On receipt of the report referred to in sub-section (4) and the informations and explanations furnished by the company under sub-section (7) and sub-section (8), the Central Government may take such action on the report, in accordance with the provisions of this Act or any other law for the time being in force, as it may consider necessary.

(10) The Central Government may direct the company whose cost accounts have been audited under this section to circulate to its members, along with the notice of the annual general meeting to be held for the first time after the submission of such report, the whole or such portion of the said report as it may specify in this behalf.

(11) If default is made in complying with the provisions of this section, the company shall be liable to be punished with fine which may extend to five thousand rupees, and every officer of the company who is in default, shall be

liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

235. Investigation of the affairs of a company. (1) The Central Government may, where a report has been made by the Registrar under sub-section (6) of section 234, or under sub-section (7) of that section, read with sub-section (6) thereof, appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct.

(2) Where- (a) in the case of a company having a share capital, an application has been received from not less than two hundred members or from members holding not less than one-tenth of the total voting power therein, and (b) in the case of a company having no share capital, an application has been received from not less than one-fifth of persons on the company's register of members, the Company Law Board may, after giving the parties an opportunity of being heard, by order, declare that the affairs of the company ought to be investigated by an inspector or inspectors, and on such a declaration being made, the Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of the company and to report thereon in such manner as the Central Government may direct

291. General powers of Board. (1) Subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do: Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting: Provided further that in exercising any such power or doing any such act or thing, the Board shall be subject to the provisions contained in that behalf in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulation made by the company in general meeting.

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

292. Certain powers to be exercised by Board only at meeting. (1) The Board of directors of a company shall exercise the following powers on behalf of the company, and it shall do so only by means of resolutions passed at meetings of the Board:- (a) the power to make calls on shareholders in respect of money unpaid on their shares; (b) the power to issue debentures; (c) the power to borrow moneys otherwise than on debentures; (d) the power to invest the funds of the company; and (e) the power to make loans: 1[Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the managing agent, secretaries and treasurers, the manager or any other principal officer of the company or in the case of a branch office of the company, a principal officer of the branch office, the powers specified in clauses (c), (d) and (e) to the extent specified in sub-sections (2), (3) and (4) respectively, on such conditions as the Board may prescribe: Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of moneys on deposit by a banking company with another

banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of moneys or, as the case may be, a making of loans by a banking company within the meaning of this section.

Explanation I. Nothing in clause (c) of sub-section (1) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act. Explanation II.-In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause

(c) of sub-section (1) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day to day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

(2) Every resolution delegating the power referred to in clause (c) of sub-section (1) shall specify the total amount 1[outstanding at any one time] up to which moneys may be borrowed by the delegate.

(3) Every resolution delegating the power referred to in clause (d) of subsection (1) shall specify the total amount up to which the funds may be invested, and the nature of the investments which may be made, by the delegate.

(4) Every resolution delegating the power referred to in clause (e) of sub-section (1) shall specify the total amount up to which loans may be made by the delegate, the purposes for which the loans may be made, and the maximum amount of loans which may be made for each such purpose in individual cases.

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

293. Restrictions on powers of Board. (1) The Board of directors of a public company, or of a private company which is a subsidiary of a public company, shall not, except with the consent of such public company or subsidiary in general meeting,- (a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking of the company, or where the company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking; (b) remit, or give time for the re-payment of, any debt due by a director 2[except in the case of renewal or continuance of an advance made by a banking company to its director in the ordinary course of business]; (c) invest, otherwise than in trust securities, 3 [the amount of compensation received by the company in respect of the compulsory acquisition, after the commencement of this Act], of any such undertaking as is referred to in (a), or of any premises or properties used for any such undertaking and without which it cannot be carried on or can be carried on only with difficulty or only after a considerable time; (d) borrow moneys after the commencement of this Act, where the moneys to be borrowed, together with the moneys already borrowed by the company (apart from temporary loans obtained from the company's bankers in the ordinary course of business), will exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, reserves not set apart for any specific purpose; or (e) contribute, after the commencement of this Act, to charitable and other funds not directly relating to the business of the company or the welfare of its employees, any amounts the aggregate of which will, in any financial year,



exceed 1[fifty thousand rupees] or five per cent. of its average net profits as determined in accordance with the provisions of sections 349 and 350 during the three financial years immediately preceding, whichever is greater.

2[Explanation I. Every resolution passed by the company in general meeting in relation to the exercise of the power referred to in clause (d) or in clause (e) shall specify the total amount up to which moneys may be borrowed by the Board of directors under clause (d) or as the case may be, the total amount which may be contributed to charitable and other funds in any financial year under clause (e). Explanation II.-The expression "temporary loans" in clause (d) means loans repayable on demand or within six months from the date of the loan such as short term, cash credit arrangements, the discounting of bills and the issue of other short term loans of a seasonal character, but does not include loans raised for the purpose of financing expenditure of a capital nature.]

Explanation 3[III].-Where a portion of a financial year of the company falls before the commencement of this Act, and a portion falls after such commencement, the latter portion shall be deemed to be financial year within the meaning, and for the purposes, of clause (e).

(2) Nothing contained in clause (a) of sub-section (1) shall affect- (a) the title of a buyer or other person who buys or takes a lease of any such undertaking as is referred to in that clause, in good faith and after exercising due care and caution: or (b) the selling or leasing of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

(3) Any resolution passed by the company permitting any transaction such as is referred to in clause (a) of sub-section(1) may attach such conditions to the permission as may be specified in the resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transaction : Provided that this sub-section shall not be deemed to authorise the effect any reduction in its capital except in accordance with the provisions contained in that behalf in this Act.

(4) The acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of moneys by the banking company within the meaning of clause (d) of sub-section (1).

(5) No debt incurred by the company in excess of the limit imposed by clause (d) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded. 1[Political contributions

## PART VII WINDING UP CHAP PRELIMINARY CHAPTER I.- PRELIMINARY

425. Modes of winding up. (1) The winding up of a company may be either- (a) by the Court ; or (b) voluntary ; or (c) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

433. Circumstances in which company may be wound up by Court. A company may be wound up by the Court,- (a) if the company has, by special resolution, resolved that the company be wound up by the Court; (b) if default

is made in delivering the statutory report to the Registrar or in holding the statutory meeting ; (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; (d) if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two; (e) if the company is unable to pay its debts; (f) if the Court is of opinion that it is just and equitable that the company should be wound up. 360

484. Circumstances in which company may be wound up voluntarily.

(1) A company may be wound up voluntarily-- (a) when the period, if any, fixed for the duration of the company by the articles has expired, or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting passes a resolution requiring the company to be wound up voluntarily; (b) if the company passes a special resolution that the company be wound up voluntarily.

(2) In this Act, the expression "a resolution for voluntary winding up" means a resolution passed under clause (a) or (b) of sub-section (1).

## The Indian Partnership Act

The Indian Partnership Act was passed in 1932 to define and amend the law relating to partnership. Indian Partnership Act is one of very old mercantile law. Partnership is one of the special types of Contract. Initially, this was part of Indian Contract Act itself (Chapter IX - sections 239 to 266), but later converted into separate Act in 1932.

The Indian Partnership Act is complimentary to Contract Act. Basic provisions of Contract Act apply to contract of partnership also. Basic requirements of contract i.e. legally enforceable agreement, mutual consent, parties competent to contract, free consent, lawful object, consideration etc. apply to partnership contract also.

**Partnership Contract is a 'concurrent subject'** - 'Contract, including partnership contract' is a 'concurrent subject, covered in Entry 7 of List III (Seventh Schedule to Constitution). Indian Partnership Act is a Central Act, but State Government can also pass legislation on this issue. Though Partnership Act is a Central Act, it is administered by State Governments, i.e. work of registration of firms and related matters is looked after by each State Government. The Act is not applicable to Jammu and Kashmir.

**Unlimited liability is major disadvantage** - The major disadvantage of partnership is the unlimited liability of partners for the debts and liabilities of the firm. Any partner can bind the firm and the firm is liable for all liabilities incurred by any firm on behalf of the firm. If property of partnership firm is insufficient to meet liabilities, personal property of any partner can be attached to pay the debts of the firm.

**Partnership Firm is not a legal entity** - It may be surprising but true that a Partnership Firm is not a legal entity. It has limited identity for purpose of tax law. As per section 4 of Indian Partnership Act, 1932, 'partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all. - - Under partnership law, a partnership firm is not a legal entity, but only consists of individual partners for the time being. It is not a distinct legal entity apart from the partners constituting it - *Malabar Fisheries Co. v. CIT* (1979) 120 ITR 49 = 2 Taxman 409 (SC).

**FIRM LEGAL ENTITY FOR PURPOSE OF TAXATION** - For tax law, income-tax as well as sales tax, partnership firm is a legal entity - *State of Punjab v. Jullender Vegetables Syndicate* - 1966 (17) STC 326 (SC) \* *CIT v. A W Figgies* - AIR 1953 SC 455 \* *CIT v. G Parthasarthy Naidu* (1999) 236 ITR 350 = 104 Taxman 197 (SC). Though a partnership firm is not a juristic person, Civil Procedure Code enables the partners of a partnership firm to sue or to be sued in the name of the firm. - *Ashok Transport Agency v. Awadhesh Kumar* 1998(5) SCALE 730 (SC). [A partnership firm can sue only if it is registered].

**Partnership, partner, firm and firm name** - "Partnership" is the relation between persons who have agreed to share the profits of business carried on by all or any to them acting for all. - - Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name". [section 4].

"Business" includes every trade, occupation and profession. [section 2(b)]. Thus, a 'partnership' can be formed only with intention to share profits of business. People coming together for some social or philanthropic or religious purposes do not constitute 'partnership'.

**PARTNERS ARE MUTUAL AGENTS** - The business of firm can be carried on by all or any of them for all. Any partner has authority to bind the firm. Act of any one

partner is binding on all the partners. Thus, each partner is 'agent' of all the remaining partners. Hence, partners are 'mutual agents'.

**ORAL OR WRITTEN AGREEMENT** - As per normal provision of contract, a 'partnership' agreement can be either oral or written. - - Agreement in writing is necessary to get the firm registered. Similarly, written agreement is required, if the firm wants to be assessed as 'partnership firm' under Income Tax Act. A written agreement is advisable to establish existence of partnership and to prove rights and liabilities of each partner, as it is difficult to prove an oral agreement. - - However, written agreement is not essential under Indian Partnership Act.

**SHARING OF PROFIT NECESSARY** - The partners must come together to share profits. Thus, if one member gets only fixed remuneration (irrespective of profits) or one who gets only interest and no profit share at all, is not a 'partner'. - - Similarly, sharing of receipts or collections (without any relation to profits earned) is not 'sharing of profit' and the association is not 'partnership'. For example, agreement to share rents collected or percentage of tickets sold is not 'partnership', as sharing of profits is not involved. - - The share need not be in proportion to funds contributed by each partner. - - Interestingly, though sharing of profit is essential, sharing of losses is not an essential condition for partnership. - - Similarly, contribution of capital is not essential to become partner of a firm.

**NUMBER OF PARTNERS** - Since partnership is 'agreement' there must be minimum two partners. The Partnership Act does not put any restrictions on maximum number of partners. However, section 11 of Companies Act prohibits partnership consisting of more than 20 members, unless it is registered as a company or formed in pursuance of some other law.

**Mode of determining existence of partnership** - In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together. [section 6].

**MUTUAL AGENCY IS THE REAL TEST** - The real test of 'partnership firm' is 'mutual agency', i.e. whether a partner can bind the firm by his act, i.e. whether he can act as agent of all other partners.

**Partnership at will** - Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will". [section 7]. - - Partnership 'at will' means any partner can dissolve a firm by giving notice to other partners (or he may express his intention to retire from partnership) - - Partnership deed may provide about duration of partnership (say 10 years) or how partnership will be brought to end. In absence of any such term, the partnership is 'at will'. - - In case of 'particular partnership', the partnership comes to end when the venture for which it was formed comes to end.

**Determination of rights and duties of partners by contract between the partners** - Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing. - - Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing. [section 11(1)]. - - Thus, partners are free to determine the mutual rights and duties by contract. Such contract may be in writing or it may be implied by their actions.

**Duties and mutual rights of partners** - Subject to contract to contrary, partners have duties and mutual rights as specified in Partnership Act-

**EVERY PARTNER HAS RIGHT TO TAKE PART IN BUSINESS** - Subject to contract between partners (to the contrary), every partner has right to take part in the conduct of the business. [section 12(a)]. - - Thus, every partner has equal right to take active part in

business, unless there is specific contract to the contrary. Even if authority of a partner is restricted by contract, outside party is not likely to be aware of such restriction. In such case, if such partner acts within the apparent authority, the firm will be liable for his acts.

**The property of the firm** - Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business. - - Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm [section 14].

**Partner to be agent of the firm** - Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm. [section 18].

**Implied authority of partner as agent of the firm** - Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his "implied authority". [section 19(1)]. -

**PARTNERS JOINTLY AND SEVERALLY LIABLE ACTS OF THE FIRM** - Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. [section 25]. 'An act of a firm' means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm [section 2(a)]. 'Joint and several' means each partner is liable for all acts. Thus, if amount due cannot be recovered from other partners, any one partner will be liable for payment of entire dues of the firm.

**Partner by Holding out** - 'Holding out' means giving impression that a person is partner though he is not. This is principle of 'estoppel'. If a person gives an impression to outsiders that he is partner of firm though he is not partner, he will be held liable as partner, if third party deals with the firm on the impression that he is a partner. Similarly, if a person retires from the firm but does not give notice of retirement, he will be liable as a partner, if some third party deals with the firm on the assumption that he is still partner.

**Minors admitted to the benefits of partnership** - A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership. [section 30(1)].

**RIGHTS OF MINOR** - Minor (who is admitted to benefit of partnership) has a right to such share of the property and of the profits of the firm as may be agreed upon and he *may* have access to and inspect and copy any of the accounts of the firm. [section 30(2)]. [Since the word used is 'may', it seems that right of minor to inspect accounts can be restricted by agreement among partners].

**MINOR'S SHARE LIABLE BUT NOT MINOR HIMSELF** - Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act. [section 30(3)].

**Reconstitution of a Partnership Firm** - A partnership firm is not a legal entity. It has no perpetual existence as in case of a company incorporated under Companies Act. However, the Act gives the partnership limited rights of continuity of business despite change of partners. In absence of specific provision in partnership deed, death or insolvency of a partner means dissolution of the firm. However, partnership can provide that the firm will not dissolve in such case.

Change in partners may occur due to various reasons like death, retirement, admission of new member, expulsion, insolvency, transfer of interest by partner

etc. After such change, the rights and liabilities of each partner are determined afresh. This is termed as reconstitution of a firm.

**Dissolution of a Firm** - A partnership firm is an 'organisation' and like every 'organ' it has to either grow or perish. Thus, dissolution of a firm is inevitable part in the life of partnership firm some time or the other.

Dissolution of a firm without intervention of Court can be (a) By agreement (section 40) (b) Compulsory dissolution in case of insolvency (section 41) (c) Dissolution on happening of certain contingency (section 42) (d) By notice if partnership is at will (section 43).

A firm can also be dissolved by Court u/s 44.

**DISSOLUTION OF PARTNERSHIP AND DISSOLUTION OF FIRM** - The dissolution of partnership between all the partners of a firm is called the dissolution of the firm. [section 39]. - - . As per section 4, Partnership is the relation between persons who have agreed to share profits of business carried on by all or any of them acting for all. - - Thus, if some partner is changed/added/ goes out, the 'relation' between them changes and hence 'partnership' is dissolved, but the 'firm' continues. Hence, the change is termed as 'reconstitution of firm'. However, complete breakage between relations of all partners is termed as 'dissolution of firm'. After such dissolution, the firm no more exists. Thus, 'Dissolution of partnership' is different from 'dissolution of firm'. 'Dissolution of partnership' is only reconstruction of firm, while 'dissolution of firm' means the firm no more exists after dissolution.

**Mode of dissolution of firm** - Following are various modes of dissolution of firm. \*  
Dissolution by agreement - [section 40]. \* Compulsory dissolution in case of insolvency - [section 41] \* Dissolution on the happening on certain contingencies [section 42] \*  
Dissolution by notice of partnership at will [section 43(2)] \* Dissolution by the court

**Consequences of dissolution of firm** - After firm is dissolved, business is wound up and proceeds are distributed among partners. The Act specifies what are the consequences of dissolution of a firm.

**Sale of goodwill of firm after dissolution** - Business is attracted due to reputation of a firm. It creates a 'brand image' which is valuable though not tangible. 'Goodwill' is the value of reputation of the business of the firm. Goodwill of a firm is sold after dissolution either separately or along with property of firm. -  
- As per section 14, property of partnership firm includes goodwill of the firm. - -  
Goodwill is the reputation and connections which the firm establishes over time, together with circumstances which make the connections durable. This reputation enable to earn profits more than normal profits which a similar business would have earned. Goodwill is an intangible asset of the firm. - -

In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm. [section 55(1)].

**Settlement of accounts after dissolution** - Accounts are settled after a firm is dissolved as provided in the Act. A firm is said to be 'wound up' only after accounts are fully settled.

**Registration of Firms** - Registration of firm is not compulsory, though usually done as registration brings many advantages to the firm. Since 'partnership contract' is a 'Concurrent Subject' as per Constitution of India, registration of firms and related work is handled by State Government in each State. Section 71 authorises State Government to make rules for \* prescribing fees for filing documents with registrar \* prescribing forms of various statements and intimations are to be made to registrar and \* regulating procedures in the office of Registrar.

**PARTNER CANNOT SUE IF FIRM IS UNREGISTERED** - No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm. [section 69(1)]. - - Thus, a partner cannot sue the firm or any other partner if firm is unregistered. - - If third party files suit against a partner, he cannot claim of set off or institute other proceeding to enforce a right arising from a contract. - - Suit or claim or set off upto Rs 100 can be made as per section 69(4)(b), but it is negligible in today's standards. - - Criminal proceedings can be filed, but civil suit is not permissible.

**UNREGISTERED FIRM CANNOT SUE THIRD PARTY** - No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm. [section 69(2)]. - - If third party files suit against the unregistered firm, the firm cannot claim set off or institute other proceeding to enforce a right arising from a contract. - - Suit or claim or set off upto Rs 100 can be made as per section 69(4)(b), but it is negligible in today's standards. - - Criminal proceedings can be filed, but civil suit is not permissible.

### Code of Civil Procedure ITI/ITO

1. Issue & Service of Summons - Order V
2. Notice by the 1st party to the opposite party->Plaint(petition filed by the plaintiff before court)->Suit -> Summons to the defendant -> Written Statement to be filed by the defendant
3. With Summons-Copy of the Plaint should be attached
4. Personal Attendance can be insisted only when the defendant resides
  - (i) within the jurisdiction of the court (ii) within 50 miles
  - (iii) 200 miles if 5/6<sup>th</sup> of the distance is connected by road
- Rail or ship
5. Small Causes courts can issue Summons- only for final disposal
6. Not Only as witness- even for Production of document summons could be issued.
7. Instead of summons even letter could be sent.
8. Modes service of Summons:-

- (i) Only copy of the summons to be served
- (ii) Even on Agent or Manager. Master of a ship- is an Agent
- (iii) Not found at residence for a reasonable time
- (iv) Agent, male or female adult member of the family But not on the servant

If Defendant refuses or not found at the resident or no agents or members- service by Affixure.

-Report stating circumstances name & address of the person identifying the house shall be submitted by the serving official.

-Serving Officer shall be examined on oath

-Court then declares- Summons is duly served

-In addition to the above- summons could be sent by RPAD

-If Defendant or A gent refuses to receive the RPAD - Courts declare Valid Service

-If Acknowledgement not received within 30 day from date of issue- Deemed to have been served.

Substituted service :- If defendant not found at the premises Last resided or carried on business - service by affixure and the procedure is as the case of service by affixure as detailed earlier.

The summons could be served with the help of other agencies.

If the defendant is :

with in the Jurisdiction of other court through that court

in Prison through Officer In-charge for service

Outside India & no agent in India- By Post

residing in foreign territory where a political agent is appointed or

Court is established as per CPC then through such agent or court

Soldier, Sailor & Airman-through Commanding Officer

9. Service & endorsement by the serving agencies are required
10. Summons and attendance of witness- Order XVI & XVI (A)
11. If party wishes - to file application and list of witnesses to court  
Witness without summons - permissible
12. Expenses in connection to the witnesses:-  
The party applying -shall pay to court  
H.C. makes rules in this regard
13. Particulars in the summons- Place, Purpose, details of document to be produced
14. Summons could be served by the party or court- if not served by the party, handed over to court for service through messenger of the court.

### Best wishes from ITEF & ITGOA

#### Code of Civil Procedure ITI/ITO

Failure to comply with summons:-

avoids or failed to produce

proclamation issued by the court for attendance or production of documents

Proclamation is fixed on the outer door

warrant with or without bail- for arrest or attachment of property

but small causes court- has no such powers

Court excuses in case sufficient cause but cost of attachment shall be borne by the defaulter

Fine not exceeding Rs. 500 for defaults.

Personal attendance of the witnesses could be insisted where the witness resides within 100 km or 500 km if public conveyance is available.



- But no limit for places connected with Air travel
- Any party fails to give evidence or document- his case could be dismissed for default - the party to the suit could also be a witness
- Witnesses confined or detained in prison
- Personal attendance of imprisoned could be insisted only where the distance from jail is below 25 km
- Commission could also be sent if the evidence is material.

#### Affidavit(O-XIX)

- Written Statement - of **deponent**- on oath duly affirmed before Court or Magistrate or Commissioner
- Requires cross examination of the deponent
- The Court may order to prove fact by Affidavit

#### Attachment of Property (Sec-60, O-XXI)

- If money not paid within **30 days** from date of passing decree- Court order for affidavit with asset details
- If the Judgement Debtor failed to pay , the Decree Holder may apply to Court to orally examine the J.D. with regards to his debts & asset
- Court order for attendance with Book or documents
- If Judgement debtor disobeys - Civil Prison not exceeding **3 months**

Property not attachable:-

Tools of artisan, Personal ornaments, Books of A/c, PF, Gratuity, LIC,  
Air, Army, Naval, Rs. 1000 & 2/3<sup>rd</sup> of the reminder(except maintenance), 1/3<sup>rd</sup> of salary in case of maintenance

Attachment of Moveable Property.

Delivered to Decree Holder or receiver

Kept under custody for 3 months then Sale by court - Balance Money after adjusting all dues to the Judgement Debtor

Immovable property

Possession to Decree Holder - In case of illegal occupation, Evacuation will be by the court

Court has power to Break open but time for women to withdraw

Tenant not bound by decree can occupy but to pay the rent to Decree Holder

affix the warrant & beat drum- Similar procedure for joint Ownership property

#### Best wishes from ITEF & ITGOA

#### Civil procedure code ITI/ITO

#### Commission (O-XXVI)

- I Court may issue commission in 5 cases:-If the witness
1. suffers from Sickness or exempted
  2. resides beyond the jurisdiction of the court
  3. is about to leave India
  4. is a Govt. Servant & appearance affects his official duty
  5. resides out side India

Evidence taken by commission could be produced before the court as evidence with the consent of the opposing party.

II **Commission for local Investigation for the following**

- (1) To Elucidating facts
- (2) To ascertain market value
- (3) To ascertain profits, damages or annual net profits

III Other types of commissions

Scientific investigation  
Commission for sale of Moveable property that are in the custody of  
court

Crop valuation- accounts of partial partition  
Commission by H.C. at the instance of foreign tribunals  
Expenses should be borne by Party at/for whose instance / benefit  
commission was granted

#### IV Powers

- (1) Examine Parties & Witnesses
- (2) Call for documents, records
- (3) Enter any premises connected to the dispute
- (4) Proceed ex parte
- (5) Summon & examine witnesses => in this regard deemed to be Civil Court

#### Review (Sec. 114, Order- XLVII)

#### I Situations warranting review

1. **Fresh new & important material or evidence** - not within knowledge of or could not have been produced by the aggrieved party when the original decree was made
2. **Apparent Mistake of-law, fact or procedure**
3. on any other sufficient cause

#### II Other points involved in review

4. No Review if appeal has been preferred on same ground
5. No Review for order passed on the Review application.
6. After withdrawal appeal Review petition can be in the original court.
7. After filing review , appeal is preferred, review could be kept pending till disposal of the appeal
8. Limitation period for filing petition 30 days from the date of order
9. Review Petition shall be filed before the same court- in case High Court it should be before the same judge or his successors
10. If petition is dismissed for default- it can be restored for sufficient cause. Rejection of application on failure of applicant to appear- can be restored if he proves that he was prevented by the sufficient cause.
11. Form of application for review- Same form preferring for appeal
12. No application of review without notice to the opposite party
13. Order of rejection of review's application - final & not appealable

#### Best wishes from ITEF & ITGOA

### ***INFORMATION TECHNOLOGY ACT 2000***

#### THE INFORMATION TECHNOLOGY ACT, 2000

An Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

WHEREAS the General Assembly of the United Nations by resolution A/RES/51/162, dated the 30th January, 1997 has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law; AND WHEREAS the said resolution recommends

inter alia that all States give favourable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based method of communication and storage of information; AND WHEREAS it is considered necessary to give effect to the said resolution and to promote efficient delivery of Government services by means of reliable electronic records. BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:-

## CHAP PRELIMINARY CHAPTER I PRELIMINARY

Short title, extent and commencement.

1. Short title, extent and commencement.--(1) This Act may be called the Information Technology Act, 2000.

(2) It shall extend to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

(4) Nothing in this Act shall apply to,- (a) a negotiable instrument as defined in section 13 of the Negotiable Instruments Act, 1881 (26 of 1881); (b) a power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882; (c) a trust as defined in section 3 of the Indian Trusts Act, 1882; (d) a will as defined in clause (h) of section 2 of the Indian Succession Act, 1925 (39 of 1925) including any other testamentary disposition by whatever name called; (e) any contract for the sale or conveyance of immovable property or any interest in such property; (f) any such class of documents or transactions as may be notified by the Central Government in the Official Gazette.

Definitions.

2. Definitions.--(1) In this Act, unless the context otherwise requires,- (a) "access" with its grammatical variations and cognate expressions means gaining entry into, instructing or communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network; (b) "addressee" means a person who is intended by the originator to receive the electronic record but does not include any intermediary; (c) "adjudicating officer" means an adjudicating officer appointed under sub-section (1) of section 46; (d) "affixing digital signature" with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for the purpose of authenticating an electronic record by means of digital signature; (e) "appropriate Government" means as respects any matter,- (i) enumerated in List II of the Seventh Schedule to the Constitution; (ii) relating to any State law enacted

under List III of the Seventh Schedule to the Constitution, the State Government and in any other case, the Central Government; (f) "asymmetric crypto system" means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature; (g) "Certifying Authority" means a person who has been granted a licence to issue a Digital Signature Certificate under section 24; (h) "certification practice statement" means a statement issued by a Certifying Authority to specify the practices that the Certifying Authority employs in issuing Digital Signature Certificates; (i) "computer" means any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network; (j) "computer network" means the interconnection of one or more computers through- (i) the use of satellite, microwave, terrestrial line or other communication media; and (ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained; (k) "computer resource" means computer, computer system, computer network, data, computer data base or software; (l) "computer system" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programme, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions; (m) "Controller" means the Controller of Certifying Authorities appointed under sub-section (1) of section 17; (n) "Cyber Appellate Tribunal" means the Cyber Regulations Appellate Tribunal established under sub-section (1) of section 48; (o) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer; (p) "digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3; (q) "Digital Signature Certificate" means a Digital Signature Certificate issued under sub-section (4) of section 35; (r) "electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device; (s) "Electronic Gazette" means the Official Gazette published in the electronic form; (t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche; (u) "function", in relation to a computer, includes logic, control, arithmetical process, deletion, storage and retrieval and communication or telecommunication from or within a computer; (v) "information" includes data, text, images, sound, voice, codes, computer programmes, software and data bases or micro film or computer generated micro fiche; (w) "intermediary" with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with

respect to that message; (x) "key pair", in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key; (y) "law" includes any Act of Parliament or of a State Legislature, Ordinances promulgated by the President or a Governor, as the case may be, Regulations made by the President under article 240, Bills enacted as President's Act under sub-clause (a) f clause (1) of article 357 of the Constitution and includes rules, regulations, bye-laws and orders issued or made thereunder; (z) "licence" means a licence granted to a Certifying Authority under section 24; (za) "originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary; (zb) "prescribed" means prescribed by rules made under this Act; (zc) "private key" means the key of a key pair used to create a digital signature; (zd) "public key" means the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate; (ze) "secure system" means computer hardware, software, and procedure that- (a) are reasonably secure from unauthorised access and misuse; (b) provide a reasonable level of reliability and correct operation; (c) are reasonably suited to performing the intended functions; and (d) adhere to generally accepted security procedures; (zf) "security procedure" means the security procedure prescribed under section 16 by the Central Government; (zg) "subscriber" means a person in whose name the Digital Signature Certificate is issued; (zh) "verify" in relation to a digital signature, electronic record or public key, with its grammatical variations and cognate expressions means to determine whether- (a) the initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber; (b) the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

## CHAPTER II DIGITAL SIGNATURE

Authentication of electronic records.

3. Authentication of electronic records.-(1) Subject to the provisions of this section any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record. Explanation.-For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible - (a) to

derive or reconstruct the original electronic record from the hash result produced by the algorithm; (b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

### CHAPTER III ELECTRONIC GOVERNANCE

Legal recognition of electronic records. 4. Legal recognition of electronic records.-Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is- (a) rendered or made available in an electronic form; and (b) accessible so as to be usable for a subsequent reference.

Legal recognition of digital signatures. 5. Legal recognition of digital signatures.-Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government. Explanation.-For the purposes of this section, "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.

Use of electronic records and digital signatures in Government and its agencies. 6. Use of electronic records and digital signatures in Government and

its agencies.-(1) Where any law provides for- (a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner; (b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner; (c) the receipt or payment of money in a particular manner, then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section

(1), by rules, prescribe- (a) the manner and format in which such electronic records shall be filed, created or issued; (b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Retention of electronic records.

7. Retention of electronic records.-(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if- (a) the information contained therein remains accessible so as to be usable for a subsequent reference; (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; (c) the details which will facilitate the identification of the origin, destination, date and time of despatch or receipt of such electronic record are available in the electronic record: Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be despatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Publication of rule, regulation, etc., in Electronic Gazette. 8. Publication of rule, regulation, etc., in Electronic Gazette.-Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette: Provided that where any rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form.

Sections 6, 7 and 8 not to confer right to insist document should be accepted in electronic form. 9. Sections 6, 7, and 8 not to confer right to insist document should be accepted in electronic form.-Nothing contained in sections 6, 7 and 8 shall confer a right upon any person to insist that any Ministry or Department of the Central Government or the State Government or any authority or body established by or under any law or controlled or funded by the Central or State Government should accept, issue, create, retain and preserve any document in the form of electronic records or effect any monetary transaction in the electronic form.

Power to make rules by Central Government in respect of digital signature.

10. Power to make rules by Central Government in respect of digital signature.-The Central Government may, for the purposes of this Act, by rules, prescribe- (a) the type of digital signature; (b) the manner and format in which the digital signature shall be affixed; (c) the manner or procedure which facilitates identification of the person affixing the digital signature; (d) control processes and procedures to ensure adequate integrity, security and confidentiality of electronic records or payments; and (e) any other matter which is necessary to give legal effect to digital signatures.

**CHAPTER IV ATTRIBUTION, ACKNOWLEDGEMENT AND  
DESPATCH OF ELECTRONIC RECORDS**

Attribution of electronic records. 11. Attribution of electronic records.-An electronic record shall be attributed to the originator- (a) if it was sent by the originator himself; (b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or (c) by an information system programmed by or on behalf of the originator to operate automatically.

Acknowledgement of receipt.

12. Acknowledgement of receipt.- (1) Where the originator has not agreed with the addressee that the acknowledgment of receipt of electronic record be given in a particular form or by a particular method, an acknowledgment may be given by- (a) any communication by the addressee, automated or otherwise; or (b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.

(2) Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then unless acknowledgment has been so received, the electronic record shall be deemed to have been never sent by the originator.

(3) Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgment must be received by him and if no acknowledgment is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.

Time and place of despatch and receipt of electronic record.

13. Time and place of despatch and receipt of electronic record.- (1) Save as otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator .

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:- (a) if the addressee has designated a computer resource for the purpose of receiving electronic records,- (i) receipt occurs at the time when the electronic record enters the designated computer resource; or (ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee; (b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the



originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received

under sub-section (3).

(5) For the purposes of this section,- (a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business; (b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business; (c) "usual place of residence", in relation to a body corporate, means the place where it is registered. CHAP SECURE ELECTRONIC RECORDS AND SECURE DIGITAL SIGNATURES CHAPTER V SECURE ELECTRONIC RECORDS AND SECURE DIGITAL SIGNATURES

Secure electronic record. 14. Secure electronic record.-Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

Secure digital signature. 15. Secure digital signature.-If, by application of a security procedure agreed to by the parties concerned, it can be verified that a digital signature, at the time it was affixed, was- (a) unique to the subscriber affixing it; (b) capable of identifying such subscriber; (c) created in a manner or using a means under the exclusive control of the subscriber and is linked to the electronic record to which it relates in such a manner that if the electronic record was altered the digital signature would be invalidated, then such digital signature shall be deemed to be a secure digital signature.

Security procedure. 16. Security procedure.-The Central Government shall for the purposes of this Act prescribe the security procedure having regard to commercial circumstances prevailing at the time when the procedure was used, including- (a) the nature of the transaction; (b) the level of sophistication of the parties with reference to their technological capacity; (c) the volume of similar transactions engaged in by other parties; (d) the availability of alternatives offered to but rejected by any party; (e) the cost of alternative procedures; and (f) the procedures in general use for similar types of transactions or communications.

## CHAP OFFENCES CHAPTER XI OFFENCES

Tampering with computer source documents. 65. Tampering with computer source documents.-Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with oth. Explanation.-For the purposes of

this section, "computer source code" means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.

Hacking with computer system.

66. Hacking with computer system.-(1) Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking.

(2) Whoever commits hacking shall be punished with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

Publishing of information which is obscene in electronic form. 67.

Publishing of information which is obscene in electronic form.-Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

Power of Controller to give directions.

68. Power of Controller to give directions.-(1) The Controller may, by order, direct a Certifying Authority or any employee of such Authority to take such measures or cease carrying on such activities with the provisions of this Act, rules or any regulations made thereunder. as specified in the order if those are necessary to ensure compliance

(2) Any person who fails to comply with any order under sub-section

(1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding two lakh rupees or to both.

Directions of Controller to a subscriber to extend facilities to decrypt information. 69. Directions of Controller to a subscriber to extend facilities to

decrypt information.-(1) If the Controller is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence, for reasons to be recorded in writing, by order, direct any agency of the Government to intercept any information transmitted through any computer resource.

(2) The subscriber or any person incharge of the computer resource shall, when called upon by any agency which has been directed under

sub-section (1), extend all facilities and technical assistance to decrypt the information.

(3) The subscriber or any person who fails to assist the agency

referred to in sub-section (2) shall be punished with an imprisonment for a term which may extend to seven years.

Protected system.

70. Protected system.-(1) The appropriate Government may, by notification in the Official Gazette, declare that any computer, computer system or computer network to be a protected system.

(2) The appropriate Government may, by order in writing, authorise the persons who are authorised to access protected systems notified under

sub-section (1).

(3) Any person who secures access or attempts to secure access to a protected system in contravention of the provisions of this section shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Penalty for misrepresentation. 71. Penalty for misrepresentation.-Whoever makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any licence or Digital Signature Certificate, as the case may be, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Penalty for breach of confidentiality and privacy. 72. Penalty for breach of confidentiality and privacy.-Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Penalty for publishing Digital Signature Certificate false in certain particulars. 73. Penalty for publishing Digital Signature Certificate false in

certain particulars.-(1) No person shall publish a Digital Signature Certificate or otherwise make it available to any other person with the knowledge that- (a) the Certifying Authority listed in the certificate has not issued it; or (b) the subscriber listed in the certificate has not accepted it; or (c) the certificate has been revoked or suspended, unless such publication is

for the purpose of verifying a digital signature created prior to such suspension or revocation.

(2) Any person who contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Publication for fraudulent purpose. 74. Publication for fraudulent purpose.- Whoever knowingly creates, publishes or otherwise makes available a Digital Signature Certificate for any fraudulent or unlawful purpose shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Act to apply for offence or contravention committed outside India. 75. Act to apply for offence or contravention committed outside

India.-(1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

(2) For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.

Confiscation. 76. Confiscation.-Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provision of this Act, rules, orders or regulations made thereunder has been or is being contravened, shall be liable to confiscation: Provided that where it is established to the satisfaction of the court adjudicating the confiscation that the person in whose possession, power or control of any such computer, computer system, floppies, compact disks, tape drives or any other accessories relating thereto is found is not responsible for the contravention of the provisions of this Act, rules, orders or regulations made thereunder, the court may, instead of making an order for confiscation of such computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, make such other order authorised by this Act against the person contravening of the provisions of this Act, rules, orders or regulations made thereunder as it may think fit.

Penalties or confiscation not to interfere with other punishments. 77.

Penalties or confiscation not to interfere with other punishments.-No penalty imposed or confiscation made under this Act shall prevent the imposition of any other punishment to which the person affected thereby is liable under any other law for the time being in force.

Power to investigate offences. 78. Power to investigate offences.-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a police officer not below the rank of Deputy Superintendent of Police shall investigate any offence under this Act.

## **THE RIGHT TO INFORMATION ACT, 2005**

**An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.**

Whereas the Constitution of India has established democratic Republic;

And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

## CHAPTER I

### Preliminary

- 1** (1) This Act may be called the Right to Information Act, 2005.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) The provisions of sub-section (1) of section 4, sub-sections (1) and (2) of section 5, sections 12, 13, 15, 16, 24, 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment.
- 2** In this Act, unless the context otherwise requires,—
- \*\*\*\* (a) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly—
- (i) by the Central Government or the Union territory administration, the Central Government;
- (ii) by the State Government, the State Government;
- (b) "Central Information Commission" means the Central Information Commission constituted under sub-section (1) of section 12;
- (c) "Central Public Information Officer" means the Central Public Information Officer designated under sub-section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5;
- (d) "Chief Information Commissioner" and "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (3) of section 12;
- \*\*\* (e) "competent authority" \*\*\*\* means—
- (i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;
- (ii) the Chief Justice of India in the case of the Supreme Court;
- (iii) the Chief Justice of the High Court in the case of a High Court;
- (iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;
- (v) the administrator appointed under article 239 of the Constitution;
- \*\*\* (f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;
- \*\*\* (h) "public authority" means any authority or body or institution of self- government established or constituted—
- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any—
- (i) body owned, controlled or substantially financed;
- (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;
- \*\*\* (i) "record" includes—
- (a) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a document;
- (c) any reproduction of image or images embodied in such microfilm (whether

- enlarged or not); and
- (d) any other material produced by a computer or any other device;
- (j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—
  - (i) inspection of work, documents, records;
  - (ii) taking notes, extracts or certified copies of documents or records;
  - (iii) taking certified samples of material;
  - (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;
- (n) "third party" means a person other than the citizen making a request for information and includes a public authority.

## CHAPTER II

### Right to information and obligations of public authorities

- 3** Subject to the provisions of this Act, all citizens shall have the right to information.
- 4** (1) \*\* Every public authority shall—
- (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;
  - (b) publish within one hundred and twenty days from the enactment of this Act,—
    - (i) the particulars of its organisation, functions and duties;
    - (ii) the powers and duties of its officers and employees;
    - (iii) the procedure followed in the decision making process, including channels of supervision and accountability;
    - (iv) the norms set by it for the discharge of its functions;
    - (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
    - (vi) a statement of the categories of documents that are held by it or under its control;
    - (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
    - (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
    - (ix) a directory of its officers and employees;
    - (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
    - (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
    - (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
    - (xiii) particulars of recipients of concessions, permits or authorisations granted by it;
    - (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
    - (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
    - (xvi) the names, designations and other particulars of the Public Information Officers;
    - (xvii) such other information as may be prescribed and thereafter update these publications every year;
  - (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;
  - (d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

- (2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.
- (3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.
- (4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.—For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

- 6 (1) \*\* A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—
- (a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;
  - (b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be,

specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

- (2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.
- (3) Where an application is made to a public authority requesting for an information,—
  - (i) which is held by another public authority; or
  - (ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

- 7 (1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

**Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.**

- (2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.
- (3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving—
  - (a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit



that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;

- (b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.
- (4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.
- (5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed:

**Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.**

- (6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).
  - (7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.
  - (8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,—
    - (i) the reasons for such rejection;
    - (ii) the period within which an appeal against such rejection may be preferred; and
    - (iii) the particulars of the appellate authority.
  - (9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.
- 8** (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—
- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
  - (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
  - (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
  - (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
  - (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
  - (f) information received in confidence from foreign Government;
  - (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
  - (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
  - (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

- (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information

Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

9 Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access **would involve an infringement of copyright subsisting in a person other than the State.**

10 (1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

(2) Where access is granted to a part of the record under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing—

(a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;

(b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;

(c) the name and designation of the person giving the decision;

(d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

(e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access.

11 (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information: Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party

to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.