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PART VI.

Bills introduced into the Council of the Governor General of India and Bills published before introduction in that Council.

[As introduced in the Legislative Assembly.]

A

BILL

TO

Validate marriages between different castes of Hindus.

Whereas it is expedient to validate marriages between Hindus of different castes for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Hindu Marriage Validity Act, 19 .

Validity of marriages among Hindus.

2. No marriage among Hindus shall be invalid by reason that the parties thereto do not belong to the same caste, any custom or any interpretation of Hindu Law to the contrary notwithstanding.

STATEMENT OF OBJECTS AND REASONS.

Under the Hindu Law as interpreted, marriages between Hindus of different castes are held illegal. This interpretation, besides being open to question, has caused serious hardship in individual cases and is calculated to retard the progress of the community. The Bill, therefore, seeks to provide that such marriages shall not be invalid.

BHAGAVAN DAS.

[As introduced in the Legislative Assembly.]

A

BILL

TO

Make provision for the application of the Moslem Personal Law (Shariat) *to Moslems in British India.*

Whereas it is expedient to make provision for the application of the Moslem Personal Law (*Shariat*) to Moslems in British India; It is hereby enacted as follows :—

Short title and extent.

1. (*1*) This Act may be called the Moslem Personal Law (*Shariat*) Application Act, 1935.

(*2*) It shall extend to the whole of British India including British Baluchistan.

Application of Personal Law to Moslems.

2. Notwithstanding any custom, usage or law to the contrary, in all questions regarding succession, special property of females, betrothal, marriage, divorce, maintenance, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, any religious usage or institution including *Wakf* (trust and trust property), the rule of decision in cases where the parties are Moslems shall be the Moslem Personal Law (*Shariat*).

STATEMENT OF OBJECTS AND REASONS.

For several years past it has been the cherished desire of the Muslims of British India that Customary Law should in no case take the place of Muslim Personal Law. The matter has been repeatedly agitated in the press as well as on the platform. The Jamiat-ul-Ulema-i-Hind, the greatest Moslem religious body has supported the demand and invited the attention of all concerned to the urgent necessity of introducing a measure to this effect. Customary Law is a misnomer inasmuch as it has not any sound basis to stand upon and is very much liable to frequent changes and cannot be expected to attain at any time in the future that certainty and definiteness which must be the characteristic of all laws. The status of Muslim women under the so-called Customary Law is simply disgraceful. All the Muslim Women Organisations have therefore condemned the Customary Law as it adversely affects their rights. They demand that the Muslim Personal Law (*Shariat*) should be made applicable to them. The introduction of Muslim Personal Law will automatically raise them to the position to which they are naturally entitled. In addition to this the present measure, if enacted, would have very salutary effect on society because it would ensure certainty and definiteness in the mutual rights and obligations of the public. Muslim Personal Law (*Shariat*) exists in the form of a veritable code and is too well known to admit of any doubt or to entail any great labour in the shape of research, which is the chief feature of Customary Law.

NEW DELHI;

The 27th March, 1935.

H. M. ABDULLAH.

[As introduced in the Legislative Assembly.]

A

BILL

TO

Amend the Child Marriage Restraint Act, 1929.

XIX of 1929. Whereas it is expedient to amend the Child Marriage Restraint Act, 1929; It is hereby enacted as follows :—

Short title. 1. This Act may be called the Child Marriage Restraint (Amendment) Act, 1935.

Amendment of section 2, Act XIX of 1929. XIX of 1929. 2. In clause (*c*) of section 2 of the Child Marriage Restraint Act, 1929 (hereinafter referred to as the said Act), between the words " is " and "thereby " the words " or is about to be " shall be inserted.

Substitution of new section for section 9 of Act XIX of 1929. 3. For section 9 of the said Act, the following shall be substituted, namely :—

" 9. (*1*) The Court may, if it is satisfied on information laid before it through a complaint or otherwise, that an offence under this Act has been or is about to be committed, upon its own motion issue process against any person suspected of having committed or of being about to commit such offence.

(*2*) No Court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed. "

Amendment of section 11, Act XIX of 1929. 4. In section 11 of the said Act,—

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

"(*1*) When the Court takes cognizance of any offence under this Act upon a complaint made to it, it may, at any time after examining the complainant and before issuing process for compelling the attendance of the accused, require the complainant to execute a bond, with or without sureties, for a sum not exceeding one hundred rupees, as security for the payment of any compensation which the complainant may be directed to pay under section 250 of the Code of Criminal Procedure, 1898, and if such security is not furnished within such reasonable time as the Court may fix, the complaint shall be dismissed. " ; and V of 1898.

(*ii*) sub-section (*2*) shall be omitted.

Insertion of new sections 12, 13 and 14 in Act XIX of 1929. 5. The following sections shall be added as sections 12, 13 and 14 of the said Act, namely :—

"12. (*1*) Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied from information laid before it through a complaint or otherwise, that a child marriage in contravention of this Act has been arranged or is about to be solemnised, issue an injunction against any of the persons mentioned in sections 3, 4, 5 and 6 of this Act prohibiting such marriage.

(*2*) Whoever knowing that an injunction has been issued against him under sub-section (*1*) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months or with a fine which may extend to one thousand rupees or with both.

13. Upon conviction under this Act and in addition to the penalties provided therein, the Court may require the husband of a female child (or, if he be a minor, the person having charge of him in any capacity whatsoever) to furnish a bond, with or without sureties, for the separate living, custody and maintenance of the wife and for preventing the consummation of the marriage until she ceases to be a child or until such later date as the Court may appoint.

14. A bond taken under section 11 or section 13 of this Act shall be deemed to be a bond taken under the Code of Criminal Procedure, 1898, and the provisions of Chapter XLII of that Code shall apply accordingly. " V of 1898.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to amend the Act to which it refers (commonly known as the Sarda Act) by three provisions aimed at facilitating the more effective enforcement of the Act :—

First by putting it beyond question that the Courts empowered to take proceedings under the Act may at their discretion issue an injunction prohibiting a marriage arranged in contravention of the Act.

Already Civil Courts in Bombay Presidency are known in several cases to have issued injunction orders against marriages known to have been arranged in contravention of the Act. It is not known whether similar action has been taken in any other Province. But since doubts have been thrown upon the legality or practicability of this method, it seems desirable to remove such doubts by providing for it directly through the proposed amendment. The draft Bill proposes to impose a higher maximum penalty for the breach of such an injunction than the penalty provided in the Act in the case of prosecutions after the marriage has already taken place, on the ground that breach of a Court injunction involves contempt of Court.

Secondly, by permitting the Court to take proceedings under the Act upon its own motion, without requiring the execution of a bond or taking security.

It is known that one of the principal impediments to the enforcement of the Sarda Act at present lies in the obligation placed upon the complainant to incur the publicity of a formal complaint and, if required by the Court to execute a bond, to incur also the risk of losing the sum mentioned in the bond. The proposed amendment would enable the Court to proceed upon information obtained privately after taking such steps as it might think necessary to satisfy itself of the correctness of the information.

Thirdly, by enabling the Court to require the husband of a child wife (or if he is a minor, his guardian) to make provision for the separate custody and maintenance of the child wife and to refrain from consummating the marriage until she reaches the legal age for marriage, or until a later date if it thinks necessary.

A provision of this kind was recommended by the Age of Consent Committee (commonly called the Joshi Committee), page 198, paragraph 23. In default of such a provision, those who have the welfare of an illegally married child wife at heart are often deterred from prosecuting the offenders by the knowledge that the prosecution, even if successful, will not rescue the child from the dangers of premature marital intercourse and may actually cause her to be maltreated by the husband or his family in revenge for the prosecution.

The 15th February, 1935. B. DAS.

[As introduced in the Legislative Assembly.]

A

BILL

TO

Amend the Hindu Law governing Hindu Women's Right to Property.

WHEREAS it is expedient to amend the Hindu Law to give better rights to women in respect of property of a Hindu, either separate, or a member of a joint Hindu family dying intestate, and in respect of separate property and the joint family property; It is hereby enacted as follows:—

Short title and extent.

1. *(1)* This Act may be called the Hindu Women's Rights to Property Act, 19 .

(2) It extends to the whole of British India.

Hindu law to remain in force subject to the provisions of this Act.

2. *(1)* The Hindu Law in force in British India shall regulate the rights and liabilities of the Hindu subject to the provisions of this Act.

(2) Save as aforesaid nothing herein contained shall be construed to affect any custom, rule, or interpretation of the Hindu Law which is not inconsistent with the provisions of this Act.

Sex not a ground for disqualification.

3. No woman because of her sex shall be excluded from the right of owning property gained by inheritance, on partition, settlement, gift, or present, or be deemed to be disqualified from having a right in property.

Devolution of property.

4. The property of a Hindu dying intestate shall first devolve upon his wife, mother, daughters and wife of a predeceased son along with his sons and all of them shall have equal shares in the property. In the absence of these the devolution shall be according to the Hindu Law. The widow and the daughters of a coparcener having no sons shall succeed to his share after his death and it shall not lapse to the surviving coparceners of the family. The widow and the daughters of a coparcener having sons shall succeed to his share. The widow and the daughters of a coparcener shall have a share equal to that of his son if he has any but shall not claim partition during his lifetime.

Nature of interest in property taken by women.

5. The interest in property going to the shares of a Hindu woman as a widow, daughter, mother or otherwise of a coparcener under the provisions in this Act shall be absolute and not limited.

Saving.

6. Nothing in this Act shall be construed to affect any proceeding in any civil suit instituted before the commencement of this Act.

STATEMENT OF OBJECTS AND REASONS.

The object of the Bill is sufficiently indicated by the Title and Preamble. Briefly it is as follows:—

To remove the existing disabilities from which Hindu women suffer in respect of Rights of Property relating to Inheritance, Partition, etc.

G. V. DESHMUKH.

The 25th January, 1935.

[As introduced in the Legislative Assembly.]

A

BILL

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

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

Short title and commencement.

1. (*1*) This Act may be called the Indian Companies (Amendment) Act, 1936.

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

Amendment of section 2, Act VII of 1913.

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

(*a*) to clause (*9*) the words "and includes a managing agent" shall be added;

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

"(*13*) 'private company' means a company which by its articles—

(*a*) restricts the right to transfer its shares; and

(*b*) limits the number of its members to fifty not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment and have continued after the termination of that employment to be members of the company: and

(*c*) prohibits any invitation to the public to subscribe for any shares 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:";

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

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

and

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

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

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

"(*2*) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and

(*a*) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent. of the issued share capital of that other company or such as to entitle the company to more than fifty per cent. of the voting power in that other company; or

(*b*) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act, and the expression 'subsidiary company' in this Act means a company in the case of which the conditions of this sub-section are satisfied."

Amendment of section 4, Act VII of 1913.

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

"(*3*) Every member of a company, association or partnership carrying on business in contravention of sub-section (*2*) of this section shall be personally liable for all liabilities incurred in such business.

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

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

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

" 9. The memorandum shall—

Printing and signature of memorandum.

(a) be printed,

(b) be divided into paragraphs numbered consecutively, and

(c) be signed by each subscriber in the presence of at least one witness who shall attest the signature."

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

Amendment of section 11, Act VII of 1913.

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

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

(b) contains the word 'Municipal' or 'Chartered' or any word which in the opinion of the registrar suggests or is calculated to suggest connection with any municipality or other local authority or with any society or body incorporated by Royal Charter; or

(c) contains the word 'Co-operative':

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

6. In sub-section (1) of section 12 of the said Act, after clause (e) the following word and clauses shall be added, namely :—

Amendment of section 12, Act VII of 1913.

" or

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

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

7. To sub-section (2) of section 17 of the said Act the following shall be added, namely :—

Amendment of section 17, Act VII of 1913.

" and shall contain regulations identical with or to the same effect as regulation 56, regulation 66, regulations 78, 79, 80, 81 and 82, regulation 105, regulation 107, and regulations 112, 113, 114, 115 and 116 contained in that Table."

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

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

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

Effect of alteration in memorandum or articles.

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

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

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

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

Alteration of memorandum to be noted in every copy.

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

Amendment of section 26, Act VII of 1913.

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

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

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

Index of members of company.

"31A. (*1*) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall within fourteen days after the date on which any alteration is made in the register of members make any necessary alteration in the index.

(*2*) The index, which may be in the form of a card index, shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(*3*) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty rupees."

Amendment of section 32, Act VII of 1913.

12. In section 32 of the said Act,—

(*a*) in sub-section (*1*), after the word "shall" the words "within a year from its incorporation and thereafter" shall be inserted, and in sub-section (*1*) and sub-section (*3*), for the words "first or only ordinary" the word "annual" shall be substituted; and

(*b*) in sub-section (*3*), for the words "seven days" the words "twenty-one days" shall be substituted.

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

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

Transfer of shares.

"34.(*1*) An application for the transfer of shares in a company may made either by the transferor or the transferee, provided that where such application is made by the transferor no transfer shall be effected unless the company gives notice of the application to the transferee and the company shall, unless objection is made by the transferee within four weeks from the date of receipt of the notice, enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for transfer was made by the transferee.

(*2*) It shall not be lawful for the company to register a transfer of shares in or debentures of the company unless the proper instrument of transfer duly stamped and executed has been delivered to the company along with the share script:

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

(*3*) If a company refuses to register the transfer of any shares or debentures, the company shall, within two months from the date on which the instrument of transfer was lodged with the company, send to the transferee and the transferor notice of the refusal.

(*4*) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(*5*) 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.

Insertion of new section 35A in Act VII of 1913.

14. After section 35 of the said Act the following section shall be inserted, namely:—

Transfer to minor or person of unsound mind.

"35A. A transfer of a share or interest in a company to a person who is below the age of eighteen years or who has been found by a Court of competent jurisdiction to be of unsound mind shall be void."

Amendment of section 36, Act VII of 1913.

15. To sub-section (*2*) of section 36 of the said Act the following words shall be added, namely :—

" and the company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company ".

Amendment of section 39, Act VII of 1913.

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

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

Amendment of section 43, Act VII of 1913.

17. Section 43 of the said Act shall be re-numbered as sub-section (*1*) of that section and to the section as so re-numbered the following sub-section shall be added, namely :—

" (*2*) Nothing in this section shall apply to a private company."

Amendment of section 50, Act VII of 1913.

18. In sub-section (*2*) of section 50 of the said Act, the words " with respect to sub-division of shares " shall be omitted.

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

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

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

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

(*2*) No company limited by shares shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company :

Provided that nothing in this section shall be taken to prohibit—

(*a*) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;

(*b*) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company ;

(*c*) the making by a company of loans to persons, other than directors, *bona fide* in the employment of the company with a view to enabling those persons to purchase fully paid shares in the company to be held by themselves by way of beneficial ownership.

(*3*) The aggregate amount of any outstanding loans made under the authority of clauses (*b*) and (*c*) of sub-section (*2*) shall be shown as a separate item in every balance-sheet of the company.

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

Amendment of section 55, Act VII of 1913.

20. In section 55 of the said Act,—

(*a*) sub-section (*1*) shall be omitted; and

(*b*) sub-sections (*2*) and (*3*) shall be re-numbered as sub-sections (*1*) and (*2*), respectively.

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

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

" *Variation of Shareholders' Rights.*

Rights of holders of special classes of shares.

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

(2) An application under this section must be made within seven days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the Court on any such application forward a copy of the order to the registrar and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty rupees.

(6) The expression 'variation' in this section includes 'abrogation' and the expression 'varied' shall be construed accordingly."

Substitution of new section for section 72, Act VII of 1913.

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

Registered office of company.

"72. (1) A company shall as from the day on which it begins to carry on business, or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office and of any change therein shall be given within twenty-eight days after the date of the incorporation of the company or of the change, as the case may be, to the registrar who shall record the same.

(3) The inclusion in the annual return of a company of the statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this section.

(4) If a company carries on business without complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business."

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

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

Annual general meeting.

"76. (1) A general meeting of every company shall be held within one year from the date of its incorporation and thereafter once at least in every calendar year and not more than fifteen months after the holding of the last preceding general meeting.

(2) If default is made in holding a meeting in accordance with the provisions of this section, the company and every director or manager of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees.

(3) If default is made as aforesaid, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company."

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

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

Statutory meeting of company.

"77. (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2) The directors shall, at least ten days before the day on which the meeting is held, forward a report

(in this Act referred to as the statutory report) certified as required by this section to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company or by the chairman of the directors if authorised in this behalf by the directors and shall state—

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted,

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid,

(c) an abstract of the receipts of the company and of the payments made thereout up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(d) the names, addresses and descriptions of the directors, auditors, managers, if any, and secretary of the company;

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification;

(f) the extent to which underwriting contracts, if any, have been carried out; and

(g) the arrears, if any, due on calls from directors and managers.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares and to the receipts and payments of the company on capital account, be certified as correct by the auditors of the company.

(5) The directors shall cause a copy of the statutory report certified as required by this section to be delivered to the registrar for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) If a petition is presented to the Court in manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(10) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly or wilfully authorises or permits the default shall be liable to a fine not exceeding five hundred rupees.

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

Amendment of section 78, Act VII of 1913.

25. To section 78 of the said Act the following sub-section shall be added, namely :—

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

Substitution of new section for section 79, Act VII of 1913.

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

Provisions as to meetings and votes.

"79. (1) The following provisions shall have effect with respect to meetings of a company, and the procedure thereat, notwithstanding any provision made in the articles of the company in this behalf :—

(a) a meeting of a company other than a meeting for the passing of a special resolution may be called by ten days' notice in writing; but with the consent of all the members entitled to receive notice of some particular meeting that meeting may be convened by such shorter notice and in such manner as those members may think fit;

(b) notice of the meeting of a company shall be served on every member in the manner in which notices are required to be served by Table A and for the purpose of this clause the expression 'Table A' means that table as for the time being in force; but the accidental omission to give notice to, or the non-receipt of notice by, any member shall not invalidate the proceedings at any meeting;

(c) five members present in person or by proxy shall be entitled to demand a poll: Provided that in the case of a private company if not more than seven members are personally present, one member, and if more than seven members are personally present, two members shall be entitled to demand a poll; and

(d) an instrument appointing a proxy, if in the form set out in regulation 67 of Table A, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instruments by the articles.

(2) The following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf :—

(a) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per cent in number of the members of the company may call a meeting;

(b) in the case of a private company two members and in the case of any other company three members personally present shall be a quorum;

(c) any member elected by the members present at a meeting may be chairman thereof;

(d) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each hundred rupees of stock held by him, and in any other case every member shall have one vote;

(e) on a poll votes may be given either personally or by proxy;

(f) the instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or if the appointor is a corporation, either under seal or under the hand of an officer or an attorney duly authorised; and

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

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

Amendment of section 81, Act VII of 1913.

27. In section 81 of the said Act,—

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

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

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

(b) in sub-sections (3) and (4), for the words "is submitted to be passed or a special resolution is submitted to be passed or confirmed" the words "or a special resolution is submitted to be passed" shall be substituted; and

(c) in sub-section (4), the words following the words "a poll may be demanded" shall be omitted.

Amendment of section 82, Act VII of 1913.

28. In sub-section (1) of section 82 of the said Act, after the word "typewritten" the words "and duly certified under the signature of a principal officer of the company" shall be inserted.

Amendment of section 83, Act VII of 1913.

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

"(4) The books containing the minutes of proceedings of any general meeting of a company held after the commencement of the Indian Companies (Amendment) Act, 1936, shall be kept at the registered office of the company and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that no less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(5) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding six annas for every hundred words.

(6) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be liable in respect of each offence to a fine not exceeding twenty-five rupees and to a further fine of twenty-five rupees for every day during which the default continues.

(7) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them."

Amendment of section 83A, Act VII of 1913.

30. In sub-section (1) of section 83A of the said Act, after the word "two" the following words shall be inserted, namely :—

"or, if registered after the commencement of the Indian Companies (Amendment) Act, 1936, at least three."

Amendment of section 83B, Act VII of 1913.

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

"(2) Notwithstanding anything contained in the articles of a company other than a private company not more than one-third of the whole number of directors shall be appointed otherwise than by the members in general meeting."

Amendment of section 84, Act VII of 1913.

32. In section 84 of the said Act,—

(a) in clause (ii) of sub-section (1), for the words "a company limited by guarantee and" the word "companies" shall be substituted;

(b) in sub-section (2), after the word "articles" the words ", if any," shall be inserted; and

(c) in sub-section (3), after the words "private company" the words "or a company which was a private company before becoming a public company" shall be inserted.

33. After section 86 of the said Act the following sections shall be inserted, namely :—

Insertion of new sections 86A to 86I in Act VII of 1913.

"86A. (1) If any person being an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company, he shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand rupees or to both.

Ineligibility of bankrupt to act as director.

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

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

Assignment of office by directors.

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

Avoidance of provisions relieving liability of directors.

Provided that—

(a) in relation to any such provision which is in force at the date of the commencement of the Indian Companies (Amendment) Act, 1936 this section shall have effect only on the expiration of a period of six months from that date, and

(b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force, and

(c) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, or in connection with any application under section 281 of this Act in which relief is granted to him by the Court.

86D. (1) No company shall make to a director of the company any loan out of moneys borrowed by the company.

Loans to directors.

(2) No company shall make to a director of the company any loan out of the surplus funds of the company except with the previous approval of three-fourths of the members of the board of directors.

(3) Particulars of any loan to which sub-section (2) applies shall be given in the balance-sheet relating to the year in which the loan is given and to any year in which any part of such loan is outstanding.

86E. No director shall without the consent of the company in general meeting hold any office of profit under the company except that of a managing director or manager or a solicitor or a banker.

Director not to hold office of profit.

86F. No director of a company which has issued debentures shall be appointed as or be eligible to act as trustee for the holders of debentures of the company.

Director not to act as trustee for debenture-holders of the company.

86G. (1) Subject to the provisions of this section the directors of a company shall, on a demand in that behalf made to them in writing by members of the company entitled to not less than one-fourth of the aggregate

Statement as to remuneration of directors to be furnished to share-holders.

number of votes to which all the members of the company are together entitled, furnish to all the members of the company within a period of one month from the receipt of the demand a statement certified as correct, or with such qualifications as may be necessary by the auditors of the company, showing as respect each of the last three preceding years in respect of which the accounts of the company have been made up, the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company whether as such directors or otherwise in connection with the management of the affairs of the company and there shall, in respect of any such director who is—

(*a*) a director of any other company which is in relation to the first mentioned company a subsidiary company, or

(*b*) by virtue of the nomination, whether direct or indirect, of the company, a director of any other company,

be included in the said aggregate amount any remuneration or other emoluments received by him for his own use, whether as a director of, or otherwise in connection with the management of, that other company :

Provided that—

(*i*) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished; and

(*ii*) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(*2*) In computing for the purpose of this section the amount of any remuneration or emoluments received by any director, the amount actually received by him shall, if the company has paid on his behalf any sum by way of income-tax (including super-tax) in respect of the remuneration or emoluments, be increased by the amount of the sum so paid.

(*3*) If any director fails to comply with the requirements of this section, he shall be liable to a fine not exceeding five hundred rupees.

(*4*) In this section the expression 'emoluments' includes fees, percentages and other payments made or consideration given directly or indirectly to a director as such and the money value of any allowances or perquisites belonging to his office.

Removal of directors.

86H. The company may by extraordinary resolution remove any director whose period of office is liable to determination at any time by retirement of directors in rotation before the expiration of his period of office and may by ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected director.

Vacation of office of director.

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

(*a*) ceases to be a director under the provisions of sub-section (2) of section 85, or

(*b*) becomes of unsound mind, or

(*c*) is adjudged an insolvent, or

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

(*e*) without the sanction of the company accepts or holds any office of profit under the company other than that of a managing director or manager or a solicitor or a banker, or

(*f*) absents himself from the meetings of directors for a continuous period of three months without leave of absence from the board of directors.

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

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

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

Register of directors and managers.

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

(*a*) in the case of an individual, his present name in full, any former name or surname in full, his usual residential address, his nationality and, if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships the particulars of that directorship or of someone of those directorships; and

(b) in the case of a corporation, its corporate name and registered or principal office.

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

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

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

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

(5) In the case of any such refusal, the Court may by order compel an immediate inspection of the register.

(6) For the purposes of this section a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company."

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

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

"*Managing Agents.*

Duration of appointment of managing agent.

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

(2) Notwithstanding anything to the contrary contained in the articles of a company or in any agreement with the company a managing agent of a company appointed before the commencement of the Indian Companies (Amendment) Act, 1936, shall cease to hold office on the expiry of twenty years from the commencement of the said Act :

Provided that the termination of the office of managing agent by virtue of this provision shall not take effect until all moneys due from the company to the managing agent are paid by the company to the managing agent.

Conditions of appointment of managing agents.

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

(a) a company may, by resolution passed at a general meeting of which notice has been given to the managing agent in the same manner as to members of the company, remove a managing agent for fraud or breach of trust proved in a competent Court;

(b) a transfer of his office by a managing agent shall be void unless approved by an extraordinary resolution of the company;

(c) a charge or assignment of his remuneration or any part thereof effected by a managing agent shall be void as against the company;

(d) if a company is wound up either by the Court or voluntarily, any contract of management made with a managing agent shall be thereupon determined without prejudice however to the right of the managing agent to recover any moneys recoverable by the managing agent from the company under the contract; and

(e) the appointment of a managing agent, the removal of a managing agent and any variation of a managing agent's contract of management shall not be valid unless approved by the company by a resolution at a general meeting of the company.

Remuneration of managing agent.

87C. (1) Where any company incorporated after the commencement of the Indian Companies (Amendment) Act, 1936, appoints a managing agent, the remuneration of the managing agent shall be a sum based on a fixed percentage of the net annual profits of the company, with provision for a minimum payment in the absence of profits, together with an office allowance to be defined in the agreement of management; and any stipulation for additional remuneration in any form shall not be binding on the company unless sanctioned by the shareholders at the statutory or a general meeting of the company.

(2) For the purposes of this section ' net profits ' means the profits of the company calculated after allowing for all the usual working charges, interests on loans and advances, repairs and outgoings, but without any deduction in respect of income-tax or super-tax, or any other tax or duty on income or revenue or for expenditure on capital account or on account of any sum which may be set aside in each year out of the profits for reserve or depreciation or any other special fund.

(3) This section shall not apply to any company carrying on the business of insurance.

Loans to managing agents.

87D. (1) No company shall make to a managing agent of the company any loan out of moneys borrowed by the company, and no company shall make to a managing agent of a company any loan out of the surplus funds of the company except with the previous approval of three-fourths of the members of the board of directors.

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

(3) Particulars of any loan to which sub-section (1) applies shall be given in the balance-sheet relating to the year in which the loan is made and to any year in which any part of such loan is outstanding.

Loans to or by companies under the same management.

87E. (1) No company incorporated under this Act after the commencement of the Indian Companies (Amendment) Act, 1936, shall make any loan to or guarantee any loan made to any company under management by the same managing agent, and no company shall after the expiry of six months from the commencement of the said Act make any loan to or guarantee any loan made to any such company:

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

(2) In the event of any contravention of the provisions of this section, the company making the loan or giving the guarantee and any director or officer of such company knowingly and wilfully in default shall be liable to a fine not exceeding five thousand rupees.

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

87F. A company shall not purchase shares or debentures of any company under management by the same managing agent, unless the purchase has been previously approved by three-fourths of the members of the board of directors of the purchasing company.

Restriction on managing agent's powers of management.

87G. A managing agent shall not exercise in respect of any company under management by the managing agent the power to issue debentures or to invest the surplus funds of the company, and no delegation of any such power by a company to a managing agent shall be valid.

87H. A managing agent shall not, whether directly or as managing agent for another person, engage in any business which is of the same nature as or which is of such a nature that it directly competes with the business carried on by a company under the management of such managing agent."

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

36. In section 91C of the said Act, after the words " the company shall " the words ", within fourteen days from the date of entering into the contract or the varying of the contract," shall be inserted.

Amendment of section 91C, Act VII of 1913.

37. In sub-section (2) of section 91D of the said Act, after the words " to the company " the words " and send copies to the directors and auditors " shall be inserted.

Amendment of section 91D, Act VII of 1913.

Amendment of section 93, Act VII of 1913.

38. In section 93 of the said Act,—

(a) in sub-section (1),—

(i) in clause (a), after the word " company " the words " and the number of redeemable preference shares intended to be issued with the date or proposed method of redemption " shall be inserted;

(ii) in clause (c), after the brackets and words " (if any) " the following words shall be inserted, namely :—

" and any provision in the articles or in any contract as to the appointment of managers and the remuneration payable to them ";

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

" (ff) where any property referred to in clause (f) has within the two years preceding the issue of the prospectus been transferred by sale, the amount paid by the purchaser at each such transfer and, where any such property is a business, the profits accruing from such business during each of the three years immediately preceding the issue of the prospectus or during each year of the existence of the business if less than three years ; and";

(iv) in the proviso to clause (l), after the word "contract", where it occurs for the second time, the following brackets and words shall be inserted, namely :—

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

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

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

"and

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

and

(b) after sub-section (1) the following sub-section shall be inserted, namely :—

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

(i) a report by the auditors of the company with respect to the profits of the company in each of the three financial years immediately preceding the issue of the prospectus and with respect to the rates and the dividends, if any, paid by the company on each class of shares in the company for each of the said three years giving particulars of each class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid on any class of shares for any of those years, and if no accounts have been made up for any part of a period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact ;

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

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

Amendment of section 97, Act VII of 1913.

39. (*1*) Section 97 of the said Act shall be renumbered as sub-section (*2*) of that section and the following sub-section shall be inserted as sub-section (*1*), namely:—

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

(*2*) In the said section as so renumbered—

(*a*) after the words "non-compliance with", in both places where they occur, the word "or contravention of" shall be inserted;

(*b*) after the word "non-compliance", in the three places where it occurs, the words "or contravention" shall be inserted; and

(*c*) after clause (*b*) the following word and clause shall be inserted, namely:—

"or

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

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

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

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

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

(*2*) For the purposes of this Act it shall, unless the contrary is proved, be evidence that an allotment of or an agreement to allot shares or debentures was made with a view to the shares or debentures being offered for sale to the public, if it is shown—

(*a*) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(*b*) that at the date when the offer was made the whole of the consideration to be received by the company in respect of the shares or debentures had not been so received.

(*3*) Section 97 shall apply to the person or persons making the offer as though they were persons named in a prospectus as directors of a company, and the provisions of section 93 shall have effect as if it required a prospectus to state, in addition to the matters required by that section to be stated in a prospectus,—

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates, and

(b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by all directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing."

Amendment of section 101, Act VII of 1913.

41. For sub-sections (1) and (2) of section 101 of the said Act the following sub-sections shall be substituted, namely :—

"(1) No allotment shall be made of any shares 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 directors must be raised by the issue of those shares in order to provide the sums or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided in respect of each of the following matters, namely :—

(a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue,

(b) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for or of his procuring or agreeing to procure subscriptions for any shares in the company,

(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters,

(d) working capital,

or thirty-three and one-third per cent. of the share capital offered to the public for subscription whichever is higher has been subscribed, and the sum of at least twenty-five per cent. thereof has been paid to or received in cash by the company.

(2) For the purposes of sub-section (1) a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid."

Amendment of section 104, Act VII of 1913.

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

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

Amendment of section 105, Act VII of 1913.

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

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

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

Powers to issue shares at a discount.

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

Provided that—

(a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company and must be sanctioned by the Court ;

(b) the resolution must specify the maximum rate of discount (not exceeding ten per cent. in any case) at which shares are to be issued ;

(c) not less than one year must at the date of issue have elapsed since the date on which the company was entitled to commence business ;

(d) the shares to be issued at a discount must be issued within six months after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Every prospectus relating to the issue of the shares and every balance-sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question.

(3) If default is made in complying with sub-section (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty rupees.

Issue of redeemable preference shares.

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

Provided that—

(a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption ;

(b) no such shares shall be redeemed unless they are fully paid :

(c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the amount applied in redeeming the shares, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company ;

(d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption must have been provided for out of the profits of the company before the shares are redeemed.

(2) There shall be included in every balance-sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be, liable to be redeemed.

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

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

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

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

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

Amendment of section 109, Act VII of 1913.

45. Section 109 of the said Act shall be re-numbered as sub-section (1) of that section, and

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

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

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

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

Insertion of new section 109A in Act VII of 1913.

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

Registration of charges on porperties acquired subject to charge.

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

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

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

Amendment of section 116, Act VII of 1913.

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

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

Amendment of section 119, Act VII of 1913.

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

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

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

Amendment of section 120, Act VII of 1913.

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

(a) in that section as so re-numbered, after the words " mortgage or charge ", where they occur for the second time, the following words shall be inserted, namely :—

" 'or the omission to give intimation to the registrar of the payment or satisfaction of a debt for which a charge or mortgage was created ";

and

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

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

Substitution of new section for section 121, Act VII of 1913.

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

Registration of satisfaction of mortgages and charges.

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

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

(3) The registrar shall, if no satisfactory cause is shown or if satisfied that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register and shall if required furnish the company with a copy thereof. "

Amendment of section 122, Act VII of 1913.

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

" (b) of any mortgage or charge registered under section 109 the debt in respect of which has been paid or satisfied ; or ".

Amendment of section 123, Act VII of 1913.

52. In sub-section (1) of section 123 of the said Act, the word " limited " shall be omitted and after the words "property of the Company" the words " and all floating charges on the undertaking or on any property of the company " shall be inserted.

Substitution of new section for section 130, Act VII of 1913.

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

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

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

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place ;

(b) all sales and purchases of goods by the company ;

(c) the assets and liabilities of the company.

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

(3) If any person being a director of a company 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 liable to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand rupees :

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the Court dealing with the case, the offence was committed wilfully. "

Amendment of section 131, Act VII of 1913.

54. In section 131 of the said Act,—

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

" (1) Every company shall once at least in every year cause the accounts to be balanced and cause to be prepared and laid before the company in general meeting at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year a balance-sheet and profit and loss account or in the case of a company not trading for profit an income and expenditure account for the period, in the case of the first account since the incorporation of the company and in any other case since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months or in the case of a company incorporated outside India by more than twelve months :

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

(b) in sub-section (2), after the words " The balance-sheet " the words " and the profit and loss account " shall be inserted;

(c) in sub-section (3),—

(i) the words " other than a private company " shall be omitted, and

(ii) for the words " such balance-sheet so audited " the words " such balance-sheet and profit and loss account so audited together with a copy of the auditors' report " shall be substituted; and

(d) sub-section (4) shall be omitted.

Insertion of new section 131A in Act VII 1913.

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

Directors' report.

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

(2) The report referred to in sub-section (1) may be signed by the chairman of the directors on behalf of the directors if authorised in that behalf by the directors.

(3) The provisions of sub-section (3) of section 130 shall apply to any person being a director who is guilty of a default in complying with this section. "

Amendment of section 132, Act VII of 1913.

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

" (3) The profit and loss account shall include particulars showing the total of the amount paid whether as fees, percentages or otherwise to the manager, the managing agents, if any, and the directors respectively as remuneration for their services, and the total of the amount written off for depreciation. "

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

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

Balance-sheet to include particulars as to subsidiary companies.

" 132A. (1) Where a company, in this section referred to as the holding company, holds shares, either directly or through a nominee, in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance-sheet of the holding company a statement signed by the persons by whom, in pursuance of section 133, the balance-sheet is signed stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have been dealt with in or for the purposes of the accounts of the holding company, and in particular how and to what extent—

(a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company or of both, and

(b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the company as disclosed in its accounts :

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

(2) If, in the case of a subsidiary company, the auditors' report on the balance-sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance-sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given

to them and as shown by the books of the company, the statement, which is to be annexed as aforesaid to the balance-sheet of the holding company, shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance-sheet shall so report in writing and their report shall be annexed to the balance-sheet in lieu of the statement."

Amendment of section 133, Act VII of 1913.

58. For sub-section (3) of section 133 of the said Act the following sub-section shall be substituted, namely :—

"(3) If any balance-sheet is issued, circulated or published which does not comply with the requirements laid down by and under section 131, section 132, section 132A and this section, the company and every officer of the company who is knowingly a party to the default shall be punishable with fine which may extend to five hundred rupees."

Amendment of section 136, Act VII of 1913.

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

Amendment of section 137, Act VII of 1913.

60. In section 137 of the said Act,—

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

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

and

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

"(6) Where the registrar is of opinion on materials placed before him by any contributory or creditor that the business of a company is carried on in fraud of its creditors or in fraud of persons dealing with the company or for a fraudulent purpose, he may by written order call on the company for information or explanation on matters specified in the order within such time as he may specify in the order and the provisions of sub-sections (2), (3) and (5) of this section shall apply to such order.

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

Insertion of new section 138A in Act VII of 1913.

61. After section 138 of the said Act the following section shall be inserted, namely :—

Institution of prosecutions.

"138A. (1) If from any report made under section 138 it appears to the Local Government that any person has been guilty of any offence in relation to the company for which he is criminally liable, the Local Government shall refer the matter to such legal adviser as may be appointed in that behalf by the Local Government.

(2) If the officer or person to whom the matter is referred considers that the case is one in which a prosecution ought to be instituted, he shall cause proceedings to be instituted, and it shall be the duty of all officers and agents of the company, past and present (other than the accused in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

(3) For the purposes of sub-section (2), the expression "agents" in relation to a company shall be deemed to include the bankers and solicitors of the company and any persons employed by the company

as auditors, whether those persons are or are not officers of the company.

(4) Any director, manager or other officer of the company convicted as the result of a prosecution initiated under this section shall not without the leave of the Court be a director of or in any way whether directly or indirectly be concerned in or take part in the management of a company for a period of five years from the date of such conviction."

Amendment of section 141, Act VII of 1913.

62. In section 141 of the said Act,—

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

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

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

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

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

Amendment of section 145, Act VII of 1913.

63. In section 145 of the said Act,—

(a) in sub-section (2), after clause (c) the following word and clause shall be added, namely :—

"and

(d) whether books of account have been kept by the company as required by section 130.";

and

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

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

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

Amendment of section 146, Act VII of 1913.

64. To sub-section (2) of section 146 of the said Act the following proviso shall be added, namely :—

"Provided that in the case of any such company the trustees for holders of debentures shall have the right conferred by sub-section (1) on holders of preference shares and debentures of a company."

Amendment of section 153, Act VII of 1913.

65. Sub-section (3) of section 153 of the said Act shall be re-numbered as sub-section (4) and the following shall be inserted as sub-section (3), namely :—

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

Insertion of new sections 153A and 153B in Act VII of 1913.

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

Provisions for facilitating arrangements and compromises.

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

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

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

(*c*) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(*d*) the dissolution, without winding up, of any transferor company;

(*e*) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;

(*f*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(*2*) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(*3*) Where an order is made under this section every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the registrar for registration within seven days after the making of the order, 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 liable to a fine not exceeding fifty rupees.

(*4*) In this section the expression 'property' includes property, rights and powers of every description, and the expression 'liabilities' includes duties.

(*5*) Notwithstanding the provisions of sub-section (*4*) of section 153, the expression 'company' in this section does not include any company other than a company within the meaning of this Act.

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

153B. (*1*) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as 'the transferor company') to another company, whether a company within the meaning of this Act or not (in this section referred to as the 'transferee company'), has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company :

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

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

(*3*) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(*4*) In this section the expression 'dissenting shareholder' includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract."

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

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

Conversion of private company into public company.

"154. (*1*) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under the provisions of clause (*13*) of sub-section (*1*) of section 2, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after the said date, deliver to the registrar for registration a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in the Second Schedule.

(*2*) If default is made in complying with sub-section (*1*) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding five hundred rupees.

(*3*) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in this Act, and thereupon the said provisions shall apply to the company as if it were not a private company :

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

Amendment of section 163, Act VII of 1913.

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

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

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

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

Amendment of section 166, Act VII of 1913.

69. In section 166 of the said Act,—

(*a*) after the words "together or separately" the words ", or by the registrar" shall be inserted, and

(b) after clause (a) of the proviso the following clause shall be inserted, namely :—

"(aa) the registrar shall not be entitled to present a petition for winding up a company—

(i) unless the previous sanction of the Local Government has been obtained to the presentation of the petition, and

(ii) except on the ground that from the financial condition of the company as disclosed in its balance-sheet or from the report of an inspector appointed under section 138 it appears that the company is unable to pay its debts."

Amendment of section 170, Act VII of 1913.

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

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

Amendment of section 171, Act VII of 1913.

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

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

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

Vacancy in the office of liquidator.

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

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

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

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

Amendment of section 172, Act VII of 1913.

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

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

Amendment of section 175, Act VII of 1913.

74. In sub-section (1) of section 175 of the said Act, after the words "a person or persons" the words "other than the official receiver" shall be inserted.

Amendment of section 176, Act VII of 1913.

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

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

Insertion of new sections 177A and 177B in Act VII of 1913.

76. After section 177 of the said Act the following sections shall be inserted, namely :—

Statement of affairs to be made to the liquidator.

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

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

(b) the debts and liabilities;

(c) the names, residences and occupations of the creditors stating separately the amount of secured debts and unsecured debts, and in the case of secured debts particulars of the securities, their value and the dates when they were given;

(d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised therefrom.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary, manager or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned as the official liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons—

(a) who are or have been directors or officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the official liquidator capable of giving the information required;

(d) who are or have been within the said year officers of or in the employment of a company, which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the official liquidator or the Court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code and shall, on the application of the liquidator or of the official receiver, be punishable accordingly. XIV of 1860.

(8) In this section the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order.

Statement by liquidator.

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

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

(i) cash and negotiable securities;

(ii) debts due from contributories;

(iii) debts due to and securities, if any, available to the company;

(iv) moveable and immoveable properties belonging to the company;

(v) unpaid calls; and

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official liquidator may also, if he thinks fit make a further report, or further reports, stating the manner in which the company was

formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court."

Amendment of section 178, Act VII of 1913.

77. In section 178 of the said Act,—

(a) in sub-section (1), after the word "liquidator" the words "whether appointed provisionally or not" shall be inserted; and

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

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

Insertion of new section 178A in Act VII of 1913.

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

Committee of Inspection in compulsory winding up.

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

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

(3) If the contributories do not accept the decision of the creditors in its entirety, it shall be the duty of the official liquidator to apply to the Court for directions as to whether there shall be a committee of inspection and, if so, what shall be the composition of the committee, and who shall be members thereof.

(4) A committee of inspection appointed under this section shall consist of not more than twelve members being creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meeting of creditors and contributories, or as in case of difference, may be determined by the Court.

(5) The committee of inspection shall have the right to inspect the accounts of the official liquidator at all reasonable times.

(6) The committee shall meet at such times as they may from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(7) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(8) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(9) If a member of the committee becomes bankrupt or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(10) A member of the committee may be removed by an oridinary resolution at a meeting of creditors if he represents creditors, or of contributories if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

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

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

Amendment of section 182, Act VII of 1913.

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

"(*2*) Every official liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Court an account of his receipts and payments as such liquidator.

(*3*) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.

(*4*) The Court shall cause the account to be audited in such manner as it thinks fit and for the purpose of the audit the liquidator shall furnish the Court with such vouchers and information as the Court may require, and the Court may at any time require the production of and inspect any books or accounts kept by the liquidator.

(*5*) When the account has been audited, one copy thereof shall be filed and kept by the Court, and the other copy shall be delivered to the registrar for filing, and each copy shall be open to the inspection of any creditor, or of any person interested."

Amendment of section 203, Act VII of 1913.

80. To section 203 of the said Act after clause (*3*) the following words shall be added, namely :—

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

Amendment of section 204, Act VII of 1913.

81. In section 204 of the said Act, for the words " authorising the winding up " the words " for voluntarily winding up " shall be substituted.

Substitution of new sections for sections 207 to 219, Act VII of 1913.

82. For sections 207 to 219 of the said Act, both included, the following sections and headings shall be substituted, namely :—

Declaration of solvency.

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

(*2*) A declaration made as aforesaid shall have no effect for the purposes of this Act unless it is delivered to the registrar for registration before the date mentioned in sub-section (*1*) of this section.

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

Members' voluntary winding up.

Provisions applicable to a members' voluntary winding up.

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

Power of company to appoint and fix remuneration of liquidators.

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

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

Power to fill vacancy in office of liquidator.

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

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

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

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

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

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

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

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

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

IX of 1899.

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

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

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

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

Final meeting and dissolution.

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

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

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

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

(4) The registrar on receiving the account and either of the returns mentioned in sub-section (3) shall forthwith register them and on the expiration of three months from the

registration of the return the company shall be deemed to be dissolved :

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

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

Creditors' voluntary winding up.

Provisions applicable to a creditors' voluntary winding up.

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

Meeting of creditors.

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

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

(*3*) The directors of the company shall—

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

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

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

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

(*6*) If default is made—

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

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

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

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

Appointment of liquidator.

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

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

Appointment of committee of inspection.

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

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

209D. (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

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

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

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

Power to fill vacancy in office of liquidator.

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

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

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

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

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

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

Final meeting and dissolution.

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

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

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

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

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

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

Members' or creditors' voluntary winding up.

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

Provision applicable to every voluntary winding up.

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

Distribution of property of company.

members according to their rights and interests in the company.

212. (*1*) The liquidator may—

Powers and duties of liquidator in voluntary winding up.

(*a*) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of either the Court or the committee of inspection, exercise any of the powers given by clauses (*d*), (*e*), (*f*) and (*h*) of section 179 to a liquidator in a winding up. The exercise by the liquidator of the powers given by this clause shall be subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers;

(*b*) without the sanction referred to in clause (*a*), exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;

(*c*) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(*d*) exercise the power of the Court of making calls;

(*e*) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

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

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

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

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

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

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

Notice by liquidator of his appointment.

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

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

Arrangement when binding on creditors.

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

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

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

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

Such application shall be made—

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

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

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

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

Cost of voluntary winding up.

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

Saving for rights of creditors and contributories.

83. In sub-section (*1*) of section 230 of the said Act,—

Amendment of section 230, Act VII of 1913.

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

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

"(*d*) compensation payable to any officer or employee of the company under the Workmen's Compensation Act, 1923; and

VI of 1923.

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

84. After section 230 of the said Act the following section shall be inserted, namely :—

Insertion of new section 230A in Act VII of 1913.

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

Disclaimer of property.

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

(*2*) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company, and the property of the company, in or in respect of the property disclaimed but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability affect the rights or liabilities of any other person.

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

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

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

(*6*) The Court may on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose :

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

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

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

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

Amendment of section 232, Act VII of 1913.

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

Amendment of section 235, Act VII of 1913.

86. In section 235 of the said Act,—

(a) in sub-section (1), after the words "or of any creditor or contributory" the words "made within three years from the date of the first appointment of a liquidator in the winding up" shall be inserted; and

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

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

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

Prosecution of delinquent directors.

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

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

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

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

(5) If it appears to the Court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the registrar, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report has been made in pursuance of the provisions of sub-section (2).

(6) If, where any matter is reported or referred to the registrar under this section,

he considers that the case is one in which a prosecution ought to be instituted, he shall place the papers before such legal adviser as may be appointed in that behalf by the Local Government and if advised to do so institute proceedings, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

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

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

Insertion of new section 238 in Act VII of 1913.

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

Penal provisions.

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

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company ; or

(b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up ; or

(c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up ; or

(d) within twelve months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of one hundred rupees or upwards or conceals any debt due to or from the company ; or

(e) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards ; or

(f) makes any material omission in any statement relating to the affairs of the company ; or

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof ; or

(h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company ; or

(i) within twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, multilation or falsification of any book or paper affecting or relating to the property or affairs of the company ; or

(j) within twelve months next before the commencement of the winding up or at any time therefater makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company ; or

(k) within twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company ; or

(l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses ; or

(m) has within twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company does not subsequently pay for ; or

(n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary way of the business of the company; or

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

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

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

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

(3) For the purposes of this section, the expression 'director' shall include any person in accordance with whose directions or instructions the directors of a company have been accustomed to act."

Amendment of section 244, Act VII of 1913.

89. In section 244 of the said Act,—

(a) in sub-section (1),—

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

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

and

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

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

Insertion of new section 244A in Act VII of 1913.

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

Payments of liquidator into bank.

"244A. (1) Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as may be prescribed, pay the money received by him into the Imperial Bank of India :

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

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

(3) A liquidator of a company which is being wound up by the Court shall not pay any sums received by him as a liquidator into his private banking account."

Amendment of section 246, Act VII of 1913.

91. In sub-section (1) of section 246 of the said Act, after the words " Courts subordinate thereto," the words " for the holding of meetings of creditors and members in connection with proceedings under section 153 of this Act," shall be inserted.

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

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

Enforcing submission of returns and documents to registrar.

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

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

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid."

Amendment of section 271, Act VII of 1913.

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

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

Amendment of section 277, Act VII of 1913.

94. For sub-section (3) of section 277 of the said Act and the proviso thereto the following sub-section shall be substituted, namely :—

"(3) Every company to which this section applies shall in every calendar year make out a balance-sheet in such form, and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver for registration a copy of that balance-sheet to the registrar of the province in which the company has its principal place of business; and, if any such balance-sheet is not written in the English language, the company shall annex to it a certified translation thereof."

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

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

Restriction on sale and offer for sale of shares.

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

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

(i) before the issue, circulation or distribution of the prospectus in

British India a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the registrar;

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

(iii) the prospectus is dated; and

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

(b) to issue to any person in British India a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part:

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

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

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

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

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

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

Requirements as to prospectus.

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

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

(i) the objects of the company;

(ii) the instrument constituting or defining the constitution of the company;

(iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iv) an address in British India where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof in the English language certified in the prescribed manner, can be inspected;

(v) the date on which and the country in which the company was incorporated;

(vi) whether the company has established a place of business in British India and, if so, the address of its principal office in British India:

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

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

Provided that—

(i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed, and

(ii) in section 93 of this Act a reference to the articles of the company shall be deemed to be a reference to the constitution of the company.

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

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

(a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part, or

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

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

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

Registration of charges.

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

Notice of appointment of receiver.

277D. The provisions of sections 118 and 119 shall *mutatis mutandis* apply to the case of all companies incorporated outside British India but having an established place of business in British India."

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

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

"PART XA.

Banking Companies.

Definition of banking company.

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

(1) the lending or advancing of money with or without security;

(2) discounting, buying, selling or dealing in bills of exchange, promissory notes or other marketable securities, drafts, coupons, bills of lading, warrants, debentures, certificates, scrip and other instruments or securities whether transferable or negotiable or not;

(3) the buying or selling of foreign exchange;

(4) the granting and issuing of letters of credit or circular notes;

(5) acquiring, holding, issuing on commission, underwriting and dealing with stocks, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds;

(6) buying, selling and dealing in bullion and specie;

(7) negotiating loans and advances;

(8) receiving valuables for safe custody;

(9) the collecting and transmitting of money and securities;

(10) transacting pecuniary agency business on commission and entering into contracts of indemnity, suretyship or guarantee with specific security or otherwise;

(11) the administration of estates for any purpose, whether as executor, trustee or otherwise;

(12) the borrowing of money for the purpose of the bank's business and the giving of security for money so borrowed by pledging the assets or otherwise;

(13) the clearing and warehousing of goods;

(14) the management of loan issues;

(15) the selling and realising of all property, whether moveable or immoveable, which may in any way come into the possession of the

bank in satisfaction or part satisfaction of any of its claims; and the acquisition and holding of, and generally dealing with any right, title or interest in any property, moveable or immoveable which may form part of the bank's security for any loan or advance or may be connected with any such security; and

(16) generally, the doing of all such matters and things as may be incidental or subsidiary to the transaction of the various forms of business herein specified.

Limitation of activities of banking company.

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

(2) No banking company shall after the commencement of the said Act carry on any form of business other than those specified in section 277E:

Provided that the Governor General in Council may, by notification in the *Gazette of India*, specify in addition to the businesses set forth in clauses (1) to (16) of section 277E other forms of business which it may be lawful under this section for a banking company to engage in.

Banking company not to employ managing agent.

277G. No banking company incorporated under this Act after the commencement of the Indian Companies (Amendment) Act, 1936, shall employ a managing agent for the management of the company.

Restriction on commencement of business by banking company.

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

Reserved fund.

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

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

(3) A banking company shall invest the amount standing to the credit of its reserve fund in Government securities or in securities mentioned or referred to in section 20 of the Indian Trusts Act, 1882. II of 1882.

Cash reserve.

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

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

(3) If default is made in complying with the requirements of this section or of section 277I, every director or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

Power of Court to stay proceedings.

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

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

(3) The registrar shall for the purposes of his report be entitled at the cost of the company to investigate the financial condition of the company and for such purpose to have the books and documents of the company examined by an auditor."

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

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

Penalty for wrongful withholding of property.

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

Penalty for misapplication of securities by employers.

282B. (1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept by the company in a special safe deposit account to be opened by the company for the purpose in the Imperial Bank of India and no portion thereof shall be utilised by the company except for the purposes agreed to in the contract of service.

(2) Where a provident fund has been constituted by a company for its employees or any class of its employees, such fund shall be a trust for the benefit of those employees or that class of employees, and the moneys of the fund shall be invested only in securities mentioned or referred to in clauses (a) to (e) of section 20 of the Indian Trusts Act, 1882. II of 1882.

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

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

Amendment of First Schedule, Act VII of 1913.

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

(a) in regulation 56, the words " by at least three members " shall be omitted;

(b) in regulation 66, for the words " seventy-two hours " the words " forty-eight hours " shall be substituted;

(c) in regulation 78, after the word " directors ", where it occurs for the second time, the brackets and words " (not being directors appointed otherwise than by the members in general meeting) " shall be inserted; and

(d) in regulation 105, after the words " in general meeting " the words " of which ten days' notice has been given " shall be added.

Substitution of new Schedule for the Second Schedule, Act VII of 1913.

99. For the Second Schedule to the said Act the following shall be substituted, namely—

" THE SECOND SCHEDULE.

(*See* section 98.)

THE INDIAN COMPANIES ACT, 1913.

STATEMENT IN LIEU OF PROSPECTUS

filed by

....LIMITED

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

Presented for filing by

The nominal share capital of the company.	Rs....................
Divided into.........	shares of Rs....... each. shares of Rs....... each. shares of Rs....... each.
Amount (if any) of above capital which consists of redeemable preference shares.	shares of Rs....... each.
The date on or before which these shares are, or are liable to be redeemed.	
Names, descriptions and addresses of directors or proposed directors and managers or proposed managers and any provision in the articles, or in any contract, as to appointment of and remuneration payable to directors or managers.	

If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of captial and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. ——shares of Rs. ...... fully paid. 2. ——shares upon which Rs....... per share credited as paid. 3. Debenture Rs.... 4. Consideration.
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company. Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price . Rs....... Cash Rs....... Shares Rs....... Debentures. Rs....... Goodwill . Rs.......
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company ; or	Amount paid. Amount payable.
Rate of the commission	Rate per cent.

The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses.	Rs..................
Amount paid or intended to be paid to any promoter. Consideration for the payment.	Name of promoter... Amount Rs. Consideration :—
Dates of, and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the company or contracts, other than contracts appointing or fixing the remuneration of a managing director or managing agent, entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or,	

where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the amounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.	

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

Date ."

Amendment of Third Schedule, Act VII of 1913.

100. In the Third Schedule to the said Act, in Form F,—

(1) under the heading " CAPITAL AND LIABILITIES "—

(i) under the item " CAPITAL "—

(a) for the sub-item " Issued Capital......shares of Rs......... each " the following shall be substituted, namely :—

" Issued Capital—

(a) Shares issued as fully paid up pursuant to any contract without payments being received in cash—

......shares of Rs....... each

(b) Shares issued for payments in cash—

......shares of Rs...... each

(b) for the sub-item " Amount called up at Rs..............per share " the following shall be substituted, namely :—

" Paid up Capital—

(a) Amount called up at Rs...............per share

(b) Calls unpaid at Rs.... ..... . per share—

(i) due from directors or managing agents

(ii) due from others ";

(ii) after the item " RESERVE FUND OR DEVELOPMENT FUND " the following item shall be inserted, namely :—

" DEBENTURES, stating the nature of security ";

(iii) for the items " LOANS ON MORTGAGE OR MORTGAGE DEBENTURE BONDS ", " LOANS OTHERWISE SECURED (Stating the nature of security)" and " LOANS UNSECURED " the following shall be substituted, namely :—

" LOANS—

(a) *Secured*—

(i) Loans on mortgages or fixed assets

(ii) Loans on debentures

(iii) Loans from Banks, stating the nature of security

(iv) Other secured loans, stating the nature of security

(b) *Unsecured*—

(i) Loans from Banks

(ii) Fixed deposits

(iii) Short term loans

(iv) Advances by Directors or Managers and Managing Agents

(v) Interest outstanding

(vi) Liabilities to subsidiary companies ";

(iv) under the item " CONTINGENT LIABILITIES ", to the sub-item " Moneys for which the Company is contingently liable " the following brackets and words shall be added, namely :—

"(Showing separately the amount of any guarantees given by the company on behalf of directors or officers of the company)";

(2) under the heading " PROPERTY AND ASSETS "—

(i) in the bracketed words under the item " FIXED CAPITAL EXPENDITURE ", after the words " original cost " the words " and the additions thereto and deduction therefrom during the year " shall be inserted;

(ii) to the bracketed words under the item " BOOK DEBTS " the following words shall be added, namely :—

" and in the case of a Bank debts due by a firm or a member of a firm auditing the accounts of the Bank to be separately stated ";

(iii) to the bracketed words under the item " ADVANCES " the following words shall be added, namely :—

" showing separately—

(i) loans given to subsidiary companies

(ii) loans, including temporary advances made at any time during the year to directors or managers of the company or to any company in which a director or manager of the company holds the position of director or manager, stating the maximum amount outstanding at any one time during the year under this head.";

and

(iv) for the brackets and words under the item " INVESTMENTS " the following brackets and words shall be substituted, namely :—

"(Distinguishing—

(i) Investments in Government and Trust securities

(ii) Investments in shares, debentures or bonds in industrial concerns (showing separately shares fully paid up and shares partly paid up, and in the case of the latter stating separately the amount paid up, and the amount liable on call)

(iii) Investments in shares, debentures or bonds in subsidiary companies, and

(iv) Immoveable properties

showing the mode of valuation, *e.g.*, cost or market-value and noting the interest (if any) of any director or manager in any investment)".

STATEMENT OF OBJECTS AND REASONS.

For some considerable time Government has had under consideration the overhaul of the law relating to companies.

2. Substantial material has accumulated in the form of communications and suggestions from Local Governments, public bodies and individuals, supplemented by publications in the press, indicating unanimity of opinion that the Indian Companies Act requires fairly extensive changes. The opinions received disclose a demand for power to deal with mushroom and fraudulent companies, for changes in the provisions relating to the issue and contents of prospectuses, for increased disclosure to shareholders of the financial position of companies and for increased rights to shareholders in connection with the management of companies, for modification of the present law applicable to managing agents, for changes in the provisions applicable to winding up, for special provisions to govern banking companies and for numerous other improvements.

3. The Indian Companies Act, 1913, was based on the English Companies Consolidation Act of 1908 and followed generally the provisions of that Act. Its revision in order to overtake subsequent developments in the law is overdue.

4. The English Act of 1908 was examined by a committee presided over by Lord Wrenbury in 1918, and again by a committee presided over by Mr. Greene, K. C., in 1926. The latter committee made extensive recommendations many of which were subsequently incorporated with or without modification in the Companies Consolidation Act, 1929. The guidance afforded by that Act is now available in the task of revising the company law of British India.

5. In September, 1934, the Government of India placed a lawyer with experience in the administration of company law on special duty to examine the material collected and to make proposals for the amendment of the Indian law. Those proposals were further discussed by a small committee of business experts specially convened for the purpose. Out of these proposals and discussions there have crystallized the amendments now proposed.

6. The revision of the law in England took the form of a consolidating Act which completely replaced the Act of 1908. This course has not been followed here. The arrangement adopted in the new English Act has attracted unfavourable criticism to an extent which does not encourage its adoption, and there are manifest advantages in retaining the form of the existing Indian Act with the administration of which the Courts are now familiar, even though the additions to it by this Bill are extensive.

7. In the amendments proposed, the lines followed in the overhaul of the English law have in accordance with the policy followed in the past been adopted in the amendments now proposed where the problems dealt with are problems common to India and England. India has however problems peculiar to itself, for example, those connected with the managing agency system.

8. The special provisions relating to banking companies have been included, because there is no immediate prospect of legislation dealing solely with this subject being undertaken. The recommendations of the Central Banking Enquiry Committee have been carefully considered in drafting these provisions.

N. N. SIRCAR.

NEW DELHI; *The 4th March, 1936.*

NOTES ON CLAUSES.

Clause 2.—The introduction of certain new terms in the Act has rendered further definitions necessary. The revised definition of "private company" follows the definition in section 26 of the English Act.

Clause 3 provides the sanction for enforcing observance of the provisions of section 4.

Clause 4 applies to a memorandum the requirements laid down by section 9 of the English Act for articles.

Clause 5.—The alteration made is suggested by the wording of section 17 of the English Act.

Clause 6.—In certain decisions it has been doubted whether in the absence of express provision in the memorandum a company is competent to alter its objects so as to enable it to perform the acts here referred to. Section 5 of the English Act makes express provision for this purpose and has been adopted by this clause.

Clause 7.—It is desired to make generally applicable certain provisions usually made by the articles of properly managed companies as to polls, absence of restrictions on form of proxies, retirement of directors by rotation, inspection of accounts, details shown in profit and loss accounts and the giving of notice to members. This clause makes the adoption of the model regulations on this subject contained in Table A compulsory.

Clause 8.—The amendment limits, on the lines of section 22 of the English Act, the liability of a member of a company under alterations made in the memorandum after he has become a member of the company.

Clause 9 follows section 24 of the English Act in providing that the memorandum should show all changes made therein.

Clause 10 follows section 18 of the English Act in limiting the exemptions now enjoyed by certain associations formed not for profit.

Clause 11 follows section 96 of the English Act in requiring an index of the names of members of a company in certain cases.

Clause 12.—Sub-section (*1*) of section 32 does not clearly show when the first list of members is to be prepared if a company is incorporated towards the end of a year. The words " first or only ordinary general meeting " have also given rise to confusion. The amendment is designed to remove this uncertainty and confusion.

Clause 13.—The Act does not lay down the procedure for the transfer of shares and this is generally provided for in the articles of the company. Undue restrictions upon transfers and undue delay in registering transfers are not uncommon. The section now introduced while leaving a discretion with the directors to refuse transfer requires for a transfer application either by the transferor or the transferee, notice by the transferee in the case of an application by the transferor, the use of the proper instrument of transfer required by the company in the case of an application by the transferee, and notice within a limited time to a proposed transferee. It also prescribes the time limit within which an objection by a transferee may be made or a refusal to register a transfer must be communicated.

Clause 14.—Under the English law it is a misfeasance on the part of directors knowingly to allot shares to an infant, while shares held by an infant by an order of Court and shares held by a lunatic can only be transferred pursuant to an order in lunacy. The proposed new section aims at preventing such person from coming into possession of shares.

Clause 15 follows the English Act, section 98, sub-section (2), in laying down a time limit wtihin which a requirement by a member must be complied with.

Clause 16 provides a time limit for a rectification of the register of members ordered by the Court.

Clause 17.—The issue of bearer share warrants is not compatible with the provision contained in new section 2 (*1*) (*13*) (*a*). Section 43 should not, therefore, apply to private companies.

Clause 18.—The Act at present allows alteration of capital to be effected by the directors and requires only an alteration involving sub-division of shares to be made in general meeting. One consequence is that the registrar's office has no record of alterations of capital made by directors. This clause brings the law into accord with section 50 of the English Act.

Clauses 19 and 20.—The utilisation of the funds of a company in the purchase of its own shares has the result of reducing its capital and is prohibited by sub-section (*1*) of section 55. The prohibition is circumvented in some cases by advancing money out of the company's funds to nominees who acquire the shares. The proposed section 54A follows section 45 of the English Act in forbidding this subterfuge. Sub-section (*1*) of existing section 55 is transferred to the new section now introduced.

Clause 21.—The new section introduced reproduces section 61 of the English Act.

Clause 22.—The existing section of the Act does not lay down any time within which the registered office is to be set up or notice of its situation or any change of its situation is to be given. This clause adopts section 92 of the English Act.

Clause 23.—Compare section 112 of the English Act and clause 12 of this Bill.

Clause 24.—The new section follows generally the lines of section 113 of the English Act. It extends the obligation to hold a statutory general meeting to all companies having a share capital. "Ten days" has been substituted for " seven days " as the period for which the report is to be in the hands of members under sub-section (*2*), and further requirements have been added by clauses (*f*) and (*g*) of sub-section (*3*). Provision has also been introduced authorising certification of the report by the chairman of the directors.

Clause 25.—Compare section 114, sub-section (1), of the English Act.

Clause 26.—The new section is based on section 115 of the English Act, but whereas that section allows of its provisions being overridden by the provisions made in the articles of the company, the section here makes certain provisions such as those governing the notice to be given for special resolution, the manner of service of notices, the number of members entitled to demand a poll and the form of proxy instruments incapable of variation.

Clause 27 amends section 81 of the Act on the lines of section 117 of the English Act, that is to say, it abolishes the necessity for the confirmation of a special resolution by a second general meeting, but requires 21 days' notice to be given of the meeting at which the special resolution is passed.

Clause 28.—The object of this amendment is to secure the correctness of the records preserved in the registrar's office.

Clause 29 follows section 121 of the English Act.

Clause 30 increases the minimum number of directors of a company.

Clause 31.—This amendment is intended to secure greater independence to the directors by limiting the number of nominated or *ex-officio* directors.

Clause 32.—The first amendment slightly widens the application of the section, the second makes it applicable to companies which have no separate articles of association of their own but adopt Table A; the third renders it inapplicable to companies which began as private companies.

Clause 33.—The clause introduces certain new sections for the control of directors. Section 86A reproduces section 142 of the English Act. Section 86B follows section 151 of the English Act in controlling the practice of directors assigning their responsibilities. Section 86C follows section 152 of the English Act. Section 86D prohibits or limits the making of loans to directors and provides that any loans made shall be disclosed in the balance-sheet, the form of which as laid down in the Third Schedule has been correspondingly amended by clause 100. Section 86E prevents directors from holding offices of profits under the company while section 86F disqualifies them from acting as trustees for debenture holders. Section 86G follows section 148 of the English Act in requiring directors' remuneration to be disclosed. Section 86H and section 86I include in the Act provision for removal of or vacation of office by directors instead of leaving these matters to be provided for in the articles by some such regulations as regulation 86 and regulation 77 of Table A.

Clause 34.—The substituted section 87 follows section 144 of the English Act. It provides that the register of directors and managers shall be kept corrected and shall be open to inspection.

Clause 35.—This clause introduces a series of new sections dealing with managing agents. Section 87A limits the term for which they may be appointed and may continue to act without re-appointment. Section 87B provides for their removal, controls the transfer of office by them, prohibits assignment of their remuneration and gives the company certain powers of control over them. Section 87C lays down the method by which the remuneration of managing agents shall be fixed in companies other than insurance companies. Section 87D makes provision in respect of managing agents, similar to that made by new section 86D in respect of directors, for controlling loans by the company to its managing agents. Section 87E controls the making of loans between companies under the same management. Sections 87F, 87G and 87H introduce further provisions for control of managing agents.

Clause 36 inserts a time limit within which the information required by section 91C is to be given to members of a company.

Clause 37 provides that copies of contracts by agents of the company in which the company is an undisclosed principal shall be sent to the directors and auditors in advance.

Clause 38 provides for the disclosure in the prospectus of a company of certain details, indicated in the amendments contained in the clause, which have not hitherto been required to be so disclosed.

Clause 39 inserts a penalty for the issue of a prospectus which fails to comply with the provisions of section 93.

Clause 40 introduces section 38 of the English Act by which a document containing an offer of shares is to be deemed a prospectus.

Clause 41 introduces the provisions of section 39 of the English Act and is aimed at discouraging flotation of companies with insufficient capital.

Clause 42.—The amendment excludes forfeited shares subsequently re-issued from the purview of the section.

Clause 43.—The amendment is consequential.

Clause 44 inserts section 47 and section 46 of the English Act.

Clause 45.—Under the existing provisions of the Act a charge or mortgage created over moveable property of the company other than book debts or the uncalled share capital need not be registered. The first amendment requires such charges or mortgages to be registered with certain qualifications. The second amendment is designed to affect transferees with notice as from the date of registration.

Clause 46 inserts section 81 of the English Act.

Clause 47 provides for the registration of charges when modified.

Clause 48 inserts the provisions of section 308 of the English Act.

Clauses 49, 50 and 51.—Section 121 of the Act as it stands empowers the registrar on proof of satisfaction of a mortgage or charge to record the satisfaction in the register. It is not, however, obligatory on a company or the mortgage to have such satisfaction recorded, and the records of the registrar may accordingly remain incomplete. The amendments made by these clauses remedy this defect.

Clause 52.—It has been doubted whether the provisions of section 123 apply to floating charges in view of the fact that such charges do not affect property until the charges are crystallized. The amendment makes the intention of the section clear.

Clause 53 substitutes section 122 of the English Act for the existing section.

Clause 54 introduces the substance of sub-section (1) of section 123 of the English Act and makes the section applicable to all companies.

Clause 55 inserts the provisions contained in sub-section (2) of section 123 of the English Act regarding the report by the directors.

Clause 56 introduces a provision requiring disclosure in the profit and loss account, now made compulsory by clause 54, of certain information of importance to shareholders.

Clause 57 adopts the provisions of section 126 of the English Act.

Clause 58 applies the penalty provided by sub-section (4) of section 131 of the existing Act to defaults under that section and sections 132 and 132A.

Clause 59.—The amendment is consequential.

Clause 60.—The first amendment provides for intervention by the Court to secure production of documents for the information of the registrar ; the second extends the powers of the registrar and makes the section applicable to documents required by a liquidator.

Clause 61 introduces provisions based on section 136 of the English Act.

Clause 62 provides *inter alia* for charging the expenses of an investigation undertaken in consequence of a report by the registrar to the company itself.

Clause 63 supplements the duties of auditors and gives them power of attending meetings to explain the accounts.

Clause 64 gives the trustees for debenture-holders the right to receive and inspect the balance-sheets and auditors' reports.

Clause 65 allows stay of suits while a compromise or arrangement between a company and its creditors is pending.

Clause 66 inserts sections 154 and 155 of the English Act dealing with arrangements and reconstructions.

Clause 67 substitutes a section in the terms of section 27 of the English Act for the existing section.

Clause 68 amends the provisions relating to the manner of serving on a company a demand for payment of debts.

Clause 69 gives power to the registrar to apply for the winding up of a company and defines the circumstances in which the power may be exercised.

Clause 70 provides that notice of a Court's order for winding up shall be sent to the official receiver.

Clause 71.—Under the existing law it is only after a winding up order has been made that proceedings against a company are stayed. The amendment follows the English Act in providing that the appointment of a provisional liquidator should operate as a stay.

Clause 72.—Inconvenience has been experienced through the office of official liquidator remaining vacant after a winding up order has been made. This clause is designed to secure that a public official shall automatically become the liquidator until some other person is appointed by the Court and can undertake the work.

Clause 73.—Under section 172, as it stands, the duty of filing with the registrar a copy of the winding up order is laid on the company. It is now laid on the petitioner.

Clauses 74, 75 and 77 are consequential on clause 71.

Clause 76 inserts sections 181 and 182 of the English Act.

Clause 78.—The new section 178A is based on section 199 of the English Act.

Clause 79.—The sub-sections added to section 182 reproduce section 195 of the English Act.

Clauses 80 and 81.—The amendments are consequential.

Clause 82 substitutes for 13 sections of the existing Act dealing with the winding up of companies the provisions of sections 230 to 255 of the English Act. New section 215E, corresponding to section 253 of the English Act, has however been slightly expanded.

Clause 83.—It is equitable that compensation payable under the Workmen's Compensation Act should not be treated as an ordinary debt provable in the winding up but should have priority. This view is taken in England. The expenses of an investigation held in pursuance of clause (*iv*) of section 138 are now charged to the company, *vide* clause 62.

Clause 84 inserts section 267 of the English Act which gives a liquidator power, corresponding to that of a trustee in bankruptcy, to disclaim land burdened with covenants, unprofitable contracts and property which is unsaleable.

Clause 85.—The existing section has been construed as not covering sales held after the winding up. The amendment is designed to forbid such sale.

Clause 86.—Sub-section (3) of the existing section by applying to an application under the section the limitation imposed on a suit allows delinquent directors in many cases to evade their civil liabilities. The amendment allows three years for the making of an application dating from the first appointment of a liquidator.

Clause 87 substitutes the more adequate provisions of section 277 of the English Act for existing section 237.

Clause 88 follows section 271 of the English Act in providing for the punishment of offences antecedent to or in the course of a winding up.

Clause 89 provides that the interim report of the liquidator shall be submitted to the Court or the registrar, as the case may be, but that a copy should in any case be given to the registrar and defines the times when the report shall be made. The form, and the particulars to be contained in these statements are prescribed by the High Courts, which have followed rules 193 to 195 of the English Companies (Winding Up) Rules, and have prescribed a form similar to the English Form 92 drawn up under those Rules.

Clause 90 inserts a section based on section 194 of the English Act requiring the liquidator to lodge moneys received during a winding up in the Imperial Bank and prohibiting him from paying any such moneys into his private accounts.

Clause 91 rectifies an omission in the rule making powers of High Courts.

Clause 92 reproduces section 135 of the English Act dealing with the enforcement of the duty of a company to submit returns and documents to the registrar.

Clause 93 inserts the provisions contained in section 338(2) of the English Act providing for the winding up of companies incorporated outside British India.

Clause 94 inserts the provisions of section 347 of the English Act and requires the balance-sheets of companies incorporated outside British India to comply with the same requirements as those of companies registered in British India.

Clause 95.—New sections 277A and 277B reproduce sections 354 and 355 of the English Act and regulate the issue of prospectuses on behalf of companies incorporated outside British India. Sections 277C and 277D follow section 90 of the English Act in making applicable to such companies the provisions of the Act which relate to registration of charges and registration of the appointment of a receiver.

Clause 96 inserts a new Part containing special provisions applicable to banking companies. Section 277E defines what a "banking company" is. Section 277F restricts the activities of such companies to ordinary banking transactions. Section 277G forbids for the future the employment of managing agents. Section 277H ensures adequate working capital before business is commenced. Sections 277I and 277J require, respectively, a reserve fund and an adequate cash reserve to be maintained. Section 277K gives effect to the recommendations of the Central Banking Enquiry Committee that provision should be made for a moratorium to save from liquidation a banking company in temporary difficulties.

Clause 97 introduces a new section penalising misapplication of the property of a company by an officer or employee and a section designed to prevent misuse of securities lodged with a company by its employees under their contracts of service, and to safeguard-provident funds.

Clause 98 makes amendments in certain of the model regulations in Table A which under the amendment made by clause 7 must be adopted by all companies.

Clause 99 substitutes for the existing form of a statement in lieu of prospectus the form now contained in the English Act.

Clause 100 incorporates in the form of balance-sheet the additional particulars which are considered necessary in order that the balance-sheet shall fully disclose the position of the company's affairs.

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