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**REPORT
OF THE
COMPANIES ACT AMENDMENT COMMITTEE**

SASTRI COMMITTEE
REPORT



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
NEW DELHI
1957

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MINISTRY OF FINANCE



REPORT
OF THE
COMPANIES ACT AMENDMENT
COMMITTEE

DEPARTMENT OF COMPANY LAW ADMINISTRATION
NEW DELHI,
1957

501 C.L.A.-i.

(ii)

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COMPANIES ACT AMENDMENT COMMITTEE

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Constitution of the Committee and Terms of Reference

By its order of the 15th of May, 1957, the Government of India constituted an *ad hoc* Committee with the following terms of reference :—

“Having regard to the aims and objects of the Companies Act, 1956, and in the light of its working—

- (1) to consider what amendments in the Act are necessary:
 - (a) to overcome such practical difficulties in its working as may have been encountered since it came into force;
 - (b) to remove such drafting defects and obscurities as may have interfered with the working of the Act;
 - (c) to ensure the better fulfilment of the purposes underlying the Act;
- (2) to consider what changes in the form or structure of the Act, if any, are necessary or desirable to simplify it.”

Composition of the Committee

2. The composition of the Committee was as follows :—

Shri A. V. Visvanatha Sastri,
Retired Judge of the Madras
High Court. } *Chairman.*

Shri C. C. Shah, Solicitor,
Bombay. }

Shri G. Basu, former President
of the Institute of Chartered
Accountants of India. }

Mr. J. D. K. Brown, Director,
Jardine Henderson Ltd., Cal-
cutta. } *Members.*

Shri K. R. P. Aiyangar, Joint
Secretary in the Department of
Company Law Admn., New
Delhi. }

Shri F. N. Sanyal, Under Secy.,
Department of Company Law
Administration, New Delhi. } *Secretary.*

Historical background

3. Company legislation in India started with the Joint Stock Companies Act, 1850 (Act XLIII of 1850). An historical account of the course of subsequent legislation will be found in the report of the Company Law Committee submitted in 1952. Indian Company Law has been largely based on the prevailing English Law. The predecessor of the Companies Act, 1956, was Act VII of 1913, which underwent several amendments, including the major amendments of 1936 and 1951 when Acts XXII of 1936 and LII of 1951 were passed. The period of the Second World War and the post-war years witnessed an upsurge of industrial and commercial activity on an unprecedented scale in India and large profits were made by businessmen through incorporated companies. During these years, several developments took place in the organisation and management of joint stock companies which attracted public attention. At the end of the War, the Company Law Amendment Committee in the United Kingdom familiarly known as the Cohen Committee, after an enquiry spread over two years, submitted its report recommending far-reaching changes in the English Companies Act, 1929. In India, too, there was a general feeling that in view of the experience gained during the war years, the time was ripe for fresh legislation so as to ensure efficient and honest management of the business of companies and check unfair business methods and anti-social practices resorted to by some persons engaged in the management of companies. The Government of India took up the revision of Company Law immediately after the termination of the last war. Two company lawyers—one from Bombay and the other from Madras—were successively appointed to advise Government on the broad lines on which the Indian Companies Act, 1913, should be revised and recast in the light of the experience gained during the war years. Their reports were considered by Government and a memorandum embodying its tentative views was circulated towards the end of 1949 for eliciting opinion. On 28th October, 1950, the Government of India appointed a Committee of twelve members representing various interests under the chairmanship of Shri C. H. Bhabha, to go into the entire question of the revision of the Companies Act, with particular reference to its bearing on the development of trade and industry in the

country. This Committee, popularly known as the Bhabha Committee, submitted its report in March, 1952, recommending comprehensive changes in the Companies Act of 1913. The report of the Bhabha Committee was again the subject of discussion and comment by Chambers of Commerce, Trade associations, professional bodies, leading industrialists, shareholders and representatives of labour. The Bill, which eventually emerged as the Companies Act, 1956, was introduced in Parliament on 2nd September, 1953. It was a comprehensive and consolidating as well as amending piece of legislation. The Bill was referred to a Joint Committee of both Houses of Parliament in May, 1954. The Joint Committee submitted its report in May, 1955, making some material amendments to the Bill. The Bill, as amended by the Joint Committee, underwent some further amendments in Parliament and was passed in November, 1955. The new Companies Act (I of 1956) came into force from 1st April, 1956.

Objectives of the new legislation

4. To some extent, the new Act reflected the prevalent trends of public opinion. It was considered desirable in the public interest, and in order to prevent the diversion of companies' funds for purposes that thwarted national economic policies or approved economic objectives, that the Government should have greater control over the formation and management of joint stock companies. A minimum standard of good behaviour and business honesty in company promotion and management, a due recognition of the legitimate interests of the shareholders and creditors and of the duty of the management not to prejudice or jeopardise those interests, provision for greater and effective control over and voice in the management for shareholders, a fair and true disclosure of the affairs of companies in their annual balance sheets and profit and loss accounts, a higher standard of accounting and auditing, a recognition of the rights of shareholders to receive reasonable information and facilities for exercising an intelligent judgement with reference to the management, a ceiling on the share of profits payable to the management as remuneration for services rendered, a check on their transactions where there was a possibility of conflict of interest and duty, a provision for investigation into the affairs of any company managed in a manner

prejudicial to the interests of the company as a whole or oppressive to a minority of the shareholders, enforcement of the performance of their duties by those engaged in the management of public companies or of private companies which were subsidiaries of public companies by providing sanctions in case of breach and a speedy and effective machinery for liquidation of companies—these were among the objectives of the new legislation. At the same time, it was recognised that private enterprise had played and had still a large part to play in the industrial and economic progress of the country and that joint stock companies covered such a wide area of the industrial and commercial field in the private sector that their continued existence and effective functioning should not be imperilled by the imposition of unduly irksome restrictions and fetters on their activities. It was not the object or purpose of the Act to put private enterprise in a strait jacket leaving no room for free play at the joints. Its object was rather to encourage honest private enterprise and safeguard private investments in fields not earmarked for the public sector. It was considered necessary that the influence of the general body of shareholders in any company should not be eliminated by a small controlling group. In view of the representations made to the Committee as regards the objectives of the Act, we have set out above what we conceive to be “the purposes underlying the Act” within the meaning of our terms of reference. We take the view that any reassessment of the considerations of general economic or social policy on which the Act is based is outside the ambit of our enquiry. Individual cases of mismanagement of the affairs of companies which were brought to our notice are also outside our purview except in so far as they disclose defects and omissions in the existing law requiring to be rectified.

Critics of the Act

5. The Companies Act of 1956 was the outcome of a prolonged and detailed consideration (both inside and outside the legislature) of the various aspects of company law and administration. It has nevertheless been the subject of criticism by businessmen, company managements, shareholders, accountants and auditors, lawyers and judges. Critics of the enactment—and they are

numerous—have focussed attention on its inordinate length, the complexity of its structure, its involved language, the vagueness and obscurity of many of its material provisions, the interposition of Government control even in apparently minor matters, the plethora of returns and forms required to be furnished by the management without any corresponding utility, the loopholes it has left, and many other features which make the enactment cumbersome or defective and difficult of application. Under our terms of reference, we have been asked to consider what changes in the form or structure of the Act are necessary or desirable to simplify it. It is possible to have a different lay out of the Act on the basis of a subject-wise arrangement and a regrouping and recasting of its different provisions. For instance, sections 198, 199, 200, 201, 309, 310, 311, 314, 348, 349, 350, 351, 352, 353, 354, 381, and 387 relating to managerial remuneration might be grouped together and compressed into a smaller number. The same could have been done about the sections dealing with different modes of liquidation. Similarly, exemptions for private companies could have been grouped together. This would, however, have necessitated a rewriting of large portions of the Act and a complete rearrangement of the sections. Well-informed opinion was almost unanimous against our attempting such a drastic or wholesale change. It was represented to us that it was too soon to introduce major changes or radical amendments and that during the twenty months that have elapsed since the Act was passed, those responsible for the management of companies as well as shareholders had, with considerable efforts, familiarised themselves with its scheme and its different provisions and that it would be a hardship to the business community and accountants and auditors, if they were now obliged to switch over to a set of new provisions. The balance of convenience and advantage was found to lie in retaining the scheme and arrangement of the present Act, which, it might be mentioned, mainly follows the order in which the different topics were dealt with in the Indian Companies Act of 1913. We, therefore, focussed our attention on the difficulties attendant on the working of the Act in actual practice, and the interpretation of its provisions. We have tried to plug loopholes, supply omissions, clarify ambiguities, correct mistakes, remove inconsistencies, omit unnecessary or otiose provisions and add others conducive to the smooth and effective working

of the Act. We have also indicated the changes recommended by us as far as possible in the form of drafts of new sections or amendments of the existing ones in the hope that they might be of some assistance to Parliamentary draftsman.

Scheme of the Act

6. The Act with its 658 sections and 12 Schedules, no doubt appears, on the face of it, to be far too elaborate and detailed. The increase in the number of sections in the (Indian) Companies Act of 1956, compared with the 462 sections of the English Act of 1948, is due mainly to the following reasons:—

- (1) The inclusion of several provisions which do not find a parallel in the English Act, but which are peculiarly appropriate to Indian conditions (*e.g.* sections 324 to 377 relating to managing agents)
- (2) the inclusion of matters which formed part of the model regulations for company management contained in Table 'A' of the First Schedule of the English Act in the body of the new Act as substantive provisions (*e.g.* sections 285—289);
- (3) splitting of matter comprised in one section of the previous Act and of the English Act into a number of sections; and
- (4) repetition of certain common statutory provisions with reference to each of the different classes of officers of a company or different modes of winding up of a company.

Though the number of sections in the Indian Act exceeds those of its English counterpart, still it will be found that the volume of printed matter of both the Acts is approximately the same, the English Act having relegated to the schedules several provisions found in the body of the Indian Act. It was presumably the intention of the legal draftsman who drafted the Bill, as well as the then Finance Minister, who piloted it in Parliament, that the enactment should be a self-contained, complete and exhaustive exposition of the law governing joint stock companies in India. Whatever might be our view if we had to write on a clean slate we have, in deference to the almost unanimous views

of those whom this legislation primarily concerns, not attempted to rewrite the Act or upset its arrangement of the topics dealt with by it. Moreover, the time allowed to the Committee was too short for such an overhaul.

Scope of the enquiry

7. From 1936 when major amendments to the Indian Companies Act, 1913 came to be made, the managements of companies and even shareholders began to evince interest in the shaping of company law as well as in its application. The machinery set up under that Act was, however, wholly inadequate for the task with the result that several provisions were honoured more in the breach than in their observance and irregularities on the part of the management often went unchecked. The Act of 1956 has remedied this defect and provided for some measure of Government control over company management in the interests of the shareholders and the investing public. Since the passing of the Act, public interest in company law and its proper enforcement has increased and the volume and variety of representations that we have received show that small investors as well as managerial interests are becoming more and more company-law minded. This is all to the advantage of healthy joint stock enterprise. We have taken into consideration the representations, written and oral, made to us by representatives of trade and industry, managements of companies, representatives of shareholders and by accountants and lawyers. We have paid attention to the difficulties experienced by the Department of Company Law Administration in the working of the Act. The Committee was asked to furnish solutions for several problems which confronted companies and shareholders individually, apparently under the impression that the Committee was an advisory body constituted for giving advice to the public. Wherever questions affecting companies and shareholders at large or a considerable section of them or relating to the interpretation of obscure or ambiguous provisions of the Act were raised, we have attempted to deal with the difficulties pointed out and given our reasons for recommending a change in the law or a clarification of the meaning and effect of the sections of the Act. We have refrained from assuming the role of a legal adviser or a judicial tribunal and recording opinions on concrete cases brought to our notice. It is

obvious that a great deal has to be left to judicial interpretation in due course. We have also refrained from recommending changes on matters of major policy. The decisions embodied in the Act on such matters were taken after great deliberation and very recently and it would be premature to alter such decisions at this stage. We have received numerous representations, *e.g.*, on managerial remuneration, proportionate representation, appointment of auditors by Government, investment of companies' funds, appointment of Government directors on companies' boards, etc. We have not recommended any radical changes in such matters, though divergent views have been expressed and changes advocated in the representations received by us.

Machinery for the Administration of the Act

8. The previous Act failed in its objectives to a considerable extent due to lack of adequate and efficient machinery for its enforcement. Its administration was left to the States, who had little interest in the Act and did not provide adequate staff. The Central Government have now taken over the enforcement and administration of the Act and set up an organisation for its proper working. The Department of Company Law Administration in its present shape consists of a Secretariat Organisation in New Delhi. In the field, there are four Regional offices and Registrars of Companies one for each State. The regional offices are under Regional Directors of the status of Deputy Secretary and are located at Bombay, Calcutta, Madras and Kanpur. Each regional organisation has a qualified Accounts Officer and a Solicitor to help and advise the Regional Director and the Registrars in the region. The status and strength of these Registrars' offices vary according to the work-load. In accordance with the provisions of the Act, an Advisory Commission with a full time Chairman has also been set up at headquarters to advise the Department in the discharge of the various functions assigned to Government by the new Act.

Sittings of the Committee

9. The Committee held separate sittings between May, 1957 and November, 1957, of which seven were held at Delhi and the rest at Bombay, Calcutta and Madras. At the first meeting held at Delhi on 27th May, 1957, the programme and procedure to be followed by the Committee were settled. At the second meeting held at Delhi on 26th and 27th June, 1957, the Committee examined

the views and suggestions of the Department with regard to remedying defects and removing difficulties found from experience of the working of the Act. The third, fourth and fifth meetings were held at Bombay, Calcutta and Madras respectively on different dates between 3rd July and 20th July, and at these meetings the Committee had the advantage of a personal discussion with representatives of management as well as of shareholders, Chambers of Commerce, Banks, Millowners, Chartered Accountants, lawyers and representatives of Advocates' Associations. At the sixth meeting held at Delhi for a week from the 19th August, the Committee heard further evidence and considered some of the controversial points. At the seventh meeting held at Delhi for a week from the 5th September, 1957, the Committee considered the draft report prepared by the Chairman after considering the representations received by the Committee. Further consideration of the draft report was taken up at the eighth and ninth meetings of the Committee at Delhi from 21st to 24th September, 1957 and from 15th to 19th October, 1957, respectively. The Committee held its last meeting at Delhi on 9th November to sign the report. The evidence and suggestions submitted to the Committee by various organisations and individuals were of great assistance to it in its enquiry and the Committee desires to express its gratitude to all of them.

A list of the Chambers of Commerce and Trade Associations and individuals who presented their views before the Committee is appended to this Report as Appendix I.

II

Amendments suggested

10. It will be convenient to follow the order of the sections of the Act and to indicate the changes which we recommend together with a brief statement of our reasons therefor. A section-wise list of amendments proposed by us is appended to this Report as Appendix II.

Section 2(3) : Associate

11. "Associates" of managing agents are subject to restrictions and disabilities in their dealings with the managed companies (see, for instance, sections 239, 249, 261, 356 to 360 and 369), the object being to prevent managing agents from securing unfair

or unconscionable pecuniary and other benefits for themselves from the managed companies indirectly through their close relatives and business associates. It has been urged that the term 'associate' is too widely defined and puts needless obstacles in the way of legitimate trade and business dealings and that the circle of associates should be confined to the partners and a few very close relations of the managing agent if he is an individual and to holding companies and subsidiaries if the managing agent is a company. The objections to the definition of 'associate' revolve mainly round the definition of the term 'relative' in section 6, which as indicated in paragraph 26 *infra* is more sweeping than it need be. There are also other practical difficulties arising from the definition of 'associate' but since the definition is intended to give effect to a fundamental principle which the legislature deliberately accepted and which we are not at liberty to discard, we are unable to accept suggestions made for removing the definition altogether. In view of the need felt by the legislature so recently as in 1955 for guarding against abuses and malpractices attendant upon dealings between managed companies and the business associates and relatives of managing agents, we are unable to recommend that the definition of 'associate' should be restricted only to partners or holding or subsidiary companies or their managing agents or that subsidiary companies managed by holding companies should be excluded from 'associates'.

12. Section 2(3) contains a reference to a body corporate at any general meeting of which not less than one-third of the total voting power in regard to any matter may be exercised or controlled by the persons and companies enumerated therein. It may not be possible to predicate with absolute certainty whether the voting power in any particular case is being controlled. Shares might also be bought and sold by one or more of the persons referred to in the sub-section and their total voting power might fluctuate from time to time. In the case of existing companies it might be difficult to ascertain the precise voting strength in specific matters on account of the existence of different classes of shares having different voting rights. The difficulty of applying the rule to particular cases need not, however, compel its abrogation. In practice, it has been found that one-third of the total voting strength would give *de-facto* control over the company. There is no need for any change of the law in this respect.

13. There are a few drafting points in connection with section 2(3) to which we should refer. The inclusion of 'managing agent' in section 2(3)(c)(i) has been criticised as being inconsistent with the provision in section 325 which prevents a managing agency company from appointing a managing agent for itself and it has been suggested that the words 'managing agent or' in the sub-clause should be omitted. This is not accurate because section 325(4) has allowed the retention till 15th August 1956 of a managing agent for a company which is itself acting as a managing agent and the inclusion of managing agent in section 2(3)(c)(i) would, therefore, serve a purpose till 15th August 1956. Moreover, the omission of these words would require the addition of similar words later in the clause before the words "of any subsidiary or holding company thereof". For these reasons, we consider that there is no need to make any change in this clause in this respect. Section 2(3)(c)(i) does not include a partner or 'relative' of an 'officer' as an 'associate' though it includes a 'relative' or partner of a 'director or manager'. The omission might be due to the fact that the officer has to work under the control, direction or supervision of the Board of Directors and is not to be considered as capable of wielding any undue influence. If, however, the omission is accidental, it might be rectified by including not the relative of every 'officer' but only that of the 'principal officer'. S. 2(3)(c)(i)

The Department has suggested a clarificatory amendment of section 2(3)(c)(ii) by deleting the semi-colon and the word "and" at the end of the clause and by adding the words "or any body corporate which is a subsidiary thereof or a subsidiary of such subsidiary; and" to provide for cases where control is exercised by the managing agent of a holding company through the subsidiaries of the latter. We think that section 2(3)(c)(ii) might be amended by the addition of the words "or any subsidiary thereof" after the words "any other body corporate" at the beginning of the sub-clause. A similar amendment will have to be made in section 2(4)(b)(ii) also. Ss. 2(3) (c) (ii) and 2(4) (b) (ii)

A suggestion has been made with reference to section 2(3)(d) that where the managing agent is a private company it is not proper to treat all its members irrespective of whether they are strangers or relatives as 'associates'; but this is not a live issue now, arrangements by way of transfers of shares having, we believe, been made in most cases.

The restricted definition of 'relative' which we are suggesting hereafter (para 26) will, we hope, go a long way in meeting many of the difficulties pointed out, arising from the wide definition of the word.

Section 2(7) : Body Corporate

S. 2(7) 14. The definition of body corporate should be so framed as to exclude societies registered under the Co-operative Societies Act. This may be done by adding the words "or a society registered under the Co-operative Societies Act applicable to a State" at the end of the sub-section.

Sections 2(9) and 8 : Branch Offices

S. 2(9) 15. The definition of a "branch office" in section 2(9) is not happy though it has an important bearing on other parts of the Act like sections 209, 228 and 292. Since sections 2(9) and 8 are interdependent an amendment of both would be necessary. "Branch office" in section 2(9) might be defined as meaning "any establishment described as a branch by the company or any establishment carrying on either the same or substantially the same activity as that carried on at the head office of the company or engaged in any production, processing or manufacture." S. 8. To fit in with this suggested amendment, section 8 might be recast as follows :—

"The Central Government may, by order, declare that in the case of any company, not being a banking or insurance company, any establishment thereof shall not be treated as a branch office of the company for all or any of the purposes of this Act."

Though section 8 of the Act refers to 'head office' this term is nowhere defined. We think this should be done and have accordingly attempted a definition of 'head office' in paragraph 18 *infra*.

Sections 2(11) and 10 : Definition of "Court"

16. The definition of the word "Court" in section 2(11) refers to section 10 and section 10 refers only to the jurisdiction of two types of courts, *viz.*, the High Court and District Courts subordinate thereto. There are, however, several sections in the

Act, where the word "Court" is used in a different sense. In sections 274(1)(d) and 283(1)(c), *e.g.*, the word "Court" is used in the sense of an ordinary criminal court trying an offence punishable under the criminal law of the land. In sections 118(3), 144(4), 163(6), 196(4), 219(4) and 304(2), the word "Court" refers to the Court of a Presidency Magistrate or First Class Magistrate trying offences under the Companies Act by virtue of sections 622 and 623 and not the "Court" contemplated by section 10 of the Act. Section 2(11) might, therefore, be recast as follows :—

S. 2(11)

“ ‘The Court’ means with respect to any matter relating to a company, the Court having jurisdiction with respect to that matter in relation to that company as provided in section 10”.

Section 10 will have to be amended by the omission of the word “and” at the end of sub-section (1) clause (a), the addition of the word “and” at the end of the clause (b) of sub-section (1) and the following words as clause (c) :—

S. 10

“(c) in respect of any offence made punishable under this Act, the Court of a Presidency Magistrate or Magistrate of the First Class having jurisdiction to try such offence.”

Section 2(17) : Financial Year

17. The definition in the Act follows the definition in section 455(1) of the English Act except that the latter refers to a “general meeting” while the former refers to the “annual general meeting.” The period of a financial year may exceed or fall short of a year. It is open to a company to have its accounts made up, audited and presented to the shareholders at a general meeting once in, say, 3 or 6 months. The period for which the accounts of the company have to be presented to the shareholders is the “financial year” which might be less or more than a calendar year but not exceeding fifteen months or, with the approval of the Registrar, eighteen months under section 210(4). The expression “annual general meeting” is often used but not clearly defined in the Act *vide* section 166. The word “annual” has to be taken in its

ordinary sense of "yearly" or "pertaining to a year" or "occurring once a year". The Board of Directors can declare an interim dividend without calling a meeting of the shareholders. Dividends can be declared half yearly at meetings of shareholders but such meetings need not be annual general meetings. Under the scheme of the Act, there should be one annual general meeting [section 166(1)(a)] at which the balance sheet and profit and loss account of the financial year and the auditor's report have to be presented to the shareholders (sections 210 and 227), auditors have to be appointed for the succeeding year (section 224), directors have to be elected in place of directors retiring by rotation [section 256(3)] and dividend has to be declared (section 173). Though the directors could present the accounts to the shareholders at intervals of 3 or 6 months there could be only one annual general meeting for a year and at that meeting all the business enumerated in section 173(1)(a) should be transacted. Section 131(1) of the English Act provides only for one annual general meeting each year. We are suggesting an amendment of section 166(1) so as to bring it in line with the English Act. The word "annual" in section 2(17) has to be omitted.

S. 2(17)

Section 2(18A) : Head Office

18. In view of the reference to "branch office" in section 2(9) the Act, a definition of the term "head office" is desirable. It may be added as sub-section (18A) to section 2 and might run thus :—

S. 2(18A)
New

"'Head Office' means the registered office of the company or where the principal activities of the company are carried on at a place other than the registered office, the place where they are so carried on."

Section 2 (26) : Managing Director

19. The definition of "managing director" is important in relation to several sections of the Act, as for instance, sections 268, 269, 310, 316 and 317. It has been said that the definition of "managing director" in section 2(26) is very wide inasmuch as it may include any director exercising powers of a routine character such as signing share certificates, cheques, receipts etc. by delegation from the Board. This, we feel, could hardly have been intended. The directors collectively have the right and duty to manage and supervise the business of the company

but an individual director does not exercise any power of management. Section 2(26) refers to "any powers of management which would not otherwise be exercisable by" a director. Certain powers like the power to affix the company's seal to documents, to draw and endorse cheques on the company's bank account or to draw or endorse negotiable instruments, to sign share certificates and to sanction registration of a transfer of shares and other acts connected with the routine administration of a company may be exercised by a director, if so authorised by the Board. Section 2(26) is, however, not intended to refer to or cover such acts. The expression "powers of management" connotes exercise of discretion and capacity to take a decision to do or not to do a thing. Acts done in pursuance of a direction given by the Board are not an exercise of any power of management. On the other hand, action taken regarding investment matters or other functions such as buying and selling, being matters of policy, are in the exercise of powers of management and would attract the provisions of the section. In order, however, to remove any doubt as to whether acts of a routine administrative character are intended to be included in this definition, we would suggest that the expression "any powers of a management" may be amended so as to read S. 2(26) "any substantial power of management."

It has been suggested that the definition may be amended so as to replace the words "any powers of management which would not otherwise be exercisable by him" in section 2(26) by the words "the management of the whole or substantially the whole of the affairs of the company". This suggested change will place the managing directors in the same position as a manager or a managing agent and would exclude persons who, though not entrusted with the management of the whole or substantially the whole of the affairs of the company, are entrusted with important powers of management, as mentioned above. That is not the intention of the Act and the adoption of this suggestion would remove from the control of the Government the appointment and remuneration of directors who, though exercising important functions and powers of management, are yet not entrusted with the whole or substantially the whole of the management of the affairs of the company. We are, therefore, unable to accept this suggestion.

Sections 2(30) and (45) : 'Officer' & 'Secretary'

20. Section 2(30) of the Act defines 'officer' as including a secretary and section 2(45) defines a secretary as meaning a person appointed to perform the duties of a secretary under the Act. The Act does not, however, define his duties though it imposes penalties upon 'officers' (including a secretary) for breach of the duties enjoined by the Act. Section 177 of the English Act provides that every company shall have a secretary and that a sole director shall not also be a secretary. The suggestion has been made that a statutory provision requiring every company in India to have a secretary should now be made. While it is desirable to have a competent secretary to guide the management in the day-to-day work not only in matters of company law and mercantile law, but also in matters relating to accounts, taxation, holding of meetings, drafting of resolutions and reports, etc., we doubt if, at present, it would be possible to find an adequate number of competent secretaries for all companies. Accordingly, we feel that at this stage it should continue to be left to the judgment of the Board of the Company to arrange for the carrying out of its secretarial work.

It has been suggested that firms qualified to perform the duties should be allowed to function as secretaries of companies. It is said that not only the efficiency of company administration would be increased by the appointment of a firm comprising men of professional competence as secretaries but the cost would be reduced if several companies employed the same firm. Section 25(4) and the proviso to section 226(1) recognise that a firm might be a member of a company licensed under section 25 or that a firm might be appointed as auditors of companies. Under section 2(45), as it stands, an individual or possibly a company but not a firm, is intended to be the secretary of a company. It has been brought to our notice that persons purporting to be appointed as secretaries of companies have, in some cases, been entrusted with functions and duties appropriately belonging to managing agents or secretaries and treasurers, as defined in the Act and have in this manner sought to avoid the limitations attaching to the holders of these offices. Nothing, of course, turns on the name and the duties and powers assigned to the office determine its true legal character. The duties of secretaries, as visualised by the

Act (sections 54 and 220) and in Table 'A' [(Regulation 84(2)) contained in Schedule I to the Act, though important, are not managerial. Though a secretary does not enjoy the same status as a Managing Agent or Manager and though no specific duties or functions are assigned to him under the Act, still they are not trivial and require administrative ability besides a good working knowledge of company law and procedure. Being a principal officer of the company, he is responsible for the correctness of the statements and documents filed with the Registrar. For default in compliance with the requirements of the Act, knowingly or wilfully, he incurs penalties. If responsibility is to be distributed among a number of partners then not only section 2(45) but allied sections like sections 539, 540 and 543 will have to be suitably amended, so as to make each of the partners liable for the default or misconduct of the others.

If a firm or another company is to be allowed to function as the secretary of a company the word 'secretary' may preferably be defined as "any individual, firm or company, appointed to perform ministerial and administrative functions in relation to a company under the Act, but not entrusted with the direction, control or S. 2(45) management of the affairs of the company."

Sections 2(33), 549, 552, 555(3) and 643(1): Rule-making power of the Supreme Court

21. The definition of the word 'prescribed' in section 2(33), as it now stands, appears to vest in the Supreme Court of India powers of rule-making which include matters falling outside its jurisdiction. In the absence of Parliamentary legislation, Article 283(1) of the Constitution vests the rule-making power in the President with reference to deposits into or withdrawals from the public account of India, or monies realised by the Official Liquidator. Consequently, the Supreme Court cannot be empowered to frame rules in respect of the above matter as section 2(33) read with section 552 purports to do. Under section 555(3) of the Act, the Liquidator in the winding up of a company, is required to furnish to the officer authorised by the Central Government a statement in the prescribed form, giving particulars relating to monies deposited in the Companies' Liquidation Account, in the public account of India, in the Reserve Bank. For this purpose, the Central Government has appointed the Registrars of Companies as 'officers'

to whom the said statement is to be furnished. Under section 555(7)(b) of the Act, the Central Government is empowered to make an order for payment of the amount due to any claimant on a certificate by the Liquidator or on other materials. The power to prescribe the form of the statements to be made by the Liquidator to the officer appointed by the Central Government under section 555(3) should appropriately vest in the Central Government and not in the Supreme Court. On the other hand, as we have suggested in paras 187 and 204 *infra*, the power to prescribe rules for the inspection of the books and papers of a company in liquidation, at present exercisable by the Central Government under section 549, could appropriately be vested in the Supreme Court. For these reasons, section 2(33) and section 643 would have to be amended by taking away the power of the Supreme Court to frame rules in respect of matters provided for in sections 552 and 555(3) of the Act and vesting it with power to make rules as respects the matter provided for in section 549.

S. 2(33), 549
and 643.

Section 2 (36) : Prospectus

22. The definition of 'prospectus' taken from the English Act is not happy inasmuch as a 'prospectus' is defined as meaning 'any prospectus, notice, etc.' What is meant is probably that any document, described as a prospectus, has to be regarded as a prospectus within the meaning of the Act. If so, 'prospectus' might be defined as meaning "any document described or issued { as a prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate." The definition includes a newspaper advertisement. It has been pointed out that advertisement charges for the insertion in a newspaper of a prospectus with full statutory particulars are inordinately heavy in the case of companies with a modest capital and that a newspaper advertisement of the fact of the floatation of a company should be excluded from the definition of 'prospectus'. Sections 56 to 65 of the Act contain stringent provisions regarding the contents of prospectuses but section 66 provides that where any prospectus is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the

S. 2(36)

memorandum or certain other particulars referred to in the section. There is no reason to exclude newspaper advertisements from the definition of 'prospectus' if there is an invitation to the public to subscribe for shares or debentures. A mere announcement in a newspaper about the formation of a company or of the fact of the publication of a prospectus by the company in connection with the issue of shares or debentures without any invitation to the public to subscribe need not be included in the definition of prospectus provided the place where a copy of the prospectus may be obtained is stated in the announcement.

Section 3(1)(iii) and (iv) : Public and Private Companies

23. Private companies are exempted from the operation of several sections of the Act and enjoy certain privileges, principally on the ground that they are family concerns in which the public is not directly interested. It is, however, well known that there are many private companies with large capital doing extensive business and controlling a number of public companies. This is made possible because funds of other companies, public and private, are invested in such private companies. As public money is invested in such companies, there is no reason for treating such companies as private companies. The problem of private companies has always been somewhat difficult. On the one hand, there are genuine private companies which are nothing but glorified partnerships and, on the other, there are private companies whose operations, financial and industrial, are far wider than those of many public companies. To meet this problem, the Cohen Committee created the category of exempted private companies but the relevant provisions in the English Act are very complicated. It was strongly urged upon us that the several exemptions granted to and the privileges enjoyed by private companies should be withdrawn, as they are abused. But to withdraw them from all private companies may cause hardship to genuine small private companies. At the same time, there is no doubt that private companies, which employ public money directly or indirectly to a considerable extent, should be subject to the same restrictions and limitations as to disclosure and otherwise as apply to public

companies. We, therefore, recommend that a proviso be added to section 3(1) (iv) in these terms :—

S. 3(1)(iv) “Provided, however, that any private company in which shares to the extent of 25 per cent. or more of the paid-up capital are held by one or more companies, public or private, shall be deemed to be a public company.”

Section 4, sub-sections (1), (5) and (6) : Public Companies and Subsidiaries

24. According to competent legal opinion obtained by the management of some companies, a private company registered as such in India, which is a subsidiary of a public company incorporated outside India, cannot be deemed to be a subsidiary of a public company within the meaning of the Act. According to this opinion, the expression ‘private company which is a subsidiary of a public company’ occurring in the Act should be taken to mean a private company which is a subsidiary of a public company registered under the Act and not to include a private company registered in India which is a subsidiary of a foreign company, described as a ‘body corporate’ in the Act. It was pointed out that there are private companies registered in India which are subsidiaries of foreign companies and which have been doing business on a large scale. Logically, it would be difficult to justify a discrimination between ‘Indian’ subsidiaries of Indian public companies and ‘Indian’ subsidiaries of foreign public companies. Indian subsidiaries of foreign public companies need not, if they are private companies, file their profit and loss account with the Registrar [*vide* section 220 (1) (b)]. They would not also be subject to the ceiling on managerial remuneration imposed by section 198 or the separate ceilings in respect of different classes of managerial personnel under sections 309, 348, 381 and 387. Even under the law of the country of incorporation of the holding company, some of these privileges might not be available to private companies of this type. It was presumably not intended by the legislature that private companies which are subsidiaries of foreign bodies corporate, should find themselves in a privileged position *vis-a-vis* private companies which are subsidiaries of Indian public companies. So far as we can ascertain, there are about 100 such private companies which are Indian subsidiaries of foreign bodies corporate which, if they were incorporated in India, would be public companies. The

capital of the majority of these private companies is said to be wholly-owned by the foreign bodies corporate. It has been represented to us that to render such private companies at this stage subject to the provisions of section 198 *et al* is bound, in the long run, to inhibit foreign investment in this country through the medium of an Indian subsidiary and might also give rise to some measure of disinvestment by existing foreign companies. It is said that, in the present world-wide shortage of development capital, the restrictions on management remuneration (which are not generally found in the capital-exporting countries themselves) will tend to drive capital away from India, other things being equal.

Bearing in mind the prime purpose of the Companies Act, *viz.*, the protection of the interests of the shareholder, subject always to the overriding requirements of public policy, a distinction might be drawn between private companies which are wholly-owned subsidiaries of foreign bodies corporate and other private companies which are subsidiaries of foreign bodies corporate but in which a portion of the capital is nevertheless held by Indian nationals or companies. In the first type of cases, it has been argued that the management, having no shareholding interest, is, in fact, effectively supervised in regard to remuneration and otherwise by the parent company abroad and is subject to any restrictions which the foreign legislature may care to impose and that there is no necessity for the Indian Legislature to concern itself with the matter. But this argument is by no means decisive in view of the fact that the business operations are carried on and profits are earned in India by the subsidiaries and that there is, therefore, a sufficient economic and territorial connection justifying regulation by Parliament. So far as the second type of company is concerned, however, it must be conceded that the company being incorporated in India and Indian capital being in some degree involved, there is no reason for any difference in treatment for the purposes of the Act between such a company and a company which is a subsidiary of an Indian public company.

We, therefore, recommend that in the case of private companies, which are subsidiaries of foreign bodies corporate, but in which some part of the capital is beneficially held by Indian nationals or Indian companies, a provision should be inserted in section 4 to make it clear that such private companies will be

reared as subsidiaries of public companies for all the purposes of the Act. As regards the treatment of private companies, the entire share capital of which is owned by one or more foreign bodies corporate, it is a matter of economic and financial policy for Government to decide, having regard to the position of foreign investments in this country generally, whether or not such private companies should continue, as at present, to remain outside the restrictions imposed on private companies which are subsidiaries of Indian public companies or whether they should henceforth be made subject to these restrictions. If an alteration of law in this respect is considered desirable, a provision should be inserted in section 4 to the effect that "a private company, which is registered in India and which is a subsidiary of a foreign public company, shall be deemed to be a subsidiary of a public company for all the purposes of this Act."

S. 4

25. There are a few drafting defects in the definition of a 'subsidiary' in section 4. There are 'existing' companies where preference shareholders have the same voting rights as equity shareholders. Section 90 preserves such rights. In such cases it is possible that the equity shares of a company may be held by one company and the preference shares by another and the preference shares might exceed the equity shares in voting strength. In such cases, it may be inappropriate to treat the company as a subsidiary of both the companies. To avoid this difficulty, section 4(1)(b) might be amended by adding the following words at the end of the clause after the words "share-capital" :—

S. 4(1)(b)

"or, in the case of existing companies, with equity and preference share holders having the same voting rights, that other holds more than half of its total voting power."

Section 4(2)(c) refers to a directorship of one company being held by another company or its subsidiary. Section 253 prohibits a body corporate from being appointed as a director of a company. Section 4(2)(c) should be recast as follows :—

S. 4(2)(c)

"(c) that the directorship is held by an individual nominated by that other company or by a subsidiary thereof."

Section 6 : Relatives

26. Section 6 contains a definition of the expression 'relative', occurring in various contexts in the Act as, for example, sections 2(3) and (4), 295, 297, 314, 354 to 360 etc. About 67, or according to another calculation, 81 persons standing in different degrees of relationship would come within the definition and it is highly inconvenient and in many cases, impracticable, for the director of a company to ascertain the different firms or companies in which any of the enumerated relatives is a partner or managing agent or director. Various suggestions were put forward, one of them being that section 6 should be omitted altogether and another to the effect that the words "whether by legitimate or illegitimate descent or by adoption and whether by full blood or half blood" should be deleted. Any change in the definition of 'relative' would affect the ambit and scope of several other important provisions of the Act referred to above. The omission of section 6 from the Act would, besides requiring the amendment of many other sections, run counter to the fundamental policy of the legislature in enacting those provisions. In this connection, it must be remembered that the practice of resorting to *benami* transactions in the names of relatives is prevalent in certain sections of the mercantile community and that this practice is often resorted to for concealing the identity or interest of the person standing to gain by questionable transactions. Having given our consideration to the objections put forward by various interests we think that a simpler and narrower definition of 'relative' should be substituted for the existing definition. Section 6 might run thus :—

“ Two persons shall be deemed to be ‘ relatives ’ if and only if :—

- (a) they are members of a Hindu undivided family; or S. 6.
- (b) they are husband and wife; or
- (c) the one or the spouse of the one is related to the other or the spouse of the other as parent and child, grand-parent and grand child, or brother and sister ; or
- (d) the one is related to the other directly (and not by marriage only) as uncle or aunt, nephew or niece.”

Since the Mitakshara, the Dayabagha, the Marumakthayam and the Aliyasanthana are all parts of the Hindu law, though

some of them are] based] on] custom, specific reference to the different systems of Hindu law in this context would appear to be unnecessary. The section might be simplified as stated above. The revised definition suggested above would cut down the number of 'relatives' by more than half. The reference to relationship by adoption and illegitimate descent is out of place in a section which does not deal with the general law of inheritance and may be omitted.

Section 7 : Exercise of Control

27. The interpretation of the expression "person in accordance with whose directions or instructions directors are accustomed to act" has been criticised on the ground that it is vague and also it is couched in a negative form without positively defining the person or persons falling within that category. It is no doubt true that under some sections of the Act [*e.g.*, sections 162(2), 203(6), 295(1)(c), 303(1) Explan., 307(10), 369(1)(b) and 538(3)] persons falling within the description specified in section 7 bear responsibilities and share disabilities attaching to directors or officers of the company. In a concrete case, however, it may not be very difficult to find out whether or not a person falls within section 7 of the Act, as for instance, where servants, employees, nominees or close relations like a son or wife of a person, act as directors. Section 7 reproduces section 455(2) of the English Act and, so far as we are aware, no difficulty has been experienced in applying that section. It is, therefore, neither necessary nor possible to frame an exhaustive definition applicable to all the situations envisaged by the sections enumerated above. In the head note to section 7 and in the body of section 538(3) the reference should be to the 'Board of Directors' instead of 'directors'.

Ss. 7 &
538(3)

Section 13 (1)(c) : Contents of memorandum

28. Section 13 (1)(c) requires an amendment by the omission of the words 'State or' for the following reasons :—

Under Entry 43 of List I of the Seventh Schedule to the Constitution of India, the incorporation, regulation and winding up of trading corporations are matters within the legislative competence of Parliament. Under Entry 44 of the same list, incorporation, regulation and winding up of corporations, whether trad-

ing or not, with objects not confined to one State are also matters within the legislative competence of Parliament. Under Entry 32 of List II of the Seventh Schedule, the incorporation, regulation and winding up of corporations other than those specified in List I are matters within the competence of the State legislature. A non-trading corporation whose activities are confined to a single State would have to be regulated by State legislation and not by the Companies Act. The requirement in section 13(1)(c) that in the case of non-trading corporations the only State to the territories of which the objects extend, should be specified in the memorandum, is thus open to objection which would be removed by the amendment suggested above.

Section 17 : Alteration of Memorandum

29. An alteration of the memorandum of a company does not require the sanction of the Court under the English Act and it was urged that there was no reason why in India any alteration, even if it is confined to the limited purposes specified in section 17(1), should require confirmation by the court before it could take effect. If there is any opposition to the proposed alteration, then, of course, intervention of the court might be necessary. The development of company law in England has to some extent obliterated the distinction between a rigid memorandum and flexible articles. Having regard to conditions in this country and to the fact that the present Act became law only in 1956, we do not think it necessary to recommend any change in the law in this respect. There is, however, a drafting change that has to be made in section 17(4). Instead of the words "notice of the alteration", the words "notice of the application to the court for confirmation of the alteration" should be substituted. S. 17(4)

Sections 18 and 19 : Registration of alteration of Memorandum

30. Under section 17(2), an alteration of the memorandum under sub-section (1) shall not take effect until and except in so far as it is confirmed by the Court on petition. Sections 18 and 19 provide for registration of the altered memorandum with the Registrar and for the consequences of a failure to register. Under section 18(1), read with sub-section (4), a copy of the altered memorandum and a copy of the Court's order confirming the alteration.

have to be *filed* with the Registrar within three months of the date of the order or such further time as might be granted by the Court. If the company has done this, it has done all that it is or can be required to do. Section 19(2) provides that if the registration is not effected within three months next after the date of the order of the Court confirming the alteration or within such further time as may be allowed by the Court for filing the documents under sub-section (4) of section 18, such alteration and the order of the Court confirming it shall become void. There is no period prescribed within which after the order of the Court has been filed, the Registrar should register and certify the alteration. Under section 18(4) the Court has no power to extend the time for registration. For this purpose, section 18(1) and (4) might be amended as follows :—

S. 18(1) : “A certified copy of the Court’s order made under section 17(5) confirming the alteration together with a printed copy of the memorandum, as altered, shall within, three months from the date of the order or within such further time as the Court may allow under sub-section (4), be filed by the company with the Registrar who shall register the same and certify the registration under his hand within one month of the date of filing the certified copy of the order of the Court or such further time as the Court may allow under sub-section (4) of this section.”

Ss. 18 (1) &
(4)

S. 18(4) : “The Court may, at any time, by order extend the time for the filing of the documents or the registration thereof under this section by such period as it thinks proper”.

S. 19(2) : The following provision may be substituted for the first part of sub-section (2) :—

S. 19(2)

“If the registration is not effected within the period allowed by section 18(1) or within the period as extended under section 18(4), such alteration and the order of the Court and all proceedings connected therewith, shall, at the expiry of such period, become void and inoperative.”

Section 23 : Registration of Change of name

31. We consider that the following sub-section, which is self-explanatory, should be inserted as section 23(4) :—

“Where a public company is converted into a private company or a private company is converted into a public company, the company shall change its name in accordance with the requirements of section 13(1)(a) and the Registrar shall make the necessary alterations in conformity with the requirements of section 13 in the memorandum of association and the certificate of incorporation.” S. 23(4)

Section 25 : Licensed Companies

32. Associations formed for promoting commerce, art, science or religion or which run schools, art galleries or sport clubs, may be registered as companies with limited liability. Such associations, if licensed by the Central Government, enjoy certain privileges enumerated in section 25(6). The suggestion of the Department is that if a body to which a licence has been granted alters any of its objects in the memorandum, it should be permitted to do so only after obtaining the previous approval of the Central Government to the alteration. In view of the fact that the Central Government is given the power of revocation of licence under section 25(7), all that is necessary is that notice of the proposed alteration of the company's objects should be given to the Central Government. If no such notice is given, it is open to the Government, on coming to know of the alteration in the objects of the company, to revoke the licence under section 25(7). Section 25(8) might be amended S. 25(8) as follows :—

“Where a body, in respect of which a licence under this section is in force, proposes to alter the provisions of its memorandum with respect to its objects, it shall give the Central Government four weeks' notice of the proposed alteration, and the Central Government may revoke the licence if no such notice is given or if it does not approve of the alteration or may vary the licence by imposing conditions and regulations in lieu of or in addition to those to which the licence was formerly subject.”

It has been urged that companies limited by guarantee and those licensed under section 25 should be exempted from certain provisions of the Act applicable to companies limited by shares. As the law stands, non-profit making associations licensed under section 25 have to comply with most of the obligations placed on companies under the Act. Section 25(6) gives only a very limited exemption. It is, in our opinion, unnecessary to require non-profit making associations like chambers of commerce, trade associations, hospital committees, school boards, clubs and other associations of the same nature to conform to the provisions of some of the sections of the Act to which they are now subject.

Section 25(6) of the Act may be amended so as to empower the Central Government to exempt associations or bodies to which a licence is granted under the section from the operation of other sections in addition to section 303. In view of the power reserved to the Central Government to revoke the licence or vary its terms and conditions, we do not consider that there is any danger of the exemption being abused. For example, members of such associations hailing from different States would prefer the annual general meeting to be held in each of the States by rotation instead of its being held always in the city where the registered office is situate in accordance with section 166. It is further urged that the date of the annual general meeting of such bodies has often to be fixed so as to suit the convenience of prominent public men invited to preside over such meetings and that it is not practicable to give 21 days' notice of the meeting in all cases. Again, in the case of these associations, frequently the entire committee of management, which corresponds to the Board of Directors of an ordinary company liable to retire by rotation, is required to retire at each annual general meeting. Section 263 of the Act requires a separate resolution for the election of each director, whereas in the case of many of these associations the election of the members of the Managing Committee is conducted by post or by ballot. These and other similar provisions need not be compulsorily enforced in the case of licensed companies. We accordingly suggest that section 25(6) might be amended as follows:—

S. 25(6)

“It shall not be necessary for a body to which a licence is so granted to use the word “limited” or the words “Private

Limited" as any part of its name and, unless its articles otherwise provide and if the Central Government so directs and to the extent specified in the direction, such body shall be exempt from the operation of the following provisions of the Act, namely, sections 147, 166, 171, 176, 177, 188, 190, 255, 256, 263, 280, 282 and 285."

Sections 28 and 29 : Articles of Association

33. Sections 28 and 29 of the Act may be combined into one section in the following terms :—

"Section 28(1) : The articles of association of a company Ss. 28 & 29 limited by shares may adopt all or any of the regulations contained in Table A in Schedule I and the articles of association of any other company shall be in such one of the forms in Tables C, D & E in Schedule I, as may be applicable, or in a form as near thereto as circumstances admit.

(2) In the case of a company registered after the commencement of this Act, if articles are not registered or if they are registered, in so far as they do not exclude or modify the regulations contained in Table A or Tables C, D & E in Schedule I, the regulations in Table A shall, so far as they may be applicable, be the regulations of the company, if the company is limited by shares, and the regulations in Tables C, D & E shall, so far as they may be applicable, be the regulations of the company, if the company is not a company limited by shares, in the same manner and to the same extent as if they were contained in duly registered articles."

Section 29 should be deleted.

Section 31 : Alteration of Articles

34. The Act does not prevent the conversion of a public company into a private company by amending its articles by a special resolution and otherwise complying with the requirements of the Act. On account of the restrictions placed by the Act on the management of public companies, there has been in recent months a tendency to convert public companies into private companies. While such conversions are no doubt primarily matters for the shareholders and, in fact, the consent of the Court is not required, it seems to us that, having regard to the fact that they can be effected merely by the adoption of a special resolution which may

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have commanded the positive support of only a minority of the members of a company, some form of control of these conversions is necessary if certain of the objects of the Act are to be achieved. At present, the Department is exercising some control over such conversions by resorting to section 21 and regarding the addition of the word "Private" consequent upon such conversion as change in the name of the company which, under the section, requires the approval of the Central Government. But, this is a change required to be made by the Act and section 21 cannot bear the strain the Department seeks to put upon it. We recommend the addition of a proviso to section 31(1) in these terms :—

S. 31(1)

"Provided that no resolution which has the effect of converting a public into a private company, shall have effect unless the Central Government approves of the same."

There is no need for the approval of the Government in the converse case of a private company being converted into a public company and thereby submitting itself to restrictions from which private companies are exempt. Where there is an alteration of the articles, the articles as altered, should be filed with the Registrar. A provision to that effect should be made by renumbering sub-section (3) as sub-section (4) and adding the following as sub-section (3):—

S. 31(3)

"(3) Where a company has so altered its articles, a printed copy of the articles as so altered, shall, within one month of the receipt of the sanction of the Central Government, be filed with the Registrar."

Section 33 : Registration of agreements and Articles

35. Under section 33(1)(c), any proposed agreement for managing agency or for appointment of secretaries and treasurers has to be filed at the time of the registration of the memorandum. It has been pointed out that, if the terms of the agreement are altered at any time after the registration of the company, the filing of the proposed agreements would have been a needless requirement and that section 33 (1)(c) might as well be omitted. We are unable to support this suggestion. The investing public should know about the arrangements proposed to be made for the management of the company before they subscribe for shares.

Section 38 : Effect of alteration in memorandum or articles

36. This section corresponds to section 22 of the English Act and though its object is plain enough, its interpretation has given rise to difficulties. In the case of a company limited by shares, the memorandum states the amount of the share capital and its division into shares of a fixed amount and the liability of a member to the company is limited to the amount payable on the share held by him. In the case of a company limited by guarantee, each member undertakes to contribute to the assets of the company in the event of its being wound up a sum not exceeding the amount specified in the memorandum for the purpose of meeting the debts and liabilities of the company. Upon his guarantee, a member is liable to be placed on the list of contributories only in respect of the amount which, by the memorandum, he has undertaken to contribute in the event of its being wound up. Under section 38, the memorandum or articles cannot be altered in such a way as to require any member to take or subscribe for more shares than the number held by him or to increase his liability to the company beyond the amount due on the shares held by him. The section also provides that a memorandum or articles should not be altered so as to compel members of a guarantee company to pay anything more than the amount which they have undertaken to pay according to the terms of the memorandum as they stood at the time they became members. This is the object and the purpose of the words "or otherwise to pay money to the company" found at the end of the main part of the section. It is this liability of the members of a guarantee company under the basic documents, to contribute a sum not exceeding the amount specified in the memorandum in the event of the company being wound up, that is referred to in the section. It would appear that the section applies to original stipulations of the kind above mentioned and has no application to collateral obligations such as the liability for monthly or annual subscriptions payable by the members of a club or other association at such rates as may be fixed by the articles from time to time for the privilege of enjoying the amenities provided by the club or association. In view of the increase in the general level of prices such recurring subscriptions have to be raised by an amendment of the articles pursuant to a resolution of the company so as to be binding on all the members. Section 38 would have no application to such cases of recurring subscriptions. The Bombay High Court

in a recent judgement, * however, has taken a contrary view and construing the words "otherwise to pay money to the company" in their widest sense held that a resolution of the company (a Turf Club) amending its articles so as to raise the rates of recurring subscriptions payable by members would not be binding on the dissentient members and that they would be entitled to enjoy all the privileges of membership on payment of the rates of subscription current at the time when they became members of the club. Of course, persons who became members of the company subsequent to the amendment of the articles would be bound to pay the increased rates of subscription. If by reason of the decision of the Bombay High Court, an amendment of section 38 is considered desirable it might be effected by the addition of the following words at the end of the proviso of the section :—

- S. 38 "or where recurring subscriptions payable by the members of a club or other association are increased by an amendment of the articles pursuant to a special resolution of the company."

Section 39 : Supply of copies of Memorandum and documents

- S. 39(1) 37. It has been pointed out that, in order to comply with section 39(1)(c) and (d), it should be sufficient if a fair precis of the terms of the agreement is included in the memorandum or articles and copies only of those resolutions which have a bearing on the memorandum and the articles are furnished to the members. It will lead to unnecessary controversy if a discretionary power is vested in the management in the matter of supplying information and no case has been made out for altering the terms of section 39(1)(c) and (d). In order to discourage frivolous applications for copies and also to reimburse the company the cost of making out the copies, it may be provided that a fee of Rs. 3/- for a copy of one or more of the documents specified in section 39(1)(a), (b), (c) and (d) should be prepaid along with the application for copies. It has also been pointed out that the interval of 7 days allowed under section 39(1) is, in practice, found to be insufficient, particularly where holidays intervene. We would suggest that in section 39(1

*Suit No. 135 of 1957.

a period of 14 days from the date of deposit of the estimated charges might be allowed for the supply of copies. This change is necessary because section 39(2) provides penalties for default in furnishing copies. S.39(1)

Sections 41, 49 & 153: Membership of companies

38. It has been suggested that a specific provision should be made that minors cannot be members of a company. Under the Contract Act a minor is incapable of contracting and membership involves a contractual relationship between the company and the members as well as the members *inter se*. No further provision is necessary.

Under section 117 of the English Companies Act no notice of any trust, expressed, implied or constructive, can be entered in the register of members or debenture holders or be receivable by the Registrar. Section 153 of our Act is to the same effect. In a few cases, the Act has recognised the holding of shares in the names of a nominee or nominees of the real owner [see sections 4(3), 42, 49, 226(3) and 307]. It would be risky for a company to register transfers of shares and pay dividends to the transferees if it was obliged to take notice of equitable interests in its share capital and it was eventually proved that the transfers were in breach of trust. A trustee of shares who is on the register of members is personally liable to the company for any calls or other obligations attaching to the shares. This has been the settled law for a long time. We are, therefore, unable to accept the suggestion that the name of a minor who has inherited shares as heir or legatee should be entered in the register as the holder of the shares. There would, however, be no objection to having the name of the certificated guardian of a minor who has inherited the shares or the executor of a probated will, under which a legacy of shares is given to a minor, being entered in the register and dividends being paid to him.

We are also unable to accept the suggestion that the name of a trust owning shares should be entered in the register in order to avoid the necessity for a transfer of the shares by one trustee to a succeeding trustee. To do so would be a contravention of section 153.

- S. 41(2) It has been brought to our notice that in some cases, on the verge of liquidation, entries are made in the register of members of the names of persons who never applied for shares, in order to fasten liability on these persons as contributories. To avoid this contingency, we suggest the addition of the words "in writing" after the word "agrees" in section 41(2).

Section 49: Investments of companies

- S. 49(2) 39. Consistently with the view we have taken that trusts ought not to be entered on the register we recommend the deletion of the word "expressly described as a nominee of the company" occurring at the end of section 49 (2). It has been suggested that in cases where investments cannot be held in the name of the company on account of the provisions of some other law or rule or regulation having the force of law, the company should be allowed to hold them in the name of other persons. This would be indirectly defeating a provision of law and could not be allowed.
- S. 49 (1) Section 49(1) might, however, be amended by inserting the words "or by any other law for the time being in force" after the words "sub-sections (2) to (5)" occurring at the beginning of the sub-section. It is said that section 49(5) (a) does not make it clear whether while depositing the securities with a company's bankers, such securities should stand in the company's own name or whether they could stand in the name of its bankers. Apparently, the intention was that the securities should be held in the name of the company. It has been pointed out that in the case of investments of the funds of a company in Government securities or debentures and shares it should be open to the company to have them bought in the name of a scheduled bank the advantage being the easy collection of dividends and the speedy disposal of such shares and securities at a slightly higher price. Till the shares or securities are disposed of, the bankers of the company would be collecting interest and dividends and crediting them to the company's account. Section 49(5) (a) may be amended by stating that
- S. (49) 5(a) "nothing in the section should be deemed to prevent a company, from depositing with or transferring to or holding shares or securities in the name of the State Bank of India or a Scheduled Bank, being the bankers of the company, so as to facilitate the collection of dividends or interest or transfer of the shares and securities."

As a consequential amendment, the words "or the State Bank of India" shall be added before the words "or with a Scheduled S. 49(6) Bank" in section 49(6).

We have been informed that difficulties have been experienced over the interpretation of the words "whose principal business" occurring in section 49(4). The suggestion has been made that the term should be defined or, alternatively, that it should be replaced by words such as "one of the business of which" or "a substantial part of the business of which". We consider that any amendment might seriously impair the effectiveness of the section to achieve its object and that, in this context, Parliament intended to exclude from the operation of the provisions of subsection (1)(a) only those companies which were mainly engaged in the buying and selling of shares and securities. The question of what is or is not a company's principal business is a question of fact which has to be decided having regard to the circumstances in each particular case and we do not feel that any amendment to section 49(4) is required.

Sections 55 and 60: Date of registration of Prospectus

40. Section 55 requires every prospectus to be dated and provides that the date should be presumed to be the date of the publication of the prospectus. Section 60 provides that no prospectus shall be issued unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by the persons named therein as directors or proposed directors of the company. The filing of the prospectus with the Registrar should precede its publication and the date of its publication is the date it bears. It may not always be possible for companies to file the prospectus with the Registrar on the same date as it bears. In practice, it appears that prospectuses are prepared and printed a few days previous to the date they bear. In other words, a prospectus is given a date posterior to the date when its form and contents are settled by the promoters or directors and the document is printed. This enables the prospectus to be filed with the Registrar before the date of its publication which would be the date it bears. There is nothing objectionable in a prospectus bearing a date posterior to its presentation for registration

It appears that in some cases Registrars have refused to register prospectuses on grounds other than those referred to in section 60(3) (a) and (b). There is no express provision requiring the Registrar to register a prospectus if the requirements of section 60(3) (a) and (b) are complied with, but that is the effect of section 60(3) by implication. In our opinion, it should not be within the province of the Registrar to refuse registration of a prospectus on the ground that the company is directly or indirectly contravening the policy of the Act or that its business is sought to be carried on in a manner contrary to Law though it will be in order for him to point out the defects in the documents on scrutiny. To make this clear section 60(3) of the Act might be amended so as to read as follows :—

S. 60 (3)

“The Registrar shall not register a prospectus unless the requirements of sections 55, 56, 57 and 58 and sub-sections (1) and (2) of this section have been complied with and the prospectus is accompanied by the consent in writing of any persons named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or proposed company to act in that capacity”.

Section 56: Contents of Prospectus

41. It has been pointed out that the requirement that a form of application for shares may not be issued unless it is accompanied by a prospectus lays a heavy financial obligation upon the company for the cost of paper and printing and that where a prospectus has been fully and widely advertised in recognised newspapers, a company should be allowed to issue application forms unaccompanied by a copy of the prospectus. The terms of section 33 of the English Act are the same as those of our section 56(3) and having regard to the conditions in India and also having regard to the fact that application forms are sent to likely subscribers or persons applying for them, there is no need to dispense with the requirements of section 56(3). When fresh shares consequent on an increase of authorised capital are offered to the public, a prospectus is necessary. But, if a further issue of shares within the limit of the authorised capital is offered in the first instance to members with a right to renounce in favour of others not being members of the company, the position is different. A member

may be presumed to have knowledge of the company's financial position and its prospects. If the member renounces his right in favour of another member, the latter, who is already a shareholder, is presumed to be similarly acquainted and does not require to be served with a fresh prospectus. If, however, the member renounces his right in favour of a stranger, the latter may not have that advantage. The premium commanded by the right of renunciation is high or low depending on the judgement of the market with regard to the merits of an issue of shares or debentures in relation to the issue price including any premium. The premium would depend upon the past record of the company, its current position and future prospects. It has been represented to us that to compel the issue of a prospectus to the public in such cases and to prohibit the issue of renounceable letters of right would depress the value of the shares held by members who, being unable to take up the new shares themselves renounce their rights for consideration in favour of strangers. It is the practice of some companies to issue with the letters offering "rights" shares to the members, a circular disclosing up-to-date information regarding the company, its progress and prospects. It was suggested that the issue of such a circular may be made obligatory. We, however, feel that any insistence on such a circular containing the prescribed requirements being attached to letters of renunciation would not be of much use because the decision to apply for the new issue is presumably made, and the purchase may be effected, before the details contained in the circular letter are known to the purchaser. If the offer of the further issue to the members fails and the company proposes to issue the shares to the public, it cannot do so without publishing a prospectus with the prescribed particulars. In view of these considerations, section 56(5)(a) of the Act which corresponds to section 93(3) of the Act of 1913 and section 38(5)(a) of the English Act, does not require any amendment.

Section 73(1): Application to Stock Exchange

42. A Stock Exchange pointed out that the periods of three weeks and six weeks allowed by section 73(1) are too short and should be increased to four weeks, and seven weeks respectively. We recommend the extension and an amendment of section 73(1) S 73(1) accordingly. Though section 73(1) refers to the closing of the subscription list, the Act does not require the prospectus to fix any

time for doing so and unless and until an issue is fully subscribed, there is nothing in the Act requiring the company to close the list. The practice is to state in the prospectuses that the lists will be closed by a particular date. By reason of sub-section (3) of the section, the company is unable to utilise the subscriptions received until the permission of the stock exchange has been obtained under sub-section (1). It has also been pointed out that some Stock Exchange refuse to consider applications in respect of partly paid shares and that in respect of such shares the permission of the stock exchange should be obtained within the time specified in section 73 (1) but taking effect only from the date when the shares become fully paid up. This is an impracticable suggestion as the shares might not be fully paid up for years. We do not consider, therefore, any further amendment is necessary.

Section 76: Payment of Commission in respect of shares

43. The interpretation of section 76 (2) has been the subject of controversy. In a recent Bombay case†, the question arose whether an agreement between the promoters of a company and the company entered into at the time of its incorporation before the present Act came into force, whereby the company had agreed to pay a part of its net profits every year to the promoters, has now become void by reason of its repugnancy to section 76 of the Act. A learned judge of the Bombay High Court held that section 76 had imposed a rigid restriction on the payment of commission to the promoters of a company and that the agreement in question became void and unenforceable after the present Act came into force. A division bench* of the same High Court on appeal affirmed this view. Section 76(2), as it stands, prohibits the application of capital moneys, but not of profits, in payment of any commission, though the obvious intention, as disclosed by section 76(1) (ii) and (2), was to put a ceiling on the commission limited to five per cent. of the price at which the shares are issued. In order to remove any doubt, we would recommend the deletion of the word "capital" from section 76(2).

S. 76(2)

†Suit No. 376 of 1956.

*Appeal No. 23 of 1957.

Section 78 : Share premium

44. Share premium and paid-up share capital are distinct from each other and it is only in respect of the formalities to be complied with for reduction of share capital that they are put on the same footing. In the balance sheet, share premium should be shown not under the main head "share capital" but separately as share premium account under "Reserves and Surplus" and the form contained in Schedule VI, Part I, is proposed to be amended accordingly *vide* para 92. The share premium account may be applied in the manner indicated by sub-section (2) of section 78. The annual balance sheet must disclose the amount of such share premium and how it is disposed of until it is finally exhausted. We do not consider that any amendment of section 17 of the Banking Companies Act is necessary, as suggested by a Banks' Association, in view of the proviso to sub-section (3) of this section.

Section 80 : Redeemable Preference shares

45. Section 80 (1) (d) and (5) refer to "capital redemption reserve fund." According to modern commercial and accountancy practice, the word "fund" is used in connection with reserves only when the funds constituting the reserves are invested outside the business. The word "account" may be substituted for the word "fund" in sub-sections (1) (d) and (5). The figure "601" occurring in sub-section (4) in the printed edition is a mistake for "611" and the mistake may be rectified.

S. 80.

Section 81 : Further issue of capital

46. It was urged that Mutual Benefit Funds and Nidhis should be exempted from this section. We deal separately with such companies later in our report (para. 208). Section 81 corresponds to section 105-C of the previous Act. The precise connotation of the words "first allotment of shares", "issue of new shares" and "directions which may be given by the company in general meeting" has been the subject of much discussion. Before formulating any amendment, it is desirable to refer briefly to the object and purpose of this section. The capital of a company may be of four kinds :—

- (1) There is the nominal, authorised or registered capital which, if it has to be increased, requires a resolution of the company at a general meeting under section 94.

- (2) The whole of the authorised capital is not generally issued at once. Only a portion is issued in the first instance, which is styled as issued capital and further issues are made as and when necessary.
- (3) The subscribed capital is that portion of the issued capital which has been subscribed or taken up by the public. Though companies generally fix an early date for closing the subscription lists and see to it that the whole of the issued capital is fully subscribed, there may be a gap between the amounts of the issued capital and the subscribed capital and the shares not disposed of at an earlier allotment might be offered to the public for a period of time running into many months.
- (4) The paid up capital is that part of the subscribed capital which is actually paid.

Section 81(1) does not deal with the increase of the authorised capital but only with the second and third categories referred to above. Every company does not as a matter of rule declare what is its issued capital, though all good companies do so. All issued capital is not fully subscribed in all cases during first allotment and further allotments continue to be made over a period of time. Unsubscribed but issued capital can be allotted at any time at the discretion of the directors. Where a part of the capital has been issued and fully subscribed and the company wants to expand its business and is in need of more resources, the company may increase its issued capital. Under section 105-C of the Act of 1913, it was competent to the directors to increase the issued capital subject to the condition that the new shares were offered *pro rata* to all the shareholders of the company. Shares issued by the directors but not thus subscribed for could be allotted by the directors to anybody at any time and on any terms (above par) at their discretion. There existed a possibility of abuse of this power by the directors allotting these shares to themselves or their nominees or relatives on favourable terms or when the market became favourable. Section 81 of the Act intended to make a departure in this respect from section 105-C of the Act of 1913, but has been so worded as to make its interpretation difficult. It refers to increase of "the subscribed capital of the company by the issue of new shares" "at any time subsequent to the first allotment". If the issued capital has been

fully subscribed, the subscribed capital would be increased by the issue of new shares and section 81 would apply to the case. Where, however, the issued capital has not been fully subscribed, the subscribed capital could be increased by the directors by making allotments against applications received by the company from time to time till the limit of the issued capital is reached. In that case the subscribed capital is increased by the *allotment* and not by the *issue* of new shares and the section might not be applicable. This interpretation is sensible because observance of the conditions laid down in section 81(1) (a) to (d) each time an allotment is made by the directors out of the issued capital would be impracticable in many cases. But section 81 refers to an increase of "subscribed capital" at any time subsequent to the first allotment of shares. Moreover, the words "issue of shares" are wide enough to cover "allotment of shares" and add to the difficulty of interpretation. The section does not define when the first allotment is deemed to be made. Again, section 81(1) does not make it clear whether the proposal to increase the subscribed capital has to emanate from the company in general meeting or from the directors as under section 105-C of the Act of 1913. On a reading of section 81(1) as a whole, it looks as if the directors can *suo moto* increase the issued capital of the company and a contrary inference cannot be drawn from section 81(1) (a) to (d) because the conditions therein specified might come into play when the company in general meeting has passed a resolution increasing the issued capital of the company without at the same time giving any directions as to how the shares are to be disposed of. /As stated above, the object of section 81 was to provide against the contingency of shares offered *pro rata* to the shareholders but not subscribed for by them, being allotted by the directors to themselves or their nominees or friends if such shares happened to go up in market value. At the same time, it would be impracticable, if not indeed impossible, to compel directors to make a *pro rata* offer to the existing shareholders from time to time before making any allotments against applications received by them over a period of months. One method of reconciling these points of view is to impose a time-limit on the exercise of the power of directors to make allotments from time to time. They might be allowed to make such allotments, say, till the date of the next following annual general meeting or till the expiry

of 6 or 12 months from the date of the offer to the shareholders of the further shares.² It has been suggested to us that so long as the issued capital remains unsubscribed, the directors must be authorised by a resolution of the shareholders at each general meeting to dispose of the unsubscribed capital either as directed by the meeting or, if the meeting so decides, in the manner the directors consider most beneficial to the company. Failing such authorisation, it could be argued that the directors have no power to make an allotment without first offering the shares *pro rata* to the existing shareholders. Considering all these factors, we recommend that section 81 (1) may be amended to read as follows :—

S. 81(x)

“Section 81(1). Where at any time after the expiry of one year from the first allotment of shares in a company, it is proposed by the directors to increase the subscribed capital of the company by the issue or allotment of further shares, then, subject to any directions to the contrary, which may be given by the company in general meeting, and subject only to those directions—(rest as in the section).”

Where there is no issue of a prospectus and the issued capital is not, therefore, made known to the public, the question might arise whether the authorised capital would be the limit of the issued capital and whether, in that event, the directors could issue further shares upto the limit of the authorised capital without the assent of the company in general meeting. We have recommended (para. 92) that a suitable change should be made in the form of the balance sheet so as to specify the amount and details of the issued capital in the same manner as in the case of the subscribed capital.

We have now to advert to a matter which was discussed before us concerning the rights of holders of preference shares which were in existence before the present Act came into force. Those rights might include (i) a preferential right to dividend and capital, (ii) a preferential right only to dividend ranking *pari passu* with ordinary shareholders in respect of repayment of capital or a preferential right to be repaid capital without a preferential right to dividend, (iii) a right also to participate with ordinary share-

holders in dividend and capital, (iv) right of voting at a general meeting on all questions, (v) limited right of voting (vi) no voting rights. Section 85 of the Act requires that unless there is a preferential right both with regard to dividends and repayment of capital, the shares shall be treated as equity shares. Section 90(a) provides that section 85 shall not affect the voting rights (subject to adjustment under section 89) or any right as to dividend capital or otherwise attached to preference shares issued before the commencement of the Act. Have the (former) preference shareholders who are regarded as equity shareholders by the operation of section 85 (1) and (2), a right to a *pro rata* allotment of equity and/or preference shares on a further issue under section 81? Section 81 corresponds to section 105-C of the Act of 1913 as amended in 1936 which gave the members a right to the further issue irrespective of the class to which they belonged. On the language of section 81 as it stands, those preference shareholders, who, by virtue of section 85, become equity shareholders, would be entitled to participate in the new issue but not those preference shareholders who remain such under section 85 (1) and (2). We do not recommend any change in this respect. In the opinion of a minority of the Committee, preference shareholders who continue to remain as such under section 85 of the Act should be entitled to participate in any further issue of *preference shares* along with equity shareholders but the majority preferred to accept the view of the Bhaba Committee embodied in section 81 that the offer of further issues, whether of equity or preference shares, should be made only to the equity shareholders unless the company in general meeting gives other directions.

Section 82: Nature of Shares

47. It has been suggested by a Stock Exchange that an amendment of section 82 should be made so as to bring shares within the category of actionable claims. The consensus of judicial opinion is that shares are goods within the meaning of the Sale of Goods Act, though shares partake of some of the attributes of negotiable instruments. Even if a change in the law is desirable, it has to be effected in other enactments and not in the Companies Act.

Sections 83 and 84: Numbering of Shares

48. A suggestion has been made that if a company already has distinctive or distinguishing numbers of its shares in its register of members and in its share certificates, it may be empowered to dispense with those details as to distinguishing numbers in respect of fully paid-up shares by a resolution of the shareholder in a general meeting. The proviso to section 74 of the English Companies Act provides that if all the issued shares in a company or shares of a particular class are fully paid-up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number. A company may convert all or any of its fully paid-up shares into stock under section 94(1) (c) of the Act and no amendment of section 83 in this respect is called for. With a view to preventing fraudulent dealings with duplicate shares, the Department suggests the addition of a subsection to section 84 in these terms :—

“New scrips shall not be issued in the place of old ones unless the latter are proved to have been lost or are defaced or surrendered.”

S. 84

This might be done.

Section 86: Preference shares issued tax-free

49. It has been pointed out by a Chamber of Commerce that specific provision should be made to protect the rights of preference shareholders who have taken shares on the faith of a statement in the prospectus that the shares will carry a fixed cumulative dividend of, say, five or six per cent “free of income-tax”. It might happen that the company concerned is not liable to pay tax as a result of some special, initial or other depreciation allowance or development rebate allowed to it under the Income-tax Act or on account of the set-off of losses and the dividend received on such preference shares is, therefore, taxed in the hands of the preference shareholders. In such cases, it is said that the company should be compelled to pay to the Government the tax payable by the shareholder under a specific provision in the Act. If the shareholder has a contractual or quasi-contractual right to be reimbursed or indemnified by the company, his right arises under the ordinary law and no special provision in the Act is necessary.

Sections 87 to 90: Adjustment of excessive voting rights.

50. Section 89 aims at terminating existing disproportionately excessive voting rights which alone were considered to be objectionable and section 90 saves all other voting rights as well as rights to "dividend, capital or otherwise" which attached to shares issued before the Act. Section 88 applies only to issues of shares made after the Act. Section 89(1) has to be amended so as to cover not only cases of reduction of voting rights but also cases where voting rights have to be increased so as to bring them into conformity with the voting rights attached to equity shares under section 87(1). Under section 106, it is open to a company to increase the voting rights of a particular class of shareholders. For the words "voting rights in excess of" occurring in section 89(1), the words "disproportionate voting rights in relation to" should be substituted while for the word "reduce" the word "adjust" should be substituted. For the words "if at the commencement of this Act" the actual date when the amendment suggested comes into force should be substituted. Section 88 provides that fresh issues of equity shares after the Act should carry the same rights as regards voting, dividend capital, or otherwise as those attaching to other equity shares. Where holders of preference shares, issued before the Act, who have by virtue of section 85(1) and (2) become equity shareholders, exist, their preferential rights to dividend, capital etc., are saved by section 90. Obviously, however, fresh issues of equity capital after the commencement of the Act could not be placed on the same footing and it is necessary to exclude those cases. This might be done by adding the words "subject to the provisions of section 90" or the words "without prejudice to the rights saved under section 90" at the beginning of section 88.

Section 89: Excessive voting rights

51. In section 89(3), there is no provision empowering the Court to compel the company to equalise or adjust voting rights if, following the failure of the requisite proportion of any class of shareholders to agree to a scheme, the company itself does not apply to the Court for an order. There is only a provision for the payment of a fine on default. Section 89(3) might be amended so as to entitle any shareholder of the company to apply to the Court.

Section 106: Alteration of shareholders' rights

52. It has been pointed out by some representative bodies that in view of the poor attendance at meetings of a class of shareholders, the consent of the majority of the shareholders present at a meeting should be sufficient for authorising the variation of the rights attaching to any class of shares in the company. Another suggestion was that the consent of 50% of the holders in the class of the shares affected should be sufficient. Yet another suggestion was that the votes cast in favour of the proposed variation should be three times the votes cast against it. As the section stands, an absolute majority of 3/4ths of all the shareholders of the class affected is required. In view of the fact that a remedy is given to the dissentient shareholders by an application to the court under section 107 there need not be an insistence of an absolute majority of 3/4ths of the shareholders belonging to the class. The provisions of section 106(1) and (2) are in any case inconsistent with Regulation 3(1) of Table "A" in Schedule I, which provides that the rights attached to any class, of shares may be varied with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class. We recommend that Regulation 3(1) of Table "A" may be substituted for section 106(1) and (2) with some amendments. As amended, section 106 would run thus :—

S. 106

“ If the share capital of a company is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, if so authorised by the memorandum or the articles, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class.”

Section 170 of the Act provides that the provisions of sections 171 to 175 and 176 to 186 shall, *mutatis mutandis* apply to such separate general meetings.

Section 108: Transfers of shares and debentures

53. It has been pointed out that considerable inconvenience is being caused by the insistence of States that stamps to be affixed to a share transfer deed should be those issued in that State in which the registered office of the company is situated. Transfer deeds might be executed in one State where the transferer or transferee resides and sent for registration at the registered office of the company situated in another State. Stamps have to be affixed to transfers before they are executed and if a transfer deed is executed in one State, it is found inconvenient in practice to stamp the instruments of transfer with the stamp issued in another State wherein the company has its registered office. Under Entry 91 of List I of the Seventh Schedule of the Constitution, rates of stamp duty in respect of share transfers is a Union subject and Entry 63 of List II excludes rates of stamp duty in respect of documents specified in List I from the State List. If any difficulty is caused in connection with the stamping of shares transfers, it can be removed by the issue of departmental instructions.

Where a transfer deed relating to a share is lost, the company may register the transfer on such terms as to indemnity as the Board may think fit. It has been complained that sometimes directors put forward demands, compliance with which is not only expensive but extremely difficult and small share-holders often lose their shares by reason of their inability to satisfy the stringent demands of the Board. We consider that an indemnity for a period of 6 years should, in ordinary cases, be sufficient to enable a transferee, whose transfer deed is lost, to get his transfer registered.

New provision suggested.

Section III: Appeal against refusal to register

54. Section III provides a new and speedy remedy to a shareholder by way of appeal to the Central Government against a refusal by a company to register a share transfer in his favour. The remedy provided under section 155 of the Act, of applying to a Court for rectifying the register of members, is not affected by section III, which is an enabling section giving an additional remedy and does not bar recourse to the Court whether under section 155 or by way of a suit. To avoid a possible conflict of decisions given by the Central Government and the Court,

S. 111(6) to (8) a new sub-section may be added after sub-section (5) as sub-section (6) in these terms :—

“(6) The order of the Central Government under this section shall be subject to the order, if any, of Court under section 155 or in a suit”.

The existing sub-sections (6) to (8) should be renumbered (7) to (9).

A shareholders' association has pressed for the reduction of the time limit for communicating the decision of refusal by the company to transfer shares from two months to one month but this might in some cases be found to be too short. We do not consider that any change is necessary.

S. 111(2) Provision should be made in sub-section (2) for cases where a company refuses to register a transfer even though its articles do not empower it to do so. This may be done by the addition of the words “or otherwise” after the words “in pursuance of any such power” in section 111(2).

S. 111(4) It has been suggested by the Department that a memorandum of appeal, preferred to the Central Government against an order of the company refusing to register any transfer or transmission of shares should be subject to the payment of a fee. We accept this suggestion and recommend that sub-section (4) of section 111 be amended as follows :—

“A memorandum of appeal under sub-section (3) shall be chargeable with such fee as might be prescribed by the Central Government not exceeding Rupees 25 and shall be made—(a) in case the appeal
..... etc. etc.”

S. 111(5) It has also been suggested that in order to enforce orders passed on appeal by the Central Government, some sanction should be provided. It is no doubt desirable that orders passed by the Central Government under section 111(5) should be enforceable without avoidable delay and accordingly we recommend that section 111(5) be amended by substitution of the words “within ten days of the receipt of the order” for the words “forthwith”

and a further sub-section may be added as sub-section (10) as follows :—

“ *Sub-section (10).*—If default is made in complying with the order of the Central Government within the period specified in sub-section (5), the company and every officer thereof, who is in default, shall be punishable with a fine which may extend to Rs. 1000/- unless such compliance was prevented by an order of a competent Court.” S. 111(10)

It has been brought to our notice that section 111(5) does not provide for a personal hearing of the transferor or the transferee or the company before the Central Government gives its decision. The law, as it stands, gives them a reasonable opportunity to make their representations in writing. There is nothing to preclude the Central Government from hearing the parties, in case a personal hearing is considered necessary or desirable but it is not necessary to make it obligatory. It does not appear to have been the intention of the legislature that there should be a full dress oral enquiry and examination of witnesses at the hearing of the appeal. But a personal hearing should be granted where the matter is important or the allegations made are serious. It has been urged before us that in the case of fully paid up shares the management should have no right to refuse to register a transfer and that in any event the Board of Directors should state the reasons for refusal. The Bhabha Committee considered this matter and left the management free to decide the question of registering the transfer giving the aggrieved transferee a right of appeal to the Central Government. The section which provides a summary remedy does not define the scope and ambit of the enquiry on appeal. Apart from section 111, under the law, as it stands, the right to refuse to register a transfer of shares belongs to the Board in terms of the articles of the company. Under section 155, a Court will not draw unfavourable inferences against the directors merely because they do not give their reasons for refusing to register a transfer if the articles provide that they need not give any reasons for their refusal. It is the view of the Department that if the company fails to give any reasons for refusing to register the transfer even to the Government at the appellate stage, it will be open S. 111.

to an appellate authority to presume that there is no justification for such arbitrary refusal. In view of legal doubts raised, the drawing of such a presumption, even in cases where the articles provide that reasons for refusal to register a transfer need not be given, should, in our opinion, be authorised by an express provision inserted in section 111 in order to make the right of appeal really effective. The reply of the company to the memo of appeal must be communicated to the appellant and he must be given an opportunity, whether personally and/or by a representation in writing as the appellate authority thinks fit to rebut the statements made in or ground stated in the reply of the company. On a consideration of the pleas advanced by the appellant and by the company and the materials placed before it, the appellate authority has to give its decision. The rules framed under section 117 of the Act should provide expressly for an opportunity to the appellant to rebut the statements in the company's reply.

S. 111.

Rules under
S. 111.

Section 113 : Time for issue of certificates

S. 113(1) 55. To bring section 113 in line with section 111, the words "within two months after the application for the registration" might be substituted for the words "within three months after the application for the registration" in section 113(1).

Section 125 : Registration of Charges

56. It has been suggested that the period of 21 days allowed by section 125(1) for the registration of a charge should be extended to two months. We are unable to accept this suggestion. The same period was allowed by section 95 of the English Act of 1948 and by our Act of 1913. In view of the importance of a charge and its effect on the rights of subsequent creditors we do not consider it desirable to extend the period. Nor can we accept the suggestion of a Chamber of Commerce to exempt hypothecation of the company's stock-in-trade from the operation of the section. Provision might however be made empowering the Registrar to condone a delay of not more than seven days in filing the instrument creating the charge on being satisfied that the delay was due to reasons beyond the control of the company.

S. 125

Sections 138, 139 and 142 : Registration of satisfaction of charges

57. Section 138 as it stands, creates some practical difficulties. For instance, in the case of day to day transactions in a running overdraft account with a bank secured by a charge, whenever any payment in reduction of the principal or of the existing liability is made or a further amount within the limit of the overdraft is advanced, registration of each transaction would seem to be required, if the section is literally construed. Under the section, a duty is cast on the company to give to the Registrar intimation of payment or satisfaction in whole or in part of any charge within 21 days of the date of the payment or satisfaction. The view has been taken by some of the Registrars that they are not empowered to enter satisfaction if the company gives notice after 21 days, even though no prejudice or injury is likely to be caused to any one by the delay. This is a real hardship to many companies. Section 142 provides a penalty for default in filing with the Registrar the particulars of the payments or satisfaction, in whole or in part, of a debt in respect of which a charge has been registered. It might happen that an overdraft account secured by a charge is closed by payments made by its branches from time to time on behalf of or on account of the company and the fact of discharge is not brought to the notice of the company within the 21 days prescribed by section 138 (1). Section 139 gives the power to the Registrar to make entries of satisfaction after taking evidence even though the company has not given intimation of the satisfaction of the charge. There is also power vested in the Court by Section 141 to rectify the register of charges, even though the company has omitted to register satisfaction. Taking these provisions into consideration, we are of the opinion that an effective remedy for the difficulties created by sections 138, 139 and 142 is to substitute the following section (taken with some modification from section 100 of the English Act) for sections 138 and 139 of our Act.

“ If the Registrar, after such inquiry as he considers necessary, is satisfied with respect to any registered charge—

Ss. 138 &
139.

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part ; or

- (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking

he may enter on the register a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and where he enters a memorandum of satisfaction in whole, he shall, if required, furnish the company with a copy thereof."

S. 142(1)
(b)

Section 142(1)(b) should also be deleted in consequence of the amendment suggested above.

Section 145 : Registration of charges prior to the Act

58. No useful purpose would appear to be served by requiring the registration of charges created before the Act but not registered, if such charges had been extinguished or discharged before the Act came into force. Section 145 should accordingly be amended by substituting the words "In respect of any charge created by the company before the commencement of this Act and remaining unsatisfied at the date of such commencement" for the words "In respect of any charge created by the company before the commencement of this Act" at the beginning of the section.

S. 145

Section 147 : Publication of name of the company

59. It has been pointed out [that the requirement of section 147(1)(c) that the name of the company shall be mentioned *inter alia* in all kinds of advertisements causes inconvenience to business houses among whom it is customary to push their sales under trade names without mentioning the company's name, address etc. in full. The reference to "advertisement" in section 147(1)(c) is perhaps to the advertisement referred to in specific sections of the Act like sections 2 (36), 53 (3), 72(2) etc. but the language is comprehensive. The Cohen Committee pointed out that the word "advertisements" which was found in section 93 of the English Act of 1929 should be removed as the provision had, in practice, been disregarded and no harm was likely to ensue from its deletion. In India, too, the practice appears to be that in trade and commercial advertisements the name of the company is not mentioned in full but only the trade-mark or brand name of the

product advertised. This is so particularly in the case of advertising media other than the Press, such as, dealer aids, display material hoardings, posters, mobile advertisement, radio, cinema slides etc. In our opinion, the word "advertisements" might be deleted from section 147 because the other words found in the section, namely, "notices and other official publications" are wide enough to include important business advertisements. We are recommending a similar amendment of section 595(c) in the case of foreign companies. It has also been represented to us that while it is desirable that the address of the registered office of the company should be mentioned in all its business letters, bill heads etc. under the first part of section 147(1) (c), it is not necessary to do so in the documents mentioned in the latter part. We accept the suggestion and recommend the insertion of the words "and the address of its registered office" after the word "name" in the first line of section 147 (1) (c) and the addition of the words "its name" after the word "and" and before the words "in all bills of exchange etc. etc." in the fourth line of the clause.

S. 147(1)
(c)

Section 149 : Commencement of business

60. Section 149(8) is based upon section 103(6) of the Act of 1913 which, however, applied to all public companies and not merely to those having a share capital. Section 98 of the Act of 1913 which required a prospectus or statement in lieu of prospectus to be filed applied to all public companies. Section 70 of the present Act which follows section 108 of the English Act applies only to companies having a share capital. Under the scheme of the present Act, companies other than those having a share capital are not required to obtain a certificate of commencement of business or to file a prospectus or a statement in lieu except where they issue debentures to the public in which case under section 56(3) they have to issue a prospectus. Section 149(8) of the present Act which has been reproduced from section 103(6) of the Act of 1913 is inconsistent with the scheme of the present Act and should be deleted.

S. 149(8)

Section 153 : Notice of Trust

61. It has already been pointed out (para 38 *ante*) that certain sections of the Act, such as 4(3), 42, 49, 226(3) and 307 contemplate cases where a company has in some sense to take notice of a trust in respect of shares. Section 153 is preemptory in its terms.

We have also pointed out that the corresponding provision in section 117 of the English Act is to the same effect. The object of both provisions is to secure absolute immunity to the company from liability for any breaches of trust committed by a trustee. No amendment is called for in spite of the plea put forward for the recognition of trusts and their entry in the share register.

Section 154 : Closing of registers

62. In view of section 27 of the Securities Contracts (Regulation) Act, 1956, requiring a transferee to lodge the security and all other documents relating to the transfer which may be required by the company for being registered in his name within 15 days of the date on which the dividend becomes due, it might be desirable to amend this section. Normally books are closed by a company for a period antecedent to and ending with the date fixed for a general meeting but there is no binding rule to that effect. When books are closed share transfers are not accepted for registration. Dividends are declared payable to those members whose names stand on the register as on a particular date. In order to prevent any *mala fide* action on the part of a company calculated to deprive transferees of shares of the dividends legitimately due to them by keeping the books closed after the declaration of dividend, it might be provided by means of a proviso to section 154 that a company should not close its books for a period of 15 days after the dividend becomes due.

S. 154

Section 155 : Register of debenture holders

63. In view of the fact that companies have to maintain a register and an index not only of members but also of debenture holders, section 155 should be amended as to extend the power of the Court to rectify the register of debenture holders also.

S. 155(5) A new sub-section should be added to section 155 as sub-section (5) in these terms :—

“(5) The provisions of sub-sections (1) to (4) shall apply *mutatis mutandis* to the rectification of the register of debenture holders as they apply to the rectification of the register of members.”

Section 156 : Notice rectification

64. It is not stated who should file the notice with the Registrar. The words "by the company" may be added after the word "filed". In view of the delay that occurs in the drawing up of the order of the court it might be provided that the notice of the rectification should be filed within 14 days from the date of the drawing up of the order. S. 156

Section 159 (1) : Annual returns of Companies

65. The section contemplates the preparation and filing with the Registrar of an annual return within 42 days from the day on which the annual general meeting is held under section 166. This provision has been sought to be interpreted as meaning that, if no annual general meeting is held, the failure to file the annual return cannot be penalised under the Act. Companies may purposely avoid or postpone the holding of an annual general meeting in order to avoid criticism of the conduct of the company's affairs by the management. If thereby the management is also released from the obligation to submit annual returns, it would appear to place a premium on mismanagement. To remedy this defect, the words "or ought to have been held under section 166" might be added after the words "is held" in section 159(1). S. 159(1)

Section 159(2) should also be amended so as to require the company to state the reasons for not holding the annual general meeting in case the annual return is made without holding such meeting. As amended, section 159(2) would run :— S. 159(2)

"The said return shall be in the form set out in Part II of Schedule V or as near thereto as circumstances admit and in case the return is made without holding the annual general meeting, the company shall state the reasons why such meeting was not held."

The existing proviso will remain.

As the section stands, every company having a share capital is required to file with the Registrar every year a formal return containing the numerous particulars enumerated in section 159(1). In order to avoid burdensome and mechanical clerical work of a repetitive character, we would suggest that Note (1) appearing under item 5 in Part II of Schedule V dealing with annual returns.

S. 159(1) proviso. should be made a proviso to section 159(1). The note is not part of the substantive law at present. The proviso would run thus :—

“Provided that if either of the two immediately preceding returns has given as at the date of the annual general meeting with reference to which it was submitted the full particulars required as to past and present directors, managing directors, managing agents, secretaries and treasurers, managers and members and the shares and stock held and transferred by them, only such of the particulars need be given as relate to persons ceasing to be or becoming members since that date and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member”.

This suggested amendment will reduce the bulk of the returns to be filed with the Registrar or maintained in the company's office, besides saving time and labour.

Nidhis and Mutual Benefit Societies claim exemption from section 159 and their case is considered separately in our report. (*vide* para 208.)

Section 161 : Returns and certificate

66. It has been pointed out that the section makes it obligatory on the managing director, if there is one, to sign the annual return and the accompanying certificate and that compliance with the section may be difficult in cases where a sole managing director has gone abroad. If so, anyone functioning as managing director in his place should sign.

It has been brought to our notice that some companies do not keep a proper record of their share transfers and sometimes even issue certificates without reference to such transfers. Some companies have however a share transfer audit, a practice which, we consider is commendable, but which we do not think can be made compulsory at this stage. It is, in any case, desirable to provide that the management should certify, when making an annual return, that a proper record of such transfers has been maintained. We recommend the addition of a new clause (c) to sub-section (2) of section 161 in these terms :

S. 161(2) (c)

“(c) that, since the date of the last annual return, the transfer of all shares or debentures and the issue of all further

certificates have been properly recorded in the books maintained for the purpose."

Section 163: Custody and inspection of registers and returns

7. There have been representations regarding the need for amendment of this section. In cities like Bombay and Calcutta, it has been pointed out that on account of the difficulties of obtaining storage space in the registered office and in order to facilitate the compilation of the registers, indexes and returns in proper form, a company may be permitted to keep its registers, indexes and copies of returns in any place within the same city but other than the registered office of the company. It has been suggested that the section might be amended so as to allow a person to be appointed by the company as its registrar for the purpose of maintaining the registers, indexes and copies of returns, provided that his office is in the same city or town as the registered office of the company. Section 110(2) of the English Companies Act permits such a course to be adopted. If this is done, the company should send to the Registrar notice of such appointment and of the place where its registers, indexes and other papers are kept and of any changes therein. The following proviso to section 163(1) might be added :—

S. 163(1)
proviso.

"Provided that the registers of members and debenture holders and the indexes thereof may be kept at another office of the company or with some other person if the company has arranged with such person for the making up of the registers on behalf of the company in the same city, town or village where the registered office of the company is situated, and the company has given notice to the Registrar of such other office or person where or with whom the registers and indexes are kept."

Objection has been taken to persons who are not members of the company inspecting, taking extracts from or obtaining copies of registers, indexes and returns from the company on the ground that such privilege has been abused in some cases. While we see the force of the argument, we are unable to recommend that the right given to non-members should be taken away

Both section 36 of the Act of 1913 and section 113 of the English Act recognise this right and the present Act favours a full disclosure by companies of their membership and liabilities. These considerations apply to private companies also. It was pointed out that in many cases copies were prepared after considerable expenditure of time and money and the applicants for copies never paid the charges nor cared to take delivery. We consider that it is reasonable that the company should have the right to demand payment in advance of the estimated charges. It was also pointed out that the existing rates of charges for grant of copies which have been in force for many years were too low in present circumstances and that the period of 10 days prescribed in section 163(4) for furnishing copies was inadequate. The period, we think, may be increased to 14 days exclusive of holidays and may be reckoned from the date of payment of the estimated charges and the words "twelve annas" might be substituted for the words "six annas" in section 163(3)(b).

S. 163(3)
(b)

Section 165: Statutory Report

68. We are unable to accept the suggestion that the period of 21 days prescribed in section 165(2) should be reduced. Section 165(4) requires the auditors to certify as correct the receipts and payments on capital account and the cash received in respect of shares allotted by the company. Form No. 22 prescribed by Rules framed under the Act and section 165(3)(c) make it clear that the certificate should be in respect of an abstract of all receipts and payments. The words "on capital account" in section 165(4) should, therefore, be deleted.

S. 165(4)

Section 166: Annual General Meeting

69. Though, as we have pointed out in paragraph 17 *supra*, the Act contemplates only one annual general meeting, section 166(1)(a) is not appropriately worded. We accordingly recommend that section 166(1) may be amended so as to read as follows:—

S. 166(1)

"Every company shall hold its first annual general meeting within 18 months of its incorporation, and thereafter shall, in each year, hold a general meeting as its annual general meeting, specified as such in the notice calling meeting, in addition to any other meetings in that

year, and not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next."

There can be no vested right in the matter of delay and the legislature has deliberately decided that there should not be too long an interval between two annual general meetings.

Various points have been raised with reference to sub-section (2) of this section. It has been said that in many cases it would be more convenient to the shareholders to hold meetings in the principal office of the company instead of at the registered office, to meet on a holiday rather than on working days when they might have to attend to their regular work and to meet at such hours as might be found convenient to the large majority of them. Reference has been made to the absence of a definition of "business hours" in the Act. In some cases, it is found that the managing agents of the company have their offices in a big city where the accounts of the company are kept and from where they manage all the affairs of the company, but the registered office is in a village or small township in another State where the factory is situated. Shareholders find it difficult to travel all the way to go to the registered office and, what is worse, find it difficult to get accommodation. All these complaints and criticisms arise out of amendments made in the section as a result of the recommendations of the Company Law Committee. While we appreciate the reasons which prompted these recommendations and are in sympathy with the object sought to be achieved, it appears that their implementation has introduced a rigidity into the matter of convening general meetings which, in practice, is proving irksome to companies limited by guarantee such as Chambers of Commerce and to small companies generally.

These difficulties might be removed by giving power to the Central Government to exempt any class of companies from the operation of section 166(2) and also by providing that the company may by its articles or by resolution at its annual general meeting determine the time and venue of its annual general meetings. It may also be provided that, so far as private companies are concerned, general meetings might be held at such times and places as may be unanimously agreed to by the shareholders. We

therefore, recommend that the following provisos be added to sub-section (2) :—

“Provided that the Central Government may exempt any class of companies from the operation of sub-section (2) subject to such conditions as it may impose.”

“Provided further that the company may by its articles or at its annual general meeting decide the time and place of its annual general meetings and, in the case of private companies, the shareholders may unanimously decide the time and place of its general meetings.”

Section 169 : Extraordinary General Meeting

S. 169(4) 70. In sub-section (4) of section 169, the number of members entitled to requisition a meeting might be fixed at either 100 or such number as hold paid up share capital of not less than rupees one lakh. This amendment would bring sections 169(4) and 188 (2)(b) into conformity with each other.

Section 170 : Meetings

S. 170(1) 71. In section 170(1) the words “sections 171 to 175 and 177 to 186” should be substituted for “sections 171 to 186”.

Sections 171, 190, 225, 261, 281 and 284 : Notice for calling meetings

72. It has been suggested that the period of 21 days' notice provided under section 171(1) is too long, that there may be matters of importance and urgency which require to be disposed of quickly and that the giving of 14 days' notice should be sufficient. Others have represented that the period of notice should be extended to a month. The notice period was made 21 days on the recommendation of the Bhabha Committee. In urgent cases, the Court can direct meetings to be held at shorter notice or the shareholders can agree to shorter notice. Sections 225, 261, 281 and 284 provide for special notice to be given by shareholders for the matters therein specified and that requires 28 days' notice. The shareholders can give that notice only after they receive notice of the meeting of the company and, therefore, there is an inconsistency between 21 days' notice for the meeting of the company and the 28 days required for special notice. In order to resolve this difficulty, we recommend that the notice for

the meeting under section 171(1) be extended to 28 days and the S. 171(1) period of special notice be reduced to 21 days, so that the shareholders have time to give special notice, even after receipt of the notice of the meeting.

Sections 172 and 173 : Notice of special business

73. It has been pointed out that as a result of section 173(2), which requires an explanatory statement setting out all material facts concerning any special business, to be annexed to the notice of a meeting, companies have had to incur heavy costs in advertising notices in newspapers pursuant to sections 172(2) and 53(3). We would recommend the addition of a proviso to section 172(2)(i) S. 172(2) in these terms :—

“Provided, however, that when serving the notice of any meeting of the company by advertisement as provided by section 53(3), the explanatory statement to be annexed to the notice under section 173 need not be advertised or published, but the advertisement shall state that the explanatory statement has been forwarded to the members.”

The question of exempting licensed companies and Nidhis from sections 172 and 173 is separately dealt with (paras. 32 and 208).

Section 174 : Quorum for meeting

74. It has been suggested that the quorum for a general meeting of a public company might be 3 members as under section 134(c) of the English Act. It is said that the requirement of 5 members being personally present to constitute the quorum for a general meeting of a public company leads to frequent adjournments. In our opinion, no change is called for.

Section 176 : Proxies

75. Some representatives of the management of companies urged that non-members should not be eligible for appointment as proxies, particularly in the case of private limited companies whose privacy would be infringed by allowing strangers to attend meetings as proxies of members. Under section 136 of the English
01 C.L.A.—5.

Act, it is open to a member to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member of a private company has the same right as the member to speak at the meeting. Under the Indian Act, a proxy is not entitled to vote except on a poll and is not entitled to speak. As this provision was enacted after considerable discussion, there is no need for amendment of the section as suggested.

Under the Act of 1913, a proxy could be lodged not less than 72 hours before the meeting (*vide* Regulation 66 in Table A) and most of the articles then framed contained a provision to that effect. Section 176(3) nullifies such a provision but does not in terms substitute 48 hours for 72 hours. It merely states that the articles should not require a proxy to be lodged more than 48 hours before the meeting. The result, though perhaps unintended, is that, unless the articles otherwise provide, proxies might be lodged at any time before the actual meeting takes place. We suggest that section 176(3) should be amended so as to provide that, where the articles of a company prescribe a longer period before a meeting for the deposit of the instrument appointing a proxy, a period of 48 hours shall be deemed to be prescribed instead.

S. 176(3).

Sections 177 and 263: Voting at meetings

76. Under section 177 of the Act voting on a resolution in a General Meeting can only be either on a show of hands or on a poll, if demanded. It has been pointed that in the case of guarantee companies not limited by shares, such as clubs, Chambers of Commerce, etc., voting by ballot is a far more convenient mode of voting than the methods prescribed by section 177 or section 263. Voting by ballot is one of the modes at company meetings under the English Law and there is no objection to its being permitted here. In practice, it will result in a greater number of shareholders participating in the election of directors and this seems to us to be desirable. We accordingly recommend that it should be open to a company to provide by its articles for the election of its directors by ballot and suggest the addition of a new section, section 263A, to give effect to our recommendation. A draft of the new provision will be found in paragraph 104 *infra*.

Section 187: Representation of Corporations

77. The section is not clear as to who should sign the letter communicating the authorisation of the Board of the body corporate entitling a person to represent it. It might be provided that the managing director or chairman of the Board of Directors or the person presiding at the meeting of the Board at which a resolution is passed authorising such representation, should sign the communication. In section 187(2) the expression "if it were a member" S. 187(2) is unhappy and should be replaced by the words "as a member".

Section 190: Special notice of resolutions

78. Under sections 225, 261, 281 and 284 special notice is required to be given to the company before moving the resolutions specified in these sections. This provision as to 28 days' notice causes inconvenience in some cases and we have recommended in paragraph 72 *supra* that the period of notice should be reduced to 21 days. The words "21 days" should be substituted for "28 days" in section 190(1). S. 190(1)

Section 192(2) and (4): Information about Resolutions and Agreements

79. We suggest that in section 192(1) the opening words may S. 192(1) be amended to read as follows :—

"A copy of every resolution, along with the relevant explanatory statement under section 173 or of a copy of every agreement to which etc."

It would be difficult, needlessly expensive and also purposeless to attach copies of all agreements to every copy of the articles of association, especially when a number of agreements have to be executed by the company in the course of its ordinary business. It is enough if copies of those resolutions which have the effect of amending or altering any provisions in the articles or which relate to the capital structure, appointment of managing agents, secretaries and treasurers, etc., are attached. Section 192(2) may be amended by the addition of the words S. 192(2) "which has the effect of amending or altering any provisions of the articles" after the words "for the time being in force". It has been suggested by the Department that the resolutions of

the company or the Board under sections 293(1)(d) and (e), 294 and 297(3) should be certified and filed with the Registrar in view of the importance of these resolutions and in order to enable the Registrar to see whether the financial arrangements purporting to be approved by resolutions are in the interests of the company. A new clause (g) might be added to section 192(4) as follows :—

“(g) resolutions of the company under sections 293(1)(d) and (e), 294 and 297”.

Sections 193 and 194: Minutes of Board's Meetings

80. It has been pointed out that in the absence of an exhaustive definition of “officer” in section 2(30) of the Act, it is difficult to comply with section 193(3) requiring all appointments of officers made at any meeting to be included in the minutes of the meeting. In practice, there is a distinction between officers or persons ranking as officers on the one hand and assistants and clerical staff on the other and we do not think that any practical difficulty exists. What the section requires is that where appointments of officers are made at Board meetings, they must be minuted. Subordinate appointments made by the management under delegated powers need not be minuted and no amendment seems to us to be called for.

Doubts have been expressed before us regarding the effectiveness of the provisions of these sections to ensure the authenticity of the minutes of the Board's proceedings and we feel that there may be some grounds for such doubts. We accordingly recommend that section 193(1) be recast as follows :—

S. 193(1)

“Every company shall cause minutes of all proceedings of general meetings, and of proceedings at meetings of its Board of Directors or of committees of the Board to be kept by promptly making entries in books kept for the purpose, with their pages consecutively numbered, each page being signed and the last page of the record of the proceedings of each meeting being dated and signed by the Chairman of the meeting or by the Chairman of the next succeeding meeting.”

Section 194 requires a consequential amendment and might run thus :

“ Minutes of meetings kept in accordance with the provisions of section 193 shall be evidence of the proceedings S. 194 recorded therein.”

Section 196 : Inspection of minute books and grant of copies

81. The rate of copying charges may be raised to twelve annas (or 75 naye paise) per hundred words and the time allowed for the grant of copies may be fixed as “ fourteen days exclusive of holidays ” instead of “ seven days ”. Amendment of section S. 196(2) might be made accordingly.

Section 197 : Reports of proceedings of meetings

82. It has been pointed out that in the case of many large companies the speech of the Chairman at the annual general meeting is alone printed *in extenso* and published in newspapers at the expense of the company. It has been suggested that the entire proceedings of the meeting should be published in a regional newspaper. The section does not make it incumbent on a company to circulate or advertise a report of the proceedings. The current practice of publishing only the speech of the Chairman is liable to give an inaccurate impression of the proceedings of the meeting or of the state of the company's affairs and the standing of the management with the shareholders and it is desirable that this practice should be discontinued. We would, therefore, recommend the substitution of the following provision for section S. 197(1) :—

“No document forming a part of the proceedings of a general meeting of a company shall be circulated or advertised at the expense of the company unless the matters required by section 193 to be contained in the minutes of the proceedings of such meeting are also circulated or advertised.”

Sections 198, 309-311, 348, 351-354, 381 and 387 : Managerial remuneration

83. It would be convenient to deal with all these sections in one place as they relate to the same topic. According to the Bombay High Court* the provisions of the Act governing managerial remuneration are badly drawn up and "do not suffer from lucidity". Others too have found some difficulty in construing these provisions. These provisions are spread out over different parts of the Act evidently with a view to bring together at one place all the provisions relating to each type of management. The scheme of the legislation is broadly as follows :—In the case of a public company or a private company which is a subsidiary of a public company an overall maximum of managerial remuneration is fixed at 11 per cent of the (annual) net profits of the company (section 198). The mode of computing the net profits is prescribed (sections 349 to 351) with slight variations in respect of the overall maximum [section 198(1)] and directors' remuneration [section 309(5)]. In the absence or inadequacy of profits, managerial remuneration upto Rs. 50,000 a year is provided subject to the amount being increased with the sanction of the Central Government [Section 198(4)]. The maximum remuneration of managing agents is fixed by section 348, of directors, including managing directors and whole-time directors by sections 309 to 311, of secretaries and treasurers by section 381 and of the manager by section 387. Within the maximum limit the actual remuneration payable to the managing agent, directors, secretaries and treasurers or manger has to be fixed by the articles or by a resolution of the company or of the Board or by an agreement.

S. 198(1) The heading of section 198 might be abridged into "Overall maximum managerial remuneration". In view of the difficulties that have arisen as regards the effect of the saving provision at the beginning of section 198(1) on allied sections like sections 310, 348, etc., we recommend that the opening words of section 198(1), namely "Save as otherwise expressly provided in this Act" should be omitted. The word "managerial" may be inserted between the words "total" and "remuneration". The

*Suit No. 291 of 1956.

percentage fixed under section 198(1) is intended to be with reference to the net profits of a financial year. In section 198(1) S. 198(1) after the words "and its manager, if any," the words "in respect of any financial year" should be inserted. Similarly, after the words "net profits of the company" the words "for that financial year" should be inserted. Section 198(3) (b) might be S. 198(3) deleted and the following proviso to section 198(1) might be added :—

"Provided that nothing in this section shall affect the operation of sections 352 to 354 and 356 to 360."

A question has been raised whether the word "remuneration" in sections 198(1), 309 and 348 would include perquisites such as rent-free accommodation in the plains or in hill-stations, free motor car, free passage, free education of children and pensionary benefits. These perquisites, undoubtedly have a money value and in some cases might be converted into their money equivalent. From the point of view of the company, perquisites allowed to directors are part of the consideration paid by the company for their services and the cost of providing them has an effect on a company's profits exactly similar to the payment of the monthly cash salary. On the other hand, from the point of view of the recipient, they form part of the consideration for his services and the position is more advantageous to him than if the money equivalent of the perquisites had been paid in cash and expended by him for the various amenities provided. The existing provisions are, however, capable of being construed as referring to cash payments alone. In our view, there is no reason in principle for ignoring these perquisites in evaluating the remuneration. It was represented before us by the Associated Chambers of Commerce of India that, if the remuneration referred to in section 198 extends beyond amounts actually paid in cash to a director, it should certainly not extend beyond items included in the director's total income for income-tax purposes. It is difficult in the context of these sections, to distinguish between, for example, the value of a motor car provided for a director's private use (which is taxable) and the value of a home leave passage to a director who is not a citizen of India (which, subject to certain Rules, is not taxable). The considerations which apply to a taxing statute are not necessarily the same as those which should apply to an Act such as the Companies Act and, in any case, the proviso to section 198(4) empowers the Central Government to take into account

all factors such as the value of perquisites in fixing any increased minimum remuneration thereunder. If the provisions of sections 198(1), 309 to 311, 348, 381 and 387 fixing ceilings on the remuneration of various categories of managerial personnel are to be effective, any evasion thereof by the grant of perquisites or benefits having a money value should be checked. An Explanation may be added to section 198(1) in these terms :—

S. 198(1)—
Explanation

“ *Explanation* : For the purposes of this section and sections 309, 310, 311, 348, 352, 381 and 387, “ remuneration ” shall include :—

- (a) the value of rent-free accommodation or any concession in the matter of rent charged by the company to the persons aforesaid ;
- (b) the value of any other benefit or amenity granted or provided by the company free of charge or at a concessional rate to the persons aforesaid ;
- (c) any sum paid by the company in respect of any obligation or service which, but for such payment, would have been payable by the persons aforesaid ; and
- (d) any sum paid by the company to effect an insurance on the life of or provide a pension or annuity for the persons aforesaid.”

We have considered various suggestions put forward to reduce or enhance the maximum limit of managerial remuneration. One of the suggestions was that the percentage might vary according to the capital of the company. Capital may consist of subscribed capital, borrowed capital, reserves, etc. Managerial remuneration is more appropriately correlated to the work done as reflected in the profits earned and a percentage of the profits earned is, on balance and over a period of years, a more satisfactory basis than any other. The limit of 11 per cent was fixed by Parliament after much discussion and there is no reason for altering it now.

Section 198 refers to overall managerial remuneration which includes the remuneration payable to managing agents under section 348. Section 348 states that “ Save as otherwise expressly provided in this Act, a company shanot pay to its managing agent

by way of remuneration, whether in respect of his services as managing agent or in any other capacity, any sum in excess of ten per cent of the net profits of the company". The opening word of that section, *viz.*, "Save as otherwise expressly provided in this Act", are intended to refer to sections 352 and 354—360. The question, therefore, arises whether if a managing agent renders services to the company in a capacity other than that of a managing agent and which are not covered by sections 352 and 354—360, he would be entitled to remuneration for such non-managerial service. It is possible to take the view that section 198 covers all services rendered by a managing agent in any capacity, or to take another view, *viz.*, that it covers only managerial services and no others. The Bombay High Court* has taken the view that section 198 covers only remuneration for managerial services. In the case referred to, the managing agency was a firm and one of the partners of that firm was appointed a technical director of the managed company. While the Court held that there was nothing in the Act to prevent a managing agent being paid extra remuneration for non-managerial services, in this particular case since the person appointed was a partner of the managing agency firm and the words used in section 348 are "in any other capacity" it held that he was not entitled to be paid any remuneration for his services as technical director to the managed company over and above the limit of 10 per cent payable to the managing agency firm prescribed by section 348. Section 360 does not appear to have been considered in that case. On the other hand, on the language of section 348, it would be difficult to extend the same principle if the managing agency is a limited company and a member or director of the managing agency company is appointed, say, a technical adviser of the managed company and renders services in that capacity, because the managing agency company is a different entity from its member or director. Having given our careful thought to this matter, we have come to the conclusion that section 198 was intended to apply only to remuneration for managerial services and, therefore, we have recommended the addition of the word "managerial" between the words "total" and "remuneration" in sub-section (1). However, this is a matter of policy and it is for the legislature to decide whether the words of sections 198 and 348, as they stand, carry out the intention of the legislature.

*Suit No. 291 of 1956.

There is a certain inconsistency between sections 198(2) and 309(2). The former speaks of fees payable to directors for meetings of the Board attended by them ; the latter speaks of remuneration paid to directors by way of a monthly payment or by way of a fee for each meeting attended by them. In order to remove the inconsistency, we recommend that section 198(2) be amended to read as follows :—

“The percentage aforesaid shall be exclusive of any fees payable to directors under section 309(2).”

S. 3:9(2) Section 309(2) may be amended to read as follows:—

“A director may receive remuneration by way of a fee for each meeting of the Board or a committee of the Board attended by him.”

We have recommended above that section 198(3)(b) should be deleted. For section 198(3)(a) the following might be substituted in order to bring out the real intention of that provision:—

“(3) Subject to the maximum remuneration provided in sub-section (1), a company may pay a monthly remuneration to its directors, including a managing or whole-time director, in accordance with the provisions of section 309 or to its manager, in accordance with the provisions of section 387.”

The payment of remuneration to directors and the manager need not be postponed till after the end of the financial year or till the accounts of that year are presented to the shareholders but might be made monthly subject to the ceiling fixed by sections 309 and 387. Overdrawings will have to be refunded as proposed in the amendment to section 309.

It was urged that in cases falling within section 198(4) it should be open to the Board of Directors to sanction payment of remuneration to managing agents or directors or a manager up to the limit of Rs. 50,000/- without reference to anybody else, and irrespective of what the previous rate of remuneration was. Section 198(4) as it stands does not require even a resolution of the

company or the approval of the Government for the payment of such remuneration. In the case of a company which is not making enough profits to enable it to remunerate its management as agreed, it is proper that the shareholders or the Central Government should have a voice in determining such remuneration. Section 198(4) might be amended by inserting the words "subject to the approval of the Central Government" between the words "may" and "pay". Suggestions have been made that where the managerial remuneration of 11 per cent or of Rs. 50,000/- allowed by section 198(4) is shared by several persons, provision should be made for its apportionment *inter se* and for a *pro rata* refund in the event of their being overdrawn. This is purely a matter of internal arrangement in each case between the company and the persons concerned. S. 198(4).

Section 309 requires amendment in some respects. We have already referred to the proposed amendment of sub-section (2). S. 309 (3). Sub-section (3) should be recast as follows:—

"Section 309(3) : A director who is either in the whole time employment of the company or a managing director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by the one way and partly by the other, provided that such remuneration shall not exceed five per cent. of the net profits for one such director, and if there is more than one such director, ten per cent. for all of them together."

If there are overdrawals, the directors should account to the company as if they were trustees, without raising a defence of limitation when refund is sought. A new sub-section might be added to section 309 as sub-section (5A) in these terms:— S. 309(5A).

" If any director draws or receives directly or indirectly, by way of remuneration, any sum in excess of the limit prescribed by this section or without the prior sanction of the Government, where it is required, he shall account to the company for such sum as if he held it in trust for the company."

S. 309(8). To meet the criticism of the Bombay High Court, we recommend that section 309 (8) of the Act might be amended as follows:—

“This section shall come into force from 1st April 1956 and, if that date does not coincide with the commencement of the financial year of a company, it shall come into force with effect from the commencement of the company’s financial year immediately succeeding that date.”

S. 310. It was urged that, subject to the limits prescribed in the articles of the company and to the ceiling laid down by the Act, the Board should have full power to increase the remuneration of directors without reference to the Government. This involves a *pro-tanto* repeal of sections 310 and 311 of the Act which have had a wholesome effect. The drafting of section 310 is unhappy and requires to be amended as follows:—

“In the case of a public company or a private company which is the subsidiary of a public company any provision relating to the remuneration of any director including a managing or whole-time director or any amendment thereof which purports to increase, etc. etc. etc. (rest of the section to be kept as it is).”

Section 200: Tax free payments

84. Section 200 was enacted after discussion and is prospective in its operation. The objection to this provision has come from foreign concerns with world-wide interests which have in their employment foreign personnel serving in India on a guaranteed minimum remuneration. Such remuneration, though in some cases subject to tax in those countries, is, according to the terms of the contract of service, free of Indian income-tax payable by them on their remuneration. In the case of approved foreign technicians, section 4(3) (vi a) of the Income-tax Act, as amended by the Finance Act of 1955, provides for a limited measure of exemption. In other cases, the company will have to bear the burden of the tax and pay its employee a sum which will include the salary plus the tax payable thereon. There is, therefore, no reason to amend section 200. Section 189 of the English Act prohibits tax-free payments to directors but section 200

goes further and is applicable to all officers and employees of company. It is a wholesome provision which helps to ensure that the accounts prepared in accordance with Part II of Schedule VI reflect the full cost of staff salaries.

Section 204: Appointment of firms and bodies corporate to places of profit

85. There is no corresponding provision either in the Act of 1913 or in the English Act of 1948. Section 204 does not refer to individuals but only to a firm or body corporate. Long term agreements might be required in some cases, particularly when preliminary work in connection with the setting up of an industry or erection of a factory and installation of plant and machinery involves a long period of time. Section 204 (4) permits S. 204 the re-appointment and re-employment or extension of the term of office of any firm or body corporate by further periods, each of 5 years. A provision might be made empowering the Government to extend the initial period of 5 years to 10 years in cases where, in the interest of the industry, such long-term collaboration with foreign companies or firms is found necessary. As section 204(1) stands, it may not be possible to appoint a company or other body corporate as trustee for debenture holders for a period exceeding 5 years. It is necessary that such trustee should have the confidence of the debenture holders and should not be liable to be removed until the purposes of the trust have been fulfilled. S. 204(1) and (5) Section 314 of the Act contains a specific exception in the case of trustees for debenture holders and a similar exception might be made in section 204(1) by the addition of the words "or trustees for debenture holders" after the words "secretaries and treasurers". In section 204, sub-section (5), the words "from the company" should be added after the word "obtains".

Section 205: Dividend payable out of profits

86. Article 116 of Table A of the English Act provides that no dividend shall be paid otherwise than out of profits and section 205 follows this provision. There is no definition of "profits" in the Act, nor is there any indication of the manner in which profits of companies have to be computed for purposes o

declaration of dividend. Sections 349 to 351 provide for the computation of profits only for the purpose of determining the remuneration of managing agents, directors or managers. Section 10 of the Income-tax Act provides for the ascertainment of the profits of a business during a year for the purpose of assessment to tax, but section 205 does not require this method to be followed in ascertaining profits. Businessmen refer to "profits" as the excess of receipts over the expenditure for earning the profits during a year. The decisions as to the funds out of which dividends may be paid are not uniform. The governing rule is that a company may not, under the guise of paying dividends, return to the shareholders any part of the moneys subscribed on their shares. Chartered Accountants, lawyers and judges differ as to the proper method of computing profits for the purpose of declaring dividend. One view is that dividends can be declared without providing any depreciation, if the directors so think fit. Another view is that full depreciation allowed by the Income-tax Act, including the development rebate or rehabilitation reserve, should be provided before distributing any amount by way of dividend. There is yet another and an intermediate view that only normal depreciation calculated on the basis of the life of the asset need be provided for. No prudent company should omit to provide for depreciation. There is also divergence of opinion as regards the question whether losses brought forward from previous years should be covered before any dividend can be declared from the profits of the current year as contemplated by Note (h) in Part I of Schedule VI of the Act or whether the dividend could be paid out of current profits leaving the previous losses to be recovered over a number of years, present and future, or even never to be recovered at all. As stated in Buckley on Companies Acts (12th Edition, page 904), the law is much more accurately expressed by saying that dividends cannot be paid out of capital than by saying that they can only be paid out of profits. Even such a plain proposition might, in actual practice, raise questions of difficulty in their solution and one such question may be what are profits and what is capital. Taking all the relevant circumstances into consideration, we would recommend the substitution for section 205 of the following provisions :—

"Dividends may be declared or paid only out of the net profits of the company for the financial year arrived at after providing an amount for depreciation for that year

on the scale prescribed by section 350 (a) of the Act or out of the undistributed profits of previous years or out of both.”

Section 207 : Payment of dividends and penalties for failure

87. It has been pointed out that dividends should be made payable by cheques drawn on a Scheduled Bank and not on the managing agents and that the amount payable as dividends should be paid by the company into a Scheduled Bank and that cheques or warrants for dividends should be made payable to order. This is a wholesome suggestion. Representatives of the management suggested that the penal provisions of this section should be repealed, leaving the shareholders to recover the dividend, if necessary, through the Court. Alternatively, it is stressed that, before any punitive action is taken under this section, the shareholders concerned should have given notice to the managing agents and directors about non-receipt of the dividend warrants. On the other hand, it was further urged that dividend warrants should be sent within 15 days of the annual general meeting. This was countered by the suggestion that if the shareholders resolve that they may be paid after an interval of more than three months or if funds are urgently required for the business, the payment of dividends could be postponed. The law should not lend countenance to excuses resorted to for delaying payment of dividends after they are declared. We suggest the following amendments to section 207. The existing section should be numbered as sub-section (2) and a new sub-section should be inserted as sub-section (1) as follows :—

“(1) Within seven days of the declaration of a dividend, the company shall deposit the total amount of the dividend payable in a Scheduled Bank in a separate account and the dividend warrants shall be made payable out of such account.”

In sub-section (2), as renumbered, after the words “from the date of declaration” the words “or if the company fails to deposit the amount as provided in sub-section (1)” should be inserted.

Section 209 : Books and documents-Custody and Inspection

S. 209(1)
and proviso

88. It has been suggested that the books of a company might be kept at a place other than the registered office for reasons of convenience. This can be allowed by the addition of a comma and the words "head office" after the words "registered office" and a proviso at the end of sub-section (1) in these terms :—

"Provided that where any of the books of account are kept at the head office or at any place other than the registered office, the company shall, within seven days of the decision of the Board of Directors to keep the books of account at the head office or such other place intimate in writing the full address of the head office or such other place to the Registrar."

It has been pointed out by the Department that as in the case of directors, the Registrar should be given the right to inspect books whenever he thinks it necessary. The majority of the Committee are of the opinion that the grant of such power is not called for, particularly as we are proposing an amendment of section 234 giving power to the Registrar to call for books of account in the circumstances mentioned therein.

The responsibility for the maintenance of books and papers of the company rests on the executives enumerated in section 209 (5). Sometimes it is alleged that some cashier or accountant or clerk of the company was in charge of the books and papers and that others had no personal responsibility in the matter. In some cases the officer in charge of the books and papers is discharged or induced to resign when there is a possibility of a probe into the affairs of the company and the excuse is then put forward that the books and papers are not with the present officers. In other cases, books and vouchers relating to earlier years are alleged to have been destroyed as being unnecessary.

S. 209(3A)

To check this evil, the following changes may be made. The following new sub-section may be added as sub-section (3A) after sub-section (3) :—

"All books referred to in sub-section (3) shall be preserved in good order for a period of not less than eight years immediately preceding the current year."

In the proviso to sub-section (5) the words "that he had reasonable ground to believe, and did believe," may be omitted. S. 209(5)
Proviso.

Section 209(6) has to be amended by the addition of a clause (d) in the following terms and by renumbering clause (d) as clause (e) with the following amendments :— S. 209(6)

"(d) where a company has a manager, such manager;" and

"(e) where the company has no managing agent or secretaries and treasurers or manager, every director of the company."

Sections 210 and 211: Financial Year

89. It has been suggested that power may be given to Government to prescribe a uniform financial year for companies. The advantages are stated to be that it would help collection of statistical data, deter interlocking of funds by companies and the abuses incidental thereto and facilitate the assessment of cost data. On the contrary, it is stated that it may cause practical difficulties and cast a heavy burden upon auditors and company managements. Different companies have different accounting years according to their convenience or the seasonal nature of the industries in which they are engaged, and it may not be practicable under the present circumstances to prescribe a uniform financial year for all companies or even for companies engaged in a particular industry. We are unable, therefore, to recommend that a uniform financial year should be prescribed for all companies.

We have received representations to the effect that sub-section (1) of section 211 read with the provisions of Schedule VI to the Act imposes such rigidity in the form in which accounts are to be presented to shareholders that a true and fair view of the state of a company's affairs and of its profits or losses for the relevant financial year may not emerge in an intelligible shape. It is also said that the present form in Schedule VI retards the development of accounting and costing techniques in this country and that it is so involved and cumbersome that, being spread over several pages and with numerous schedules attached, it is intelligible only to the expert and not to the ordinary shareholder who is not himself an accountant. There are others who require

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more details to be given, such as the quantity of goods purchased, the persons from whom purchases were made and the prices at which they were purchased, if the value exceeds of a certain amount.

The history of the development of the accounting and audit provisions of company legislation in India is set out in Chapter XI of the Bhabha Committee Report and Appendix IV thereto. Section 211 (1) requires the balance sheet to be in the form set out in Part I of Schedule VI "or as near thereto as circumstances admit", the same phrase having been used in section 132 (2) of the Act of 1913. In the light of the improvement in the form of presentation of accounts of companies between 1913 and 1956 and particularly from 1936 onwards, this phrase was apparently interpreted to permit the adoption of improved techniques in the presentation of accounts to shareholders. It is important that the information which is required to be given to shareholders pursuant to Schedule VI should be given in a manner which they will understand and which has the effect of giving, in the opinion of the auditor, a true and fair view of the state of the company's affairs and of its profit or loss for the relevant year. That is the substance of the matter and it may be desirable that a concise and clear statement of the general position is given in addition to the balance sheet. The Institute of Chartered Accountants might give a lead to its members on the question of the reconciliation of the accounting requirements of the Companies Act with developing techniques in the fields of financial management and cost accounting by convention rather than by repeated attempts formally to amend Schedule VI. At the same time, it is not desirable to leave the matter entirely to the discretion of the management and the auditor. We are proposing certain amendments to Schedule VI to meet practical difficulties which have been encountered in its application and these are set out in detail in our note on Schedule VI contained in the Annexure to the Report.

- S. 210(4) The proviso to section 210(4) might lend itself to abuse by companies seeking to avoid a prompt presentation of the accounts to the shareholders and might be deleted. The reference in
- S. 211(5)(iii) section 211(5)(iii) should be to the Indian Electricity Act, 1910.
- S. 211 (1) and(2) In the provisos to sub-sections (1) and (2) of section 211, the words "or any company engaged in the generation or supply of electricity"

might be inserted after the word "company" and before the word "or".

An amendment to the provisos to sub-section (5) of section 210 and sub-section (7) of section 211 deleting the words "that he had reasonable ground to believe, and did believe," similar to that suggested by us in respect of the proviso to sub-section (5) to section 209 may be made.

S. 210 (5)
Proviso.

S. 211 (7)
Proviso.

Section 212: Financial year and Accounts of Subsidiaries.

90. On the wording of section 212(2)(a), as it stands, if the financial year of a subsidiary coincides with that of its holding company, the balance sheet of the subsidiary to be attached to the holding company's balance sheet would be the subsidiary's balance sheet in respect of the immediately preceding financial year. This was presumably not the intention of the legislature, particularly when section 212(2)(c) provides that the financial year of the subsidiary shall not end on a day which precedes the day on which the holding company's financial year ends by more than six months. To remove the difficulty pointed out above, section 212(2)(a) might be redrafted as under:—

S. 212(2)(a)

"The balance sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of this Act as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the holding company or if it does not so coincide, as at the end of the financial year of the subsidiary last before that of the holding company."

It has been pointed out that it is not clear what particulars as to its subsidiaries are required to be included under section 212(3)(b)(ii) and (c) (ii). A distinction is drawn between profits and losses of the company before it became a subsidiary and after it became a subsidiary. A company acquiring shares in another company having undistributed profits or accumulated losses acquires an asset and such profits or losses are of a capital nature. On the question whether all profits and losses earned or incurred by a subsidiary since it became a subsidiary may, so far as attributable to the holding company's shares in the subsidiary, be properly treated in the holding company's accounts as revenue profits

S. 212(9)
Proviso.

and losses, the opinion has been expressed that they cannot be so treated, except to the extent the subsidiary has declared and distributed dividends or to the extent the holding company has discharged any such losses out of revenue account and written off any liability from the subsidiary in that connection. [See Buckley on Companies Act (12th Edition), page 973]. In this view, section 212(3)(b) and (c) would apply only to profits and losses of a subsidiary which might properly be treated as revenue profits and losses. The proviso to sub-section (9) of section 212 may be amended by omitting the words "that he had reasonable ground to believe, and did believe," as recommended by us in respect of the provisos to sections 209(5), 210(5) and 211(7).

Section 215: Authentication of balance sheet.

91. The balance sheet and the profit and loss account have to be prepared and approved by the Board of Directors before they are submitted to the auditors for their report thereon. We have received numerous representations regarding the difficulties which are said to arise out of this requirement. It has been suggested that the auditors should draw up a tentative balance sheet and profit and loss account, draw the attention of the directors to any irregularities that come to light in the course of the audit, consider the explanation of the directors and then submit a report and that the directors should thereafter sign the balance sheet and profit and loss account as finally settled. This suggestion is an inversion of the wholesome rule laid down both by our Act and the English Act and we do not, therefore, recommend its adoption. In practice, what happens is that the audit proceeds simultaneously with the finalisation by the management of the balance sheet and accounts and as points of difference between the auditor and the management arise, they are discussed and either disposed of or remain for inclusion in the auditors' report to the members. In due course, a stage is reached where, subject to the decision of the directors as to the amount to be provided for depreciation the sums to be transferred to various reserves, etc., and the dividend to be recommended, the accounts are completed and the auditor is ready to submit his report. It is at this stage that normally, the accounts are submitted to a meeting of the directors who consider the appropriations to be made and the draft of their report after having ascertained that the auditor is prepared to sign his

report without any reservation or qualification. The decisions of the directors are thereafter embodied in the accounts, the audit of which is then completed. If, at this stage, the auditor nevertheless finds that he has to make any reservation or qualification in his report, a further meeting of the Board can be convened to consider any amendment to its report pursuant to section 217(3). So far as the sequence of events leading up to the signature by the auditor of his report is concerned, the new Act makes no change as compared with the position under the 1913 Act and the procedure which we have outlined above does not in any way conflict with the provisions of sections 215(3) and 217. We do not feel, therefore, that any amendment of these provisions is necessary.

Section 217 : Board's Report

92. If, acting under the articles, the directors transfer an amount to reserve, it should be carried into the balance sheet. In other cases, they can only recommend the proposal to the shareholders. In view, however, of the explanation of "surplus" as the balance after the proposed allocation for dividend, bonus or reserves given in Schedule VI, Part I, it would seem that, if the Board recommends an appropriation for reserve, it has to be incorporated in the balance sheet at the close of the year and not left to be shown as a 'reserve' in a subsequent balance sheet. Section 217(1)(b) will, therefore, have to be modified by the omission of the word "either" and the words "or in a subsequent balance sheet". S. 217(1)(b)

The complaint has often been heard that directors' reports are colourless documents which do little to inform or educate the shareholders. Both the Cohen Committee in England and the Bhabha Committee here adverted to this defect. In paragraph 170 of the Bhabha Committee's report, suggestions were made for improvement in the quality of directors' reports. A firm of Chartered Accountants has suggested that besides the matters required to be stated in the report of the Board of Directors to be attached to the balance sheet laid before a company in general meeting, it should contain express declarations regarding commitments in respect of purchase or sale of investments and capital expenditure other than those shown in the balance sheet, the correctness of the book debts or loans and advances due from

directors, officers and connected firms or companies and charges on the company's assets, the sufficiency of the provision for depreciation on fixed assets and the provision for a fall in the value of current assets, etc. These are matters of proper accounting for the auditors to look into in the course of their audit and the directors to explain in their report. We would, however, recommend the addition of new clauses (d) and (e)

S. 219(1) to section 217 in these terms:—

“(d) any material changes which have occurred between the end of the financial year of the company and the date of the report which affect the financial position of the company.

(e) any commitments in respect of the purchase or sale of investments and capital expenditure other than those shown on the face of the balance sheet.”

A period of six months or more often elapses between the close of the financial year and the publication of directors' report and during this period material changes might have occurred. It is but fair that such changes should be brought to the notice of the shareholders.

Section 219(1) : Copies of balance sheet, etc.

S. 219(1) 93. For the reasons explained in para 72, we recommend that section 219 (1) be amended by substituting “twenty-eight days” for “twenty-one days”.

Section 220 : Profit and Loss Accounts of Private Companies

94. It has been suggested by the Department that a provision should be made requiring private companies to file before the Registrar copies of their profit and loss accounts along with their balance sheets. Under section 220(1)(b), the production of the balance sheet and the auditor's report alone is, referred to in the case of private companies. Section 216, however, requires that the profit and loss account should be annexed to the balance sheet and likewise, the auditor's report. It would, therefore follow that the profit and loss account should be filed along with the balance sheet of private companies. But a difficulty is created by the specific inclusion of the profit and loss account in section 220(1)(a) and its omission in section 220(1)(b) thereby inferentially

suggesting that the profit and loss account need not be filed in the case of private companies. There are private companies carrying on business on a large scale and managing a number of public companies with substantial capital. The balance sheet contains an item relating to the debit or credit balance of the profit and loss account. The profit and loss account also explains how this particular item has been arrived at. No harm would be caused if the profit and loss account is filed with the Registrar provided non-members are not entitled to inspect or get copies from him. Some restraint on publicity in regard to the affairs of a private company is insisted upon by those in management and it might be provided that the profit and loss account shall not be open to inspection by, and copies thereof shall not be granted to, any person other than members. For the reasons stated above, the following amendments to section 220 are recommended:— S. 220(1)

In section 220(1)(a), the words “in the case of a public company” and section 220(1)(b) shall be deleted. A proviso shall be added to section 220(1) as follows:—

“ Provided that persons who are not members of the company shall not be entitled to inspect or obtain copies of the profit and loss account of a private company, not being a subsidiary of a public company, under section 610.”

In section 220(2), the words “ public or private” should be omitted. S. 220(2)

Sections 224, 225, 226 and 229 : Auditors

95. In section 224(1), the following words might be added at the end:— S. 224(1)

“and an auditor so appointed should signify his written consent to act as such to the Registrar within a week of his appointment.”

In section 224(2), the words “or auditors” may be added after the words “retiring auditor”. The complaint has been made that by the exercise of its voting strength and through proxies, the management secures the appointment of its own nominees as auditors thereby avoiding an independent auditor. Suggestions have been made to give the right to the Government to S. 224(2)

appoint auditors in appropriate cases. This may not be an adequate remedy. Increased vigilance on the part of shareholders and a high sense of duty on the part of Chartered Accountants will be the only effective remedy for the complaint heard in some cases regarding the unsatisfactory state of company audits. Statutory provision for re-appointment of retiring auditors may result in a kind of monopoly but, in the present circumstances, we are unable to support the suggestion that the re-appointment of auditors should be left to the absolute and unfettered discretion of the general body, particularly where the management has a predominant strength.

Section 226, sub-sections (1) and (2) prescribe that an individual or a firm whereof all the partners practising as accountants in India are qualified as provided therein, may be appointed as the company's auditor. A firm can be appointed by its firm name but an individual auditor has to be appointed by name. Section 226(1) does not contemplate the appointment of an individual auditor by reference to his business name and section 229 requires the auditor to sign the report. It appears that the accountancy profession is anxious that it should continue the practice of signing audit reports in the auditor's business name without stating in the report the name and identity of the individual who actually signs it. Similarly in the case of a firm of auditors, it is claimed that any partner of the firm should be entitled to sign in the name of the firm without stating in the report the name of the partner who actually signed the report. The law of partnership would allow this procedure and the same practice obtains in some other professions. According to section 229, only a partner of the firm practising in India could sign the auditor's report. Liabilities of one kind or another might attach to an erring auditor and cases might arise where it would be very material to know who was actually responsible for the audit report. Again, in the case of a firm of accountants one of whom is practising in India and the other or others outside, it should be known whether it was signed by the partner practising in India. The name of the firm found in the documents would not throw light on this point. One solution of this matter would be to provide that the report might bear the name of the auditors' firm but should indicate in addition the name or names of the auditors actually responsible for

the audit. This suggestion, however, is not acceptable to representatives of the accountancy profession. In order that responsibility for the audits might be fixed on the individual who signs the report, the Council of the Institute of Chartered Accountants has, after consultation with Central Government, issued a Notification under the Chartered Accountants Act [No. 60-CA (1)/57, dated the 27th August, 1957] that in all cases where a firm of Chartered Accountants is appointed as the auditor of a company under section 226 of the Companies Act, the member or partner of the firm, as the case may be, who signs the auditor's report on the accounts of the company or any other documents of the company required by the Act to be signed or authenticated by the auditor, shall, at the time he affixes his signature, write to the Registrar of Companies concerned, certifying the fact of his having signed the auditor's report or other documents of the company, and for the year, to be specified by him in the letter.

It has been suggested to us that it is undesirable that the statutory auditor should act as taxation adviser or serve in any other consultative or advisory capacity and provide himself with an additional source of remuneration or depend on the patronage of the Board to any extent. There is a possibility of the independence of the auditor being impaired by his taking up the dual role. At the same time, by reason of his close knowledge of the accounts and dealings of the company he might be in a position to give the company useful advice, guidance or assistance on matters on which he is particularly qualified to advise. No hard and fast rule can be laid down and it must be left to the good sense and honour of the profession to preserve its independence and integrity.

Section 226 : Restricted State Auditors

96. We must now advert to a subject which has been the subject of controversy among the members of the accountancy profession. The point that has been debated is whether "Restricted State Auditors" should be made eligible for appointment as auditors of companies throughout India. Under section 226(1), it is only a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, that is so eligible. Under section 2(1)(b) of that Act, 'Chartered Accountant' means a person who

is a member of the Institute of Chartered Accountants of India and who is in practice. Prior to the enforcement of the Chartered Accountants Act on the 1st July, 1949, besides the Registered Accountants enrolled under the Auditors' Certificates Rules, 1932, holders of Restricted Certificates granted by a Provincial Government under the Restricted Certificates Rules, 1932, were also entitled to practise as auditors within the limits of the Province specified in their certificates. The Restricted Certificates Rules referred to above were not, however, applicable to the former Indian States; but the Governments of those States used to issue certificates enabling the holders thereof to practise as auditors of companies in their respective States according to the rules prescribed by them in this behalf. Minimum qualifications such as a B.Com. degree or practical training under an auditor for five years or a certificate issued by the London Chamber of Commerce had been prescribed for the grant of such certificates in the former Indian States. Holders of these certificates were not, however, treated on a par with the Restricted Certificate holders in the Provinces of British India for purposes of enrolment as members of the Institute of Chartered Accountants, evidently on the assumption that professional standards in the Indian States were not high enough. When the Indian Companies Act, 1913, and the Chartered Accountants Act, 1949, were extended to Part B States with effect from the 1st April, 1951, by the Part B States (Laws) Act, 1951, section 144 of the Indian Companies Act of 1913 was amended with a view to preserving the rights of holders of certificates granted under a law in force in the whole or any portion of a Part B State immediately before the 1st April, 1951, entitling them to act as auditors of companies in that State or any portion thereof and to continue to be appointed to act as auditors of companies registered anywhere in that State. This category of persons is known by the name of "Restricted State Auditors" and the renewal, etc. of their certificates was governed by the Restricted Auditors' Certificates (Part B States) Rules, 1951. Under these rules Part B States auditors desirous of continuing their practice were required to apply for renewal of their certificates to the Institute of Chartered Accountants of India. Section 226(2) of the Companies Act, 1956, contains a provision corresponding to sub-sections (2) and (2A) of section 144 of the 1913 Act, and the Restricted Auditors' Certificates (Part B States) Rules, 1956, have been framed for regulating the renewal, etc., of their certificates.

During the last few years, the Restricted State Auditors have pressed their demand for admission to the Institute of Chartered Accountants of India. Their efforts have not been successful. This matter has been considered time and again and it is unnecessary for us to go into the details of the controversy. In the opinion of the majority of the Committee there is no justification for the continuance of the invidious distinction between Restricted State Auditors and Chartered Accountants, particularly having regard to the fact that the former are eligible to undertake the audits of joint stock companies, including public limited companies within the State specified in their certificates. Many of them have had considerable experience of auditing and practically all of them belong to the former States of Mysore and Travancore-Cochin where the average standard of audit work was probably not lower than the average in the provinces of British India. The total number of Restricted State Auditors in the country is about 111 or 3% of the total number of members of the Institute of Chartered Accountants and it cannot be seriously contended that the admission of the former as members of the Institute would be harmful to the profession as a whole. We are of the opinion that the Restricted State Auditors should be eligible to audit accounts of companies throughout India as urged before us. The effect of our proposal, if adopted, would be that the Restricted State Auditors would be able to take up audits of companies throughout India without being designated as Chartered Accountants, but they would not be eligible to take up any work which, under any other statute, only a Chartered Accountant can do. Considering the small number of Restricted State Auditors, which cannot be added to, and the fact that they are unlikely, in view of the stringent provisions in the Companies Act governing a change of auditors, to obtain new business at the expense of other Chartered Accountants, there is in our opinion, no room for any substantial apprehension regarding any permanent dilution of standards in the profession of accountancy. The majority of the Committee, therefore, recommends that section 226(2) of the Act should be amended S. 226(2) so as to allow "Restricted State Auditors" to be appointed to act as auditors of companies throughout India. This can be done by the substitution of the word "India" for the words "that State" occurring at the end of sub-section (2).

Section 227 : Functions of auditors

- S. 227(5) 97. Section 227(5) consisting of one sentence running into 17 closely printed lines is difficult to interpret. The intention of the draftsman evidently is that where a company, by virtue of other statutory provisions applicable to it, is not required to disclose certain matters which, under this Act, the company is required to disclose, the balance sheet would, nevertheless, be regarded as presenting a true and fair view of the company's affairs, provided the relevant statutory provisions are specified therein. This simple matter might be expressed in a few simple words.

Section 228 : Branch audits

98. We have recommended the adoption of a new definition of "branch office" in section 2(9) of the Act (para. 15). The provisions relative to the audit of branch accounts require clarification. On the language of section 228(1), two views are possible. A company may pass a resolution that the accounts of its branch offices are not to be audited or that they are to be audited by an auditor not possessing the qualification prescribed for company auditors. It is also possible that the company may pass no resolution at all on this point. Even if a company passes a resolution that the branch accounts are not to be audited, the responsibility is thrown on the company's auditor under section 228(2) to decide to what extent the accounts of the branch have to be looked into and examined. An audit cannot be complete or satisfactory unless the branch accounts also are audited, particularly in cases where branches in cities like Calcutta and Bombay often do a much larger volume of business than the registered office of the company. If the company in general meeting appoints an auditor for the branches different from the company's auditor, the responsibility for the audit of the branch accounts would be on the branch auditor and the company's auditor would be entitled to rely on the work performed by such branch auditor unless, on the face of it, the branch accounts disclose defects or irregularities not noticed or commented upon by the branch auditors. If the resolution of the company appoints the same auditor both for the branches as well as for the company, then he would be responsible for the audit of the entire accounts. If the company passes no resolution that the branch accounts are not to be audited and no branch auditor is

appointed by the company, then the company's auditor must carry out the audit of the branch. Difficulties arise where the company passes no resolution at all regarding the audit of the branch accounts and the Board of Directors appoint local qualified auditors of the branches for the purpose of carrying out branch audits. Section 228(1) is silent as to who should appoint the branch auditor. In that case the company's auditor could presumably rely on the audit of the branch accounts by the branch auditor. A satisfactory solution would be to amend sections 224 and 228 so as to provide for the appointment of an auditor for the branches of a company either by the shareholders at a general meeting or by the directors with the approval of the company's auditor. In the former case, the shareholders' resolution might state that the audit of the branch accounts should be carried out by a person qualified to be an auditor and appointed by the directors with the approval of the company's auditor. We recommend the following amendments to section 228:—

In sub-section (1), omit the words " unless the company in general meeting decides otherwise" and add the words " the auditor appointed under section 224 or by" after the words "audited by". In sub-section (2), omit the words "not so" and add the words " by a person other than the company's auditor" after the word "audited". The following sub-section should be added:—

S. 228

" (3) Where the company in general meeting decides to have the accounts of a branch office audited by a person other than the company's auditor, the company in such meeting shall appoint an auditor or auditors for audit of those accounts or authorise the Board of Directors to appoint such auditor or auditors in consultation with the company's auditor. The auditor or auditors so appointed shall have the same powers and duties as the company's auditor in respect of the audit of the accounts of the branch or branches entrusted to him or them, as the case may be. The remuneration of the auditor or auditors so appointed shall be fixed by the company or the Board of Directors, if so authorised by the company".

In recommending these amendments, we have kept in view the following main considerations:—

- (a) The branch accounts must be audited by a qualified person.
- (b) The qualifications, rights and duties of such persons must be the same as those of a statutory auditor but confined to the audit of the accounts of the branch office or offices entrusted to him.
- (c) The statutory auditor should have the right but not the duty to examine the branch office accounts, if he so desires.
- (d) The branch audit reports should be returned to the statutory auditor.
- (e) The provisions of sections 216, 224, 225 and 229 would apply to branch auditors also.

Sections 234 to 251 : Investigation of company's affairs.

99. Sections 234 to 251 have been modelled on sections 164 to 175 of the English Act with some modifications. Though steps have been taken under them against a few companies, they have proved mostly infructuous. Representatives of shareholders as well as the Department stressed the need for a tightening up of these provisions, while those representing the management consider them to be unduly inquisitorial and harmful. Very little has been achieved in the way of reformation or redress by setting in motion these seemingly stringent but practically ineffectual provisions. They require amendment if they are not to remain a dead letter.

Under section 234, as it stands, the Registrar has no power to compel production of account books or documents by the company. He can only call for any information or explanation in writing. The report the Registrar is required to make to the Central Government under section 234(6) or (7), on the basis of which an order of appointment of an Inspector is contemplated by section 235(c), would be of real value only if it is based on available evidence or material, particularly the books of account and vouchers. It is, therefore, desirable that section 234 should be amended by giving

the Registrar power to call for and inspect such books of account or documents of the company as he might require. Section 234(1) S. 234(1) might be amended as follows:—

Insert the words “and produce for his inspection such books of account or other documents as he considers necessary”, between the words “information or explanation” and “within such time as he may specify”.

In section 234(2), add the words “and produce such books and documents” at the end of the sub-section. In section 234(3), S. 34(2), (3) & (4) add the words “and produce such books or documents if they are in his custody or under his control” at the end of the sub-section. In section 234(4), add the words “or produce such books or documents” after “information or explanation”. In section 234(4) (b), insert the words “trying the offence” after the words “the Court” in the first line of that clause.

In order to make an investigation under section 239 effective, it would be necessary to make an amendment of section 239(1)(c) by the addition of the following words at the end of the sub-section:— S. 239 (1) (c)

“ or the Board of which comprises nominees of the company or is accustomed to act in accordance with the directions of the company or any of its directors or related companies any directorships in which are held by employees or nominees of those controlling the management of the first mentioned company”.

It was represented to us that some companies have escaped the investigation of questionable inter-company loans or advances or investments of a questionable or fraudulent character, taking advantage of the present wording of the section. The proposed amendment would cover such cases. In order to prevent any harassment, the following sentence might be added at the end of sub-section (2):— S. 239(2)

“Before giving its approval, the Central Government shall give to such person or body corporate an opportunity to show cause against the proposed investigation.”

S. 240(1) Difficulties have been experienced by Inspectors in the matter of securing production of documents and evidence under section 240. In some cases, it is found necessary to examine employees of the company who may not be officers or agents within the meaning of section 240(1). Therefore, instead of the words "all officers and agents of the company" the words "all officers, agents and other employees of the company", might be substituted in section 240(1). Section 240(2) would then automatically apply to such employees.

S. 240(3) It has been found that considerable delay is caused by attempts to refuse or evade production of books and documents required by the Inspector. Section 240(3) does not compel the production of books and documents by the company. A company might find it more profitable to court some punishment and avoid production, rather than produce the books and documents. Section 240(3) might, therefore, be amended as follows:—

"If any such person fails without reasonable cause or refuses—

- (a) to produce to an Inspector any books or papers in his custody or control which it is his duty under sub-section (1) to produce; or
- (b) to answer any question put to him by an Inspector under sub-section (2),

the Inspector may certify the failure or refusal under his hand to the Court and the Court may thereupon after taking such evidence as might be produced on behalf of the alleged offender and hearing his explanation, make an order for the production by him before the Inspector of such books or papers within a date to be specified in the order or requiring such person to answer any questions put to him by the Inspector."

Disobedience of the order for production of books or documents or answering questions, should be made punishable with imprisonment of 6 months or a fine of Rs. 2,000/- or both.

We are unable to accept the suggestion put forward by some persons that with a view to facilitating investigation the principal person in charge of the management should be relieved of his office during the period of investigation or that the Government should appoint directors under section 408 during the said period. To

remove a person from the management before his misconduct has been established, would be a very drastic step involving loss, both of money and reputation, for the individual and possibly serious dislocation of business for the company. For the same reason, we do not recommend that officers of the rank of Assistant Registrar should be empowered to conduct searches and seize books and records without the intervention of a magistrate as suggested by the Department.

It has been pointed out that the moment an investigation starts or the management gets to know that steps are being taken for the appointment of an Inspector to investigate the affairs of the company, books and papers of an incriminating nature are speedily destroyed or secreted. Difficulties and delays are experienced in taking action under section 627 in such cases. It has, therefore, been suggested that the power of seizure of records and books of account should be given to the Inspector or the Registrar in order to make investigations effective. A power might be given to the Registrar or Inspector to seize books of account and documents after obtaining the orders of a magistrate for such seizure where there is an apprehension of their destruction or manipulation. We have already recommended that account books and vouchers should be retained for a period of not less than 8 years and that the persons mentioned in section 209(6) should be responsible for the production of documents and books for inspection (para. 89).

A suggestion has been made by the Department that in cases where an investigation has been ordered by the Government under clause (c) of section 235 or clause (b) of section 237, the Government should have the power to direct recovery of expenses of the investigation from the company or the parties in default, on the ground that there is a reference to it in section 245(3). There is no power given to Government to direct the recovery of such expenses to the extent it deems necessary from the company or the parties in default as in section 245(1)(c). The Bhabha Committee recommended that so far as the investigation of the affairs of companies was concerned, we should adopt the provisions in the English Act with necessary modifications to suit Indian conditions. Section 170 of the English Act deals with the matter of recovery of costs of investigation and section 245 of our Act is based upon that section. But in reproducing in section 245 the provisions of section 170, 501 C.L.A.-7.

the draftsman has split it up into several sub-sections. Sub-section (3) of section 245 provides that the report of an Inspector appointed under clause (c) of section 235 or clause (b) of section 237 may, if he thinks fit, and shall if the Central Government so directs, include a recommendation as to the directions, if any, which he thinks appropriate, in the light of his investigation, to be given under clause (c) of sub-section (1). Clause (c) of sub-section (1) refers to clause (a) or (b) of section 235 or clause (a) of section 237 and not to clause (c) of section 235 or clause (b) of section 237. On a reference to section 170 of the English Act, which section 245 adopts, it is obvious that the reference in sub-section (3) of section 245 to clause (c) of section 235 or clause (b) of section 237 is a mistake for clause (a) or (b) of section 235 or clause (a) of section 237 and there is apparently an inconsistency in the reference to clause (c) of sub-section (1) in sub-section (3) of section 245. There was no mention in the Notes on Clauses attached to the Bill, as introduced, of any intention to depart from the provisions of the English Act in this particular matter. The Department's suggestion goes beyond the report of the Bhabha Committee and the provisions in the English Act, which our Act has adopted, and the majority of the Committee does not see any reason to depart from the recommendation of the Bhabha Committee or the provisions of the English Act. In view of what we have stated above, sub-section (3) of section 245 will have to be amended by substituting "clause (a) or (b) of section 235 or clause (a) of section 237" for "clause (c) of section 235 or clause (b) of section 237" in order to bring it into line with clause (c) of sub-section (1) of section 245 and the English Act.

S. 245 (3)

An amendment of section 245(2) has been suggested by the Department so as to make the amount, for which a company might be liable under sub-section (1)(b), recoverable as if it were an arrear of land revenue. This might be done by adding the words "and shall be recoverable as if it were an arrear of land revenue" at the end of section 245(2).

S. 245 (2)

Investigations into the real or effective ownership of companies, that is to say, regarding the persons who, by reason of their financial interest, control the policy of the company, enquiries about the persons having an interest in a company or its managing agency, investigation of associateship with the management of a company

and the imposition of restrictions on transfer of shares and voting rights with a view to facilitating the aforesaid investigations are dealt with by sections 247 to 250 modelled on the corresponding provisions of the English Act. Representatives of the management are very critical of these provisions while those who profess to speak for the shareholders press for their tightening up. In view of the wide prevalence of the *benami* system among particular sections of the mercantile community the need for these provisions is greater here than elsewhere. Affluent speculators manage to corner shares of public companies with a view to ousting the established management, however efficient or satisfactory it might have been, to commit depredations on reserves and manage or mis-manage the company's affairs with a view to their personal gain or to compel the management to purchase peace by buying their newly-acquired shares at unreasonably high prices. The evil effects of these speculative manoeuvres whereby the real shareholding control is camouflaged were pointed out to us in Calcutta. We are unable to agree with the suggestion of a Chamber of Commerce that the investigation under section 247 should be confined to the ascertainment of the *ex facie* title to the shares and that it should not be extended to the ascertainment of interested persons under section 248(2). The ostensible title could easily be ascertained by reference to the company's register. Section 346 requires Government approval for a change in the constitution of the managing agency, but when an apparent majority of shareholders support the change, the beneficial ownership not being divulged and the nominee not being obviously objectionable, the approval of Government usually follows. Applications to the Court under sections 397 and 398 are made after the mischief has been done and are finally disposed of after a considerable lapse of time. These provisions are not sufficient and sections 247 to 250, which are to some extent preventive, are, in our opinion, necessary. Section 250, as it stands, is restricted to the particular situation envisaged therein. It might be amended so as to confer power on the Central Government in a case where, owing to change in the ownership of shares, a change in the managing agency or directorate of a company is likely to take place, which, if permitted, would, in its opinion, be prejudicial to the public interest, to direct by an order that for a specified period, say three years, voting rights shall not be exercised by the transferees of those shares. In view of the recourse to Courts allowed by section 250

(3) no irreparable injury is likely to be caused by any action taken by the Government. It is only in serious cases that the Government would exercise the power. Section 250(3) has to be amended by the addition of the words "be subject to or" after the words "shares shall" and the words "as the case may be" at the end of the sub-section.

Section 252 : Number of Directors

S. 252 100. This section makes it obligatory on a private company which is a subsidiary of a public company to have at least three directors though such a private company could be formed with only two members under section 12. A private company which is not a subsidiary of a public company need have only two directors. Accordingly, we feel that private companies which are subsidiaries of public companies also need have only two directors and section 252(1) and (2) may be amended by providing that "a public company shall have at least three and a private company shall have at least two directors". Under section 176 of the English Act, the obligation to have at least two directors does not apply to private companies and a private company need have only one director.

Section 255 : Retirement of Directors

S. 255(1) 101. A suggestion was made that guarantee companies should be exempted from the operation of section 255. In Chambers of Commerce, trade associations, clubs and companies licensed under section 25, all directors generally retire simultaneously every year. A general provision may, therefore, be made by adding the following words at the beginning of section 255(1):—

"Unless the articles provide for the retirement of all directors at every annual general meeting,"

It has been pointed out that where persons appointed as directors by the Central or State Governments and/or by a financing corporation and/or by a managing agent are on the Board of Directors of a company, the number of directors elected by the shareholders has to be considerably increased so as to ensure that two-thirds of the total number of directors shall be those liable to retire by rotation under section 255. This is no doubt the case. We are, however, unable to recommend that directors appointed by the Government or by a financing corporation or by the managing agent shall be liable to retire by rotation.

Sections 255, 256, 257, 259, 260 and 262 to 264: Tenure of office of directors

102. Under the Act, directors may be appointed (a) by the company in general meeting (sections 255 and 261); (b) by the principle of proportional representation (section 265); (c) by the directors (i) in a casual vacancy (section 262), or (ii) as additional directors (section 260), or (iii) as alternate directors (section 313); (d) by the managing agents (sections 255 and 377); (e) by third parties having a right under the articles (section 255); (f) by the Central Government (section 408). The expression "retiring director" in sections 256, 257(1) and 264(1) should be taken to refer to a director liable to retire by rotation and who is about to retire and not to additional or alternate director or directors appointed by debenture holders or financiers pursuant to the articles. This is evident from the provisions of section 256(3) to (5). The words "a director retiring by rotation" have to be substituted for the words "a retiring director" occurring in sections 256 and 257. Chambers of Commerce, companies limited by guarantee or licensed under section 25 and non-profit making associations registered as companies desire to be exempted from the operation of sections 255, 256, 259, 263 and 264, etc. We have already referred to the exemptions suited to licensed companies in paragraph 32 of our report. In view of the amendment of section 255 recommended above, no further change in other sections is necessary. Representations have been made that the period of 14 days prescribed in section 257(1) should be increased or reduced. There is no need for any amendment. In this respect, we would, however, recommend the addition of the following words at the end of section 257(1):—

"A copy of such notice shall be forwarded by the company to every member at least seven days before the date of the meeting."

Ss. 256 &
257.

S. 257(1)

This amendment is necessary to prevent resolutions pursuant to such notices being brought before the meeting at the last moment, sometimes on ante-dated notices.

Section 261: Special resolution for appointment of certain directors

103. Exception has been taken to the comprehensive terms of the section. It was pointed out that in view of section 377 of the Act strictly limiting the right of managing agents to the appointment

of two directors of section 255 requiring a fair quota of directors for the shareholders, no further restriction should be placed on the election of rotational directors. It was further stressed that only sub-clauses (e), (f) and (g) of section 261 (1) relate to the managing agents or to their associates, and that there was no justification for placing under the restrictions of the section the persons, firms and companies referred to in sub-clauses (a) to (d) which should, therefore, be deleted. We are unable to accept this suggestion. This provision has a history behind it. Both the Amending Act of 1936 and the Company Law Committee had to deal with this matter. It was found that in spite of the two-thirds quota reserved for election by shareholders, persons closely connected or associated with the managing agents or their nominees got themselves elected by the company in general meeting by reason of the managing agents holding or controlling a sizeable portion of the shares of the company or exercising their influence. Section 261 is designed to prevent the Board from becoming a packed body of the nominees of the managing agents or those who have to work under them in the company and, therefore, subject to their influence and control. The section does not impose an absolute bar on the election to the Board of the persons enumerated therein but only requires a special notice and a special resolution.

Section 261 relates to the appointment of directors "whose period of office is liable to determination by retirement of directors by rotation". This will not include additional directors appointed under section 260 or alternate directors appointed under section 313. It is possible that additional or alternate directors may be appointed, who may be of the category of persons enumerated in sub-section (1) of section 261. It is desirable to prevent such appointment to give effect to the principle underlying section 261. We, therefore, recommend that a new sub-section (5) may be added to section 261 to read as follows :—

"(5) The provisions of this section shall apply to the appointment of any additional or alternate director under section 260 or 313."

Section 263 : Voting on appointments of directors

104. This section is based on section 183 of the English Act and its aim is to prevent all the directors being voted to office *en bloc* at the instance of a powerful group of shareholders. Hence

the requirement that directors should be elected individually by separate resolutions. It has been suggested that a block vote could be taken if agreed to by three-fourths of the members present and voting, instead of by all of them. There is no satisfactory reason for this proposed amendment. The representations made to us were unanimous that Chambers of Commerce, clubs and associations licensed under section 25 of the Act as companies limited by guarantee should be allowed to vote the members of their Executive Committees (who are deemed to be directors) in the manner prescribed by their articles for such election. Sometimes the voting is done by a postal ballot and the names of the validly nominated persons are circulated and in such cases it is inappropriate to pass individual resolutions to elect each member separately. We, therefore, suggest the addition of a new section, section 263A in these terms :—

S. 263A

“Section 263A— Nothing contained in sections 177, 255, 256 and 263 shall affect any provision in the articles of association of a company for the election of all directors by ballot at the time of each annual general meeting of the company”.

Section 264 : Consent to act as director

105. There is, in our opinion, no necessity for all candidates who seek election, to file with the Registrar, prior to their appointment, their consent in writing, to act as directors, in the event of their being elected. It is sufficient if they file such consent within 7 days of their appointment. Some of them may not be elected at all in which case the filing of their consent would have been a meaningless formality. Moreover, the filing of the consent with the Registrar should be intimated to the company by the production of his receipt before a person functions as a director. The section might be recast as follows :—

S. 264(1)

“Section 264 : (1) Every person proposed as a director shall file with the company his consent in writing to act as a director, if appointed.

(2) A person other than a director proposed to be re-elected on the expiry of his term, retiring

by rotation, shall not act as a director of a company unless he has, within seven days of his appointment, signed and filed with the Registrar his consent in writing to act as such director.

(3) This section shall not apply to a private company unless it is a subsidiary of a public company."

Section 265 : Appointment of directors by proportional representation

106. The majority of the Committee see no reason to change the provisions of this section which was enacted only in 1955, no new facts having been proved to warrant a change. The view of the minority, however, is as follows :—The key to the reform of Company Law so as to ensure honest and efficient management of companies is the appointment of persons of business ability and integrity as directors. The complaint on behalf of the shareholders is that the managing agents, so long as they have a controlling voting interest, ignore the interests of the other shareholders and put on the Board of Directors their nominees, who, without any real stake, are provided with a nominal number of shares after their appointment to the Board. The system of proportional representation by the single transferable vote is calculated to enable the voice of the entire body of shareholders and not merely that of a group having a controlling interest, to be heard on the Board. Otherwise, a bare majority of 51 per cent. of the shareholders would be able to monopolise all directorships and respectable minority of shareholders may not be able to elect even one of their representatives as a director. This is the case even with private companies. The matter was discussed at length by the Joint Committee, whose decision was to leave it to the discretion of the company to adopt the system of cumulative voting or any other similar system of voting. Section 265 allows the appointment of directors by the principle of proportional representation if the articles so provide. Suggestions have been made to us that instead of leaving the matter to be dealt with by the articles, it should be made obligatory by statute that not less than two-thirds of the total number of directors should be appointed on the principle of proportional representation,

whether by single transferable vote or by the system of cumulative voting or otherwise. One-third of the total number of directors might be left to be nominated by the managing agents, financiers or debenture holders. On the other hand, it has been asserted that if this suggestion is accepted and given effect to there is the possibility of the Board becoming a storm centre and a battlefield for warring factions. It is desirable that the system of proportional representation should be tried and a start may be made with private companies or with public companies where not less than one-third of the number of shareholders express in writing their concurrence. An amendment of the articles by a special resolution so as to incorporate the system of proportional representation might be beset with serious difficulty and opposition from vested interests and is not a practical proposition. Another possible method is to fix the maximum number of votes that could be recorded by a shareholder irrespective of the extent of his shareholding and also avoid an automatic increase of voting power in proportion to the shares held. This is no doubt at variance with the principle laid down in section 87. There are provisions in the enactments relating to banking and insurance companies which are aimed at preventing control passing into the hands of a few interested persons or groups of people by providing that a person shall not be entitled to any vote as a shareholder of the company in respect of his excess holding of shares, above a certain percentage of the paid up capital. To the extent to which shareholders are given an effective voice, the need for Government control and interference would be diminished.

It has been represented to us that there is greater scope for oppression of minorities in private companies and it is easy to give representation to minorities in private companies. Some of us are of the opinion that proportional representation should and can be made obligatory in the case of private companies without the difficulties attendant upon it in the case of public companies.

Section 269 : Government approval for managing or whole-time directors' appointment

107. There is a drafting omission in the section. On a reading of it as it stands, it would appear that in the case of a public company or its subsidiary, if it is incorporated after the commencement of the Act, a managing or whole-time director could be appointed

by the company itself before the expiry of three months from the date of incorporation without obtaining the sanction of the Central Government. There is no intelligible reason why the appointment of a managing or whole-time director for the first time after the commencement of this Act in the case of an existing company should require the sanction of the Government, while the appointment of a managing or a whole-time director of a company incorporated after the commencement of the Act made within three months of its incorporation should be exempt from such sanction. The intention of the legislature was obviously that, in such cases, the appointment shall not have effect beyond a period of three months from the date of incorporation, unless approved by the Central Government. The section should be amended as follows:—

S. 269

“In the case of an existing public company or private company which is a subsidiary of a public company, the appointment of a managing or whole-time director for the first time after the commencement of this Act shall be subject to the approval of the Central Government and to such terms and conditions as it might impose and, in the case of a company incorporated after the commencement of the Act such appointment shall have no effect beyond a period of three months from the date of its incorporation unless such appointment and the terms and conditions thereof are approved by the Central Government.”

Section 271 : Declaration of share qualifications

108. It is difficult to evolve a comprehensive definition of the term “technical director”, though in a particular case it might not be difficult to say whether or not a director is a technical director, having regard to his special qualifications, the nature and extent of the work done by him for the company, and of the business of the company. A suggestion has been made on behalf of shareholders that directors should be persons who have a stake in the company and own a minimum of at least one per cent of the equity share capital where its capital is less than a crore of rupees and one-half of one per cent. of such capital in the case of companies with a capital of over a crore of rupees. While it is no doubt desirable that directors should have a real or substantial interest in the fortunes of the company, it is not possible to lay down a uniform rule:

as to the share qualification in all cases. The filing by the director with the company of a declaration of the qualification shares held by him is a needless formality. The words "file with the Registrar" should be substituted for the words "file with the company" in the section.

S. 271.

Section 274(1)(d) : Disqualifications of directors

109. A conviction by a foreign court involving moral turpitude is as much a disqualification as conviction by an Indian court. Therefore, the words "in India" occurring after the word "Court"² in section 274(1)(d) may be omitted and a similar amendment may be made in section 267 (c).

S. 267 (c) &
S. 274 (1)
(d).

Sections 275, 276, 316 and 332 : Restrictions on directorships and managing agencies

110. Section 275 restricts the number of directorships capable of being held by an individual to twenty. Section 316 restricts managing directorships to two companies and section 332 limits managing agencies to ten companies. There is no corresponding provision in the English Act and some Chambers of Commerce have pointed out that the restrictions are unnecessary and inappropriate in view of the paucity of capable business managers in this country. There are, on the other hand, complaints that the limit of twenty directorships and ten managing agencies is too high and that there is a tendency for a few businessmen and the members of their families to concentrate in their hands enormous industrial power by virtue of their position as managing agents of a large number of public companies. We have been informed that, in practice, the average number of directorships held by an individual in the U. K. or in the U.S.A. is much less than the number permissible under our Act. So far as directorships are concerned, the matter is dealt with in paragraph 91 of the Company Law Committee's Report. Parliament has, after due deliberation, enunciated a policy in respect of this and allied matters quite recently and no new facts or unexpected difficulties have been brought to our notice to warrant a change. We are, therefore, unable to accept any suggestion for the alteration of these provisions.

Sections 280 to 282 : Age of directors

III. Divergent views have been expressed to the effect that there should be no age limit at all for directors, that the age bar should be made absolute, that the limit should be fixed at varying ages from 65 to 75 and that the restrictions should not apply to companies limited by guarantee and companies licensed under section 25. Company managements have used their voting strength and, after giving the necessary special notices got resolutions passed for continuance in office of over-aged directors as a matter of course. The expectations of Parliament that persons above the age of 65 should retire to make room for younger people do not appear to have been realised to any appreciable extent. On the other hand, in view of the unfavourable comment which this practice has evoked, we believe that within the next few years the provisions as they stand will achieve their object. A question has been raised whether in the case of directors appointed by managing agents under section 377, or by debenture holders, the approval of the company is essential to the relaxation of the age limit. The section, as it stands, requires the approval of the general meeting for relaxing the age limit generally. We do not recommend any change.

Section 283 : Vacation of office by director

112. The language of section 283(1) as it stands makes it the duty of a director to vacate office on the happening of any one of the contingencies specified in the sub-section. There is no provision for compelling the vacation of the office by the disqualified director. The language of the opening words of section 283(1) might be amended as follows :—

“A director shall be deemed to have vacated his office if etc.”

It is also desirable to attach a penal provision so as to deter a person from continuing to act as a director after he becomes disqualified.

We do not agree with the suggestion that it should be open to public companies or subsidiaries of public companies to prescribe by their articles grounds other than those specified in section 283(1) obliging a director to vacate his office. There are, however, two amendments which appear to be necessary. Under section 283(1)(e) a conviction *per se* results in vacation of the office. It is

desirable to have one uniform rule for section 267 (c), section 27 and section 283, and, in all these cases, conviction for an offence involving moral turpitude by any court, Indian or foreign, should be a disqualification or a ground for vacation of office. A company sometimes appoints an officer-director or workman-director. When an officer or workman is appointed a director by reason of the office he holds under the company, it is but reasonable that he should cease to be a director when he severs his connection with the company or takes service elsewhere. Similarly, a nominee of the managing agents should cease to be a director if the managing agency ceases. Section 283(1)(e) might, therefore, be s. 283(1)(e) amended as follows :

“(e) he is convicted by a Court of any offence involving moral turpitude and sentenced therefor to imprisonment for not less than six months”.

With reference to section 283 (1)(h), it has been pointed out that while a director is required to vacate office when he himself takes a loan, he might easily evade the provision by obtaining such loan through a near relative such as a son. To avoid such evasion, the words “directly or indirectly” may be inserted after the word S. 283 (1)(h) “accepts” in section 283(1)(h).

The word “or” might be inserted at the end of clause (k) and a fresh clause might be added to section 283(1) as clause (l) in s. 283 (1)(k) and (l) these terms :—

“(l) having been appointed a director by virtue of his office in or employment by the company, or as a nominee of the managing agents he ceases to hold such office under or to be employed by the company or the managing agency ceases, as the case may be.”

Sections 285, 287 and 288: Meetings of the Board and quorum.

113. There is unanimity of opinion that section 285 causes hardship and unnecessary expense, particularly to smaller public companies, private companies, companies limited by guarantee and companies licensed under section 25, the volume and nature of whose business does not require Board meetings to be held so often as once in every three calendar months. Very often such

companies find it sufficient to have the business of the Board transacted by the circulation of papers. In the case of big and average-sized companies carrying on business for profit, section 285 enacts a wholesome rule which should be enforced. In view of the difficulty of laying down any general exemption from the section for companies to which its provisions may cause genuine hardship, it might be left to the Central Government to exempt by notification any class of companies from the operation of the section. The "class" may comprise private companies having a subscribed capital below a certain amount, and companies limited by guarantee or those licensed under section 25. A proviso might, therefore, be added to section 285 in these terms :—

S. 285.

"Provided, however, that the Central Government may, by notification, exempt any class of companies from the operation of this section."

Section 287 (2) has given rise to difficulties of interpretation as to the meaning of the words "remaining directors" in the proviso. They may refer either to disinterested directors remaining out of the total strength of the Board or out of those who are present at the meeting of the Board. The intention apparently is to refer only to those present at the meeting as a quorum. This might be made clear by the addition of the words "present at the meeting not being less than two" after the words "the directors who are not interested" in the proviso to section 287 (2).

S. 287(2)
Proviso.

Section 289: Resolutions by circulation

114. A suggestion has been made by a Chamber of Commerce that the section should be so amended as to confine the circulation of draft resolutions to the directors present in the city or town where the registered office of the company is situate. A director may be resident just outside the city but near enough to the registered office. In these days of quick postal service throughout the country there is no reason, in any case, for recommending the amendment suggested.

Section 292: Powers of Board of Directors

115. This section and section 293, which regulate the Board's powers and place restrictions thereon, have been the subject of criticism. It has been pointed out that these sections create hardships and dislocate business in a manner which probably

the draftsman did not contemplate. To comply with the requirements of section 292 (1) (c) and (e), Boards of banking companies have to pass resolutions authorising Branch Managers or other principal officers of branches to exercise extensive powers of borrowing and making advances or loans. In order to cover cases where large sums have to be received on deposit or large loans have to be granted to customers, it is necessary to delegate to Branch Managers or principal officers detailed and vast powers which otherwise would not have been delegated. In some cases, the practice is to have local Boards of Directors or committees who advise and guide Branch Managers and principal officers in regard to sanctioning of loans and advances, while in others, the Branch Manager previously obtains sanction from his head office before granting large loans. While, for purposes of section 293, acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public is not a borrowing of moneys by that company, there is no similar provision in section 292. In the case of overdraft and cash credit accounts, the opening of the account and the fixing of the limit is done by resolution of the Board but the day-to-day operation of the account is carried on by the persons looking after the business. On a strict construction of section 292 (1) (c) the drawing of a cheque by a non-banking company may be an exercise of the power of borrowing even if the drawing is under or in pursuance of an overdraft or cash credit arrangement with a bank entered into by the Board and a resolution of the Board would appear to be necessary for such drawing. That, however, could not have been intended. In many cases, resolutions passed by companies do not comply with sub-sections (2), (3) and (4) requiring the resolution to specify the total amount upto which moneys may be borrowed or invested or lent by the delegate, in order to retain a certain amount of freedom or latitude in the exercise of the power. Whether section 292(2) should specify the maximum amount of each borrowing or acceptance of deposit or the aggregate of loans borrowed by a delegate over a period is not clear. These difficulties are accentuated in the case of banking companies by reason of the absence of a provision in section 292 similar to that in section 293(4). A further difficulty pointed out is that the proviso to section 292(1) unduly limits the power of delegation by insisting that the delegate should be one of the persons specified therein. For instance, delegation to a single director

or to a principal officer at the head office is not allowed. It follows that cheques on overdraft or cash credit accounts must be signed only by one of the functionaries named in the proviso to section 292 (1). It has been suggested that banking companies should be exempted from the operation of section 292(1)(c) and (e) and section 292 (2) and (4), but this is not desirable.

We recommend the following changes. So far as companies generally are concerned the proviso to section 292 (1) might run thus :—

S. 292(1)

“Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors the managing director, the managing agent, secretaries and treasurers, the manager or any other designated principal officer of the company and in the case of a branch office of the company, a principal officer of such branch office, the powers specified in clauses (c), (d) and (e) to the extent specified in sub-sections (2) (3) and (4) respectively, on such conditions as the Board might prescribe.”

In the case of banking companies, a further proviso might be added as follows :—

“Provided further that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise and the placing of moneys on deposit by a bank with another bank, on such terms and conditions as the Board might prescribe, shall not be deemed to be a borrowing or making of a loan by a banking company within the meaning of this section.”

S. 292 (1) We would further suggest that at the end of section 292(1) Explanations. the following Explanations be added :—

“*Explanation I.* Section 292 (1) (c) shall not be applicable to borrowings by a banking company from other banks, including the Reserve Bank

of India and the State Bank of India and such other banks as are established under separate enactments.”

“Explanation II.—In respect of dealings between a company and its bankers, the exercise of the power specified in sub-section (1) (c), shall mean the arrangement for borrowing by way of overdraft or cash credit or otherwise with the bankers and not the actual day-to-day operation on overdraft, cash credit, or other accounts by means of which the facilities so arranged are actually availed of.”

To make it clear that the total amount on loan at any one time is the total amount outstanding after allowing for loans or drawings thereon previously repaid, the words “the total amount outstanding at any one time” may be substituted for the words “total amount” in section 292(2). S. 292(2)

Section 293 : Restrictions on powers of Board

116. To begin with a few drafting changes, the words “or requisitioning” may be added after the word “acquisition” and the words “without the consent of the company” might be deleted in section 293 (1) (c). The reference to “sale proceeds” in the clause is inappropriate to a case of compulsory acquisition or requisitioning. The words “compensation received by the company in respect of” might be substituted for the words “sale proceeds resulting from” in the same clause. The word “compulsory” may be added before “acquisition”. S. 293 (1)(c)

Section 293 (1) (b) has given rise to difficulty in the case of advances by a bank to its directors. While bank advances are repayable on demand, they are normally allowed to continue for a year at a time at the end of which all advances, whether to a director or others, are reviewed and if they are found satisfactory their renewal or continuance is sanctioned. In effect, it amounts to the Board giving time to the director concerned to repay the debt. If so, the sanction of a general meeting would be necessary under this clause with its attendant publicity. To avoid this

result, the following words might be added at the end of section S. 293 (1) (b) 293 (1) (b) :—

“except in the case of a renewal or continuance of an advance to its director made by a banking company in the ordinary course of business.”

It has been pointed out that a blanket resolution of a general meeting without setting out any upper limit to the loan should not be permitted. To bring about this result, the following might be added as a further Explanation at the end of sub-section (1), the existing Explanation being numbered as S. 293(1) Explanations Explanation I :—

“*Explanation II.*—Every resolution passed by the company in general meeting relating to the exercise of the power referred to in clause (d) of sub-section (1) shall specify the total amount upto which moneys may be borrowed by the Board of Directors.”

There is an exception in the case of “temporary loans” in section 293(1) (d), but the term is not defined. A well-known bank sent us a definition which, with the modifications we have made, would read as follows :—

“Temporary loans” in section 293 (1) (d) means loans repayable on demand or within six months from the date of the loan such as short-term cash credit arrangements, discounting of bills, and issue of other short-term loans of a seasonal character, but not loans raised for the purpose of financing expenditure of a capital nature.”

This might be introduced in the form of Explanation III to section 293 (1).

The expression “free reserves” is sufficiently explained in section 293(1) (b) itself and refers to general reserves. It would not include capital reserves, depreciation reserves or share premium account. According to the opinion of the majority of the Committee, section 293(5) should be left as it is. The minority, however, is of the opinion that section 293(5) casts an undue

burden on the lender and is at variance with the provisions of Regulation 79 of Table A of the English Act. It is true that a company is not bound by acts done by the directors for objects which it has no power to entertain. At the same time, it must be remembered that not only do the acts of the directors bind the company when done within the scope of their authority, but also where the acts of the directors, however irregular, belong to a class of acts which is authorised by the constitution of the company, and that the company is bound when the acts are done with strangers who act *bona fide*. In this view, the following provision might be substituted for section 293 (5) in order to protect bankers and *bona fide* creditors advancing money to companies :—

S. 293(5)

“No debt incurred by a company from or security given by a company to a lender in excess of the limit imposed by clause (d) of sub-section (1) shall be invalid or ineffectual as against the company unless the lender had, at the time when the debt was incurred or security given, notice or could with reasonable care and diligence have found out that the limit imposed by clause (d) of sub-section (1) had been or was thereby exceeded.”

Both at the time when section 293 was passed by the legislature and subsequently too, the propriety of public companies or private companies which are subsidiaries of public companies contributing moneys to the funds of political parties has been the subject of controversy. Recently on applications made to the High Courts of Bombay* and Calcutta† by certain companies for confirmation of an alteration of their memoranda of association so as to permit such contributions to be made, the learned judges have expressed their views regarding the propriety of such contributions and the conditions that should be attached before the Court gives sanction to the alteration. It is unnecessary for us to traverse the same ground here. Different views have been held on the propriety or expediency of allowing companies to contribute to the funds of political parties. On the one hand, it has been said that such contributions are an offer of a monetary temptation to the Government of the day run by

* I.C. 199 of 1956. O.C.J. Appeal No. 15 of 1957.

† Matter No. 32 of 1957.

the party in power to adopt policies that should help the donors in their business. It is pointed out in this connection that companies have been the recipients of financial assistance in the shape of loans or guarantees for loans given by Government. On the other hand, it is said that there is no wrong-doing, moral or legal, in a company financially supporting a party whose economic and industrial policies the company considers to be or likely to be beneficial or profitable to it. Before the present Act, it was open to the Board of Directors, if the memorandum allowed it, to make contributions without limit, out of its funds, to charitable purposes or political parties. Section 293(1) (e) places a limit on the amount upto which the Board may, on its own authority, make such contributions. As a result of full discussion in the legislature, section 293(1) (e) was enacted in terms wide enough to include contributions to political bodies, the expression "charitable and other funds not directly relating to the business of the company" being comprehensive enough for that purpose. This was also the view taken by the learned judges of the Bombay and the Calcutta High Courts.

The position, as it stands today, may thus be stated. If contributions to the funds of political parties are covered by the objects as specified in the memorandum, or if not so directly covered, fall within the category of transactions conducive or incidental to the profitable working of the company, it would be open to the Board of Directors to contribute any amounts to the funds of political parties not exceeding Rs. 25,000/- or 5 per cent. of the average annual net profits of the company, whichever is greater. This pecuniary limit for contributions may be exceeded only with the consent of a general meeting in the case of a public company or of a private company which is a subsidiary of a public company.

It has been pointed out that in the case of some big companies and corporations, a limit of five per cent. of the net profits would be quite an enormous sum, running, in some cases, to many lakhs of rupees. It has also been stated that due publicity should be given to the fact that contributions have been made by a company to the funds of all or any of the political parties. In our opinion, a general resolution of the company authorising the Board of Directors to contribute to charitable and other funds in

excess of the limits prescribed by section 293 (1) (e) would be sufficient and a separate resolution is not required in respect of each contribution.

In the judgments of the High Courts referred to above the alteration in the memorandum was sanctioned by the Courts subject to the condition that the company should make full disclosure in its profit and loss account of every single contribution made, directly or indirectly, to any political party. To this extent, the learned judges of both the High Courts agreed. In one of the cases, the alteration was directed to be effective only for a period of six years unless an extension of the period was agreed to by the Court. In the other case, a condition was imposed that at the end of every financial year the company should publish in two leading papers in India a complete statement of all contributions and donations made by the company to the funds of any political party or institution or for any political cause.

Whether lobbying and financing of political parties or candidates for elections should be prohibited in the interests of the public, is a broad question of public policy. It has been the subject of special legislation in America. The case of companies could not be considered in isolation and contributions from other sources, such as bodies corporate, partnerships, societies, trusts, trade unions and even from individuals might have to be regulated or prohibited by a comprehensive enactment. This, however, is a matter which falls outside the scope of the Companies Act.

With all respect to the observations of the High Court in one of the recent cases, we consider that it is not desirable that companies should be called upon to seek the prior approval of the Courts to any contributions which they may like to make to the funds of any political party. Such applications would be a source of embarrassment to the judges and it is also not desirable that Courts should get involved in political or quasi-political controversies. In support of the suggestion that such contributions should be promptly published in newspapers immediately after they are made, the reason put forward was that if the information regarding such contributions was given to the shareholders long after the event, it would be too late for them to take any effective action.

Even if the publication in the newspapers were made immediately after the making of such contribution, the shareholders would hardly be in a position to recall the contributions already made. In view of the strongly expressed views of the High Courts, we recommend that full information relating to such contributions, with particulars as regards the parties or organisations to which such contributions are made and the amounts of such contributions should be incorporated in the accounts and circulated to the members before that next annual general meeting. If the shareholders so decide at that meeting, they may give appropriate directions to the Board of Directors in regard to such contributions in the future. A further provision may be added as

S. 293 (6) sub-section (6) to section 293 in these terms :—

“Every company shall disclose in its profit and loss account every donation made by it during the year of account to any political party, giving particulars of the amounts given and the name of the person or persons, association or party to whom or to which, such donation is made.”

S. 293 (1) (e) A minor drafting change has to be made in section 293(1) (e) by the insertion of the word “annual” after the word “average” occurring in that clause.

Sections 294 to 302: Contractual arrangements with directors

117. Numerous suggestions have been received on this topic, both from representatives of management and shareholders; the former complaining that the restrictions imposed by sections 294 and 297 are stringent and hamper legitimate business, the latter drawing attention to the loopholes which enable the management to violate the spirit of the law, if not its letter, and unjustly enrich themselves at the expense of the shareholders.

It has been brought to our notice that in view of the ceiling imposed on managing agency commission under section 348 and in view of the provisions of sections 356 to 358 and 360 requiring special resolutions for contracts between the managing agents and the company, some persons have given up their managing agency and got themselves appointed as managing or other

directors in order to enable them or their erstwhile associates to enter into agreements with the company as buying or selling agents or as sole selling agents on advantageous terms with the consent of the Board under section 297 or of the company by an ordinary resolution under section 294. In this manner, they earn directors' remuneration under section 309 as well as a substantial commission on sales or purchases. With a shareholding control, they are in a position to obtain the sanction of the Board or to get the requisite resolution passed by the company. The sanction of the Central Government is not also required. It would not, however, be practicable for the Government to interfere in the management of a company's affairs to the extent of sanctioning every selling or buying agency agreement or scrutinising every transaction of the company with the ex-managing agent or his or its associates.

It was urged on behalf of shareholders that a ceiling should be placed on the remuneration payable to selling agents. In some cases, it has been found that the selling agency commission is equivalent to the entire profits earned by the company and is quite a large sum. Remuneration payable to selling agents will vary from commodity to commodity, time to time and area to area. It is, therefore, not possible to fix a ceiling on selling agency commission in every case either by reference to a percentage of the price of the goods or to the total amount of commission. At the same time, it is desirable that power should be taken by the Government to notify industries or commodities like textiles, cement, sugar, etc. in which sole selling agencies could be given for any area only on such terms and conditions as the Government might approve. Existing sole selling agencies in the industries or commodities which may be so notified should also obtain the approval of the Government within a period, say, of six or twelve months of the amendment of the Act. It is also desirable that the unhealthy tendency of managing agents to resign their office and take up sole selling agencies should be checked. A provision might accordingly be made in section 294 that no managing agent who has resigned his managing agency, shall, directly or indirectly, either by himself or through or in association with others, take or acquire any interest in the sole selling agency of the products of the company of which he was

the managing agent, for a period of three years from the date of his resignation.

Provisions on the following lines are suggested :—

- “(1) Where on or after the first of April, 1956, a managing agent has resigned his office and taken up a sole selling agency of the company the managing agency of which he resigned, the sole selling agency agreement, whether taken in his name or in association with or in the names of others for his benefit, shall, unless approved by the Government within six months of the date on which the Amending Act comes into force, become void and inoperative.
- (2) The Central Government may, by notification in the Official Gazette, specify industries or commodities in which sole selling agencies shall not be appointed by any company engaged in such industries or manufacturing such commodities except with the approval of the Central Government of the person, firm or company proposed to be appointed, the area in which such person, firm or company shall operate and the terms and conditions of the selling agency.
- (3) Any appointment of sole selling agencies existing at the date on which the above provision comes into force shall cease unless the approval of the Central Government to such appointment (including its terms and conditions) is obtained within a period of six months after such date.”

It has also been pointed out that in the ordinary course of business it often becomes necessary to appoint sole selling agents for different areas and that it is inconvenient and needlessly expensive to call a general meeting within six months of each such appointment. This inconvenience might be remedied by substituting in section 294(1) for the words “a period of six months from the date on which the appointment is made” the following words :—

S. 294 (1)
and (2)

“before the expiry of six months from the date on which the appointment as sole selling agent is made or at the next general meeting of the company, whichever is later.”

In section 294(2) the words "of six months", wherever they occur, should be omitted.

Section 296 : Book Debts

118. In view of the amendment we are suggesting to Schedule VI to the Act, the following might be substituted for the existing section :— S. 296

"Section 295 shall apply to any transaction represented by a book-debt, which was from its inception in the nature of a loan or an advance."

Section 297 : Contracts in which directors have interest

119. There appears to be a drafting omission in section 297(2) We consider that the word "relative" should be inserted after the word "director". This amendment would obviate the necessity S. 297 (2)

for the consent of the Board to petty contracts for the sale to or purchase of goods from a relative.

We are unable to accept the suggestion made to us by a Chamber of Commerce that banks and all non-profit making companies should be exempted from this section. Banking companies, however, have pointed out that services rendered by a Bank to a director, or the relative, firm, partner or private company described in the section, in the normal and ordinary course of the bank's business, for which services the bank gets remunerated in the usual way, should be excluded. Another suggestion is that contracts of insurance should also be excluded. It has been suggested that this section should not apply to private companies, but in view of the fact that many public companies are managed by private companies, we are unable to accept the suggestion. It was urged that "relatives" should be excluded from the purview of sub-section (1), but in view of the revised definition of "relative" in section 6, which we have proposed (paragraph 26 *supra*), the hardship complained of would, to a considerable extent, be mitigated. It has been pointed out that occasions might arise when, in order to avert a stoppage of work or breakdown, it may be necessary to enter into contracts urgently with persons or companies coming within the restriction of the section and that

it would be impracticable to obtain the consent of the Board before entering into the contracts. It has also been pointed out that the ceiling of Rs. 5,000/- in the aggregate fixed by section 297(2) is unreasonably low and that purchases for cash at current market rates need not enter into the computation. There is some force in these suggestions. We recommend that a proviso be added to section 297(1) as follows :—

S. 297 (1)
proviso.

“Provided that if, in the cases excepted under sub-section (2), and in circumstances of urgent necessity, the company has to enter into a contract of the above description with any of the parties aforesaid without obtaining the prior consent of the Board, such consent shall be obtained at the next meeting of the Board or within three months of date of the contract, whichever is earlier.”

S. 297(2)

Section 297(2) might be amended so as to read as follows :—

“Section 297(2) : Nothing contained in clause (a) of sub-section (1) shall affect—

(a) purchases of goods from the company for cash at prevailing market prices or any contract or contracts for sale, purchase or supply of any goods, materials or services in which either the company or the director, relative, firm, partner or private company as the case may be, regularly trades or does business provided that the value of such goods or the cost of such services do not exceed five thousand rupees in the aggregate in any calendar year with every company, director, relative, firm, partner or private company aforesaid; and

(b) in the case of a banking or an insurance company, any transaction in the normal or ordinary course of business of such company with any other company director, relative, firm or partner aforesaid.”

Sections 299 and 300 : Disclosure of interest by director

120. It is true that section 299 is wide in its terms and the holding of even one share in a public company may be considered as constituting an interest. The difficulty, however, is not so

great as is imagined. All that the director concerned has to do is to give a general notice once in a year of his interest in the firm or company concerned. This has been the law under the previous Indian Act (*see* section 91A) and also under the English Act (*see* section 199). We, therefore, see no reason to make any change in section 299.

The difficulty really arises under sections 300 and 301. Under section 300, an interested director is not to take any part in the discussion of or vote on any contract or arrangement in which he is interested in terms of section 299. Sub-section (2) of section 300 exempts from the operation of sub-section (1) the contracts therein mentioned, but the exemption provided in clause (d) of sub-section (2) is very limited. We are of the opinion that the holding of shares by a director in a public company or a private company which is its subsidiary not exceeding 2 per cent. of its paid-up capital should not disqualify a director from taking part in or voting upon any contract or arrangement with such a company and we recommend that clause (d) of sub-section (2) of section 300 be amended accordingly by the addition of the following S. 300(2)(d) words at the end of sub-clause (d) :—

“or holding not more than two per cent. of the paid-up capital of the company with which the contract or arrangement is proposed to be entered into”.

Section 301 : Register of contracts

121. The section is not happily drafted. Section 301(1) should have differentiated between contracts falling within section 297 and those falling within section 299. If a director has given a general notice under section 299(3), then in the financial year in which such notice is given by him, no further disclosure need be made by him about his concern or interest in any contract or arrangement which might thereafter be entered into by the company with a body corporate or firm included in the notice. Section 297 relates to contracts requiring the Board's sanction. Section 299 deals with the disclosure of the interest of a director in a contract or arrangement and not with the approval thereof or consent thereto at a meeting of the Board. Section 301(1)(d) and (e) would be appropriate to contracts requiring the Board's sanction under section 297, but not to contracts or arrangements

not requiring such sanction. All the particulars in respect of each of the contracts approved by the Board under section 297 are to be entered in the register of contracts maintained under section 301. As indicated above, however, the Board need not approve of all contracts falling under section 299 and, further, all particulars relating to such contracts need not be entered in the register. With regard to contracts with bodies corporate or firms of which general notice has been given under section 299(3) the register of contracts need specify, as provided in section 301(3), only the names of the bodies corporate and the firms of which notice has been given by the director under section 299(3). It may sometimes happen that the contract is actually entered into more than three days after it is approved at a meeting of the Board. Suitable provision has to be made to cover that case and holidays should be excluded in computing the three days under the section. We accordingly recommend that for sub-sections (1), (2) and (3) of section 301, the following provision be substituted :—

S. 301 (1),
(2) and (3)

“301(1). Every company shall keep one or more registers in which shall be entered separately particulars of all contracts or arrangements to which sections 297 and 299 apply, including the following particulars to the extent they are applicable in each case, namely :

- (a) the date of the contract or arrangement ;
- (b) the names of the parties thereto ;
- (c) the principal terms and conditions thereof ;
- (d) in particular, in the case of a contract falling within section 297 or 299(2), the date on which it was placed before the Board ; and
- (e) the names of the directors voting for and against the contract or arrangement and the names of those remaining neutral.

(2) Particulars of every such contract or arrangement falling within section 297 or 299(2), shall be entered in the relevant register aforesaid within three days (exclusive of public holidays) of the meeting of the Board at which the contract or arrangement is approved or the date of the contract whichever is later ; and the register shall be placed before the next meeting of the Board and shall then be signed by all the directors present at that meeting.

- (3) The register aforesaid shall also specify, in relation to each director of the company, the names of the bodies corporate and firms of which notice has been given by him under sub-section (3) of section 299 and shall contain in respect of all contracts entered into by the company with such bodies corporate and firms in which a director is interested, the particulars in clauses (a), (b), and (c) of sub-section (1), and, to the extent possible, the particulars in clauses (d) and (e) of that sub-section.”.

Section 302(7) : Contracts appointing managerial personnel

122. The precise significance of this provision has been the subject of some controversy. An examination of the language of sub-section (7) in the context of the other sub-sections would make it clear that sub-section (7) is directed to those cases where managers and managing or whole-time directors are appointed by a resolution of the Board without a formal contract being entered into in pursuance of the resolution. It is to meet such cases that section 302(7) appears to have been enacted and the provisions of section 302 are made applicable to a resolution of the Board in the same manner as they would apply to any contract for the like purpose. In order, however, to avoid any doubt about the meaning of the provision, we suggest that the words “or proposed resolution” in section 302(7) might be omitted. The result would be that the appointment of a manager, a managing director or whole-time director by a resolution of the Board (but not under a contract) or a variation of the terms of such appointment should be circulated to the members of the company just as in the case of a contract appointing a manager, managing director or whole-time director.

S. 302(7)

Section 303 : Register of managerial personnel

123. Under this section read with Form No. 32, prescribed by the General Rules framed under the Act, particulars of the managerial personnel of a company have to be filed with the Registrar and whenever there is a change in the personnel of the managing agents, directors, etc. a return in Form 33 has to be filed with the Registrar by every company in which the person concerned is or becomes a managing agent, director, etc. In the case of a director

holding directorships in several companies not only the company from which he resigns his directorship, or the other company of which he becomes a director in the future will have to file the prescribed Form No. 33, but every other company which has mentioned his directorships in column 5 of Form No. 32 will have to file Form No. 33 by reason of the alteration taking place in connection with the former or the new company. It is needless to insist that if a person is a director of twenty companies and resigns from one of them and becomes a director of another, each of the twenty companies must file with the Registrar notice of such change. This requirement involves a cycle of form filling and filing of returns with no commensurate benefit or utility. It must be made obligatory that a director (or any of the other managerial persons mentioned in the section) on his resigning or ceasing to hold the office or taking up directorships or other managerial offices or in the event of a change occurring in the particulars relating to him, must communicate the change to all the companies in which he happens to hold directorships or other managerial office. It must further be provided that the company whose managerial office he accepts or takes up or from which he resigns should fill in Form No. 33 and file it with the Registrar. The rest of the companies with which he is connected need only notify the alterations at the time of the filing of the annual return under section 159 or section 160 though they should effect the changes in their registers which should be kept upto date and open to inspection of members and non-members under section 304. Literally construed, the section would apply not only to changes of personnel among directors, managing directors, managing agents, secretaries and treasurers, managers or secretaries but also to changes in addresses or in directorships of other companies of which they happen to be directors. As regards these minor changes as distinct from changes in personnel effected by resignation, removal, appointment or otherwise, they might be intimated once a year when filing the annual return and not 28 days after each such change. Form No. 32 does not provide for a statement of the date on which partners became partners of the firm, though it is required by section 303(1) (c). This omission has to be rectified.

S. 303 (2) The following proviso may be added to sub-section (2) :—

“Provided that changes in any of the particulars contained in the register, other than changes in the personnel of

managing agents, the Board of Directors, secretaries and treasurers, manager or secretary of the company shall be notified only once a year within twenty-eight days from the end of the financial year."

Section 305 : Disclosure by directors

124. As the section includes within the meaning of a director "any person in accordance with whose instructions the Board of directors of a company is accustomed to act" the reference to a disclosure within 21 days of his appointment is inappropriate. In the case of such a "deemed director" the notice should be sent, say, 21 days before the first meeting of the Board held in a year or where he acquires such position subsequently at the first meeting of the Board held thereafter. Not only the appointment to but relinquishment of directorships in other companies should be notified by the director concerned. This section should also be amended on the lines of section 308 so as to cast an obligation on the persons concerned to report to the companies affected any changes in the particulars relating to such persons within 20 days of the occurrence of the change. We suggest the following amendments to the section:—The words "or relinquishes" should be inserted after the words "who is appointed to", the words "or relinquishment" should be inserted after the words "twenty days of his appointment" and the words "and every other company in which he holds a similar appointment" should be inserted after the words "disclose to the company aforesaid".

S. 305.

Section 307 : Register of directors' shareholdings

125. Objection was taken to section 307(10) on the ground that it brings into existence an artificial person without defining him. We have already stated in paragraph 27 above that, following the English Act, a person in accordance with whose directions the Board of a company is accustomed to act is a well-recognised category. This section is intended to disclose dealings by directors in the shares of the company, particularly by reason of their inside knowledge. These considerations are equally relevant in the case of managing agents, secretaries and treasurers and managers, and it is therefore desirable that the registers to be maintained under

this section should also disclose the holdings of managing agents, secretaries and treasurers and managers. We, therefore, recommend the addition of a new sub-section to section 307 reading as under:

“The provisions of this section and section 308 shall apply to managing agents, secretaries and treasurers and managers in the same manner as they apply to directors.”

Section 309 : Remuneration of directors

126. In paragraph 83 *supra*, we have made our suggestions for the amendment of this and the allied sections relating to the remuneration of managerial personnel.

Different suggestions have been made with regard to directors' fees and remuneration. Some are in favour of a maximum sitting fee of Rs. 100/- for each meeting and others for not fixing any limit. It is not possible to fix an absolute minimum or maximum limit applicable to all cases. A sitting fee should be reasonable having regard to the position of the company and the status of the directors.

Sections 310 and 311 : Government sanction for increase in remuneration of directors

127. A suggestion has been made that in view of the provision of a ceiling for managerial remuneration in sections 198 and 309, sections 310 and 311 should be deleted from the Act as being redundant. In the case of big companies, the overall maximum managerial remuneration permissible under the Act will run into several lakhs of rupees a year and in the interests of the shareholders some kind of check or control over an increase in the remuneration of directors was considered necessary. These provisions were introduced after due deliberation and there is no reason why public companies and private companies which are subsidiaries of public companies should fight shy of publicity in this matter. If, for instance, a person is appointed as a managing director or whole-time director under an agreement for a period of five years on a scale of Rs. 750-100-1150, the increase in the monthly remuneration during the second, third and fourth years of service when they become payable will not attract the provisions of section

310. Any appointment or re-appointment of a managing or whole-time director made after the commencement of this Act, which involves no increase, direct or indirect, in the scale of remuneration previously paid for the post would not seem to require the approval of the Government. The appointment of a director or managing or whole-time director is in no way affected and only the increased remuneration is made subject to the approval of the Central Government under these sections. Increase of dearness allowance from time to time according to a scale prescribed in a contract approved by the Government does not require Government approval for every such increase.

Sections 310 and 311, to some extent, overlap each other and they may be combined and replaced by a section reading as follows :—

Ss. 310 &
311

“In the case of a public company or a private company which is a subsidiary of a public company, any provision relating to the remuneration payable to any director including a managing director or a whole-time director in the case of companies incorporated on or after the 1st April, 1956, and in the case of any such company incorporated before that date, any amendment of any such provision which has the effect of increasing such remuneration, directly or indirectly, or of making an alteration in the terms of appointment or re-appointment of managing or whole-time directors shall not have effect unless approved by the Central Government.”

Section 313 : Alternate directors

128. It has been suggested that a term of office should be fixed for alternate directors, say, a period of six months at the most. This suggestion is not practicable in view of the fact that in many cases foreign directors come to India only at long intervals for meetings of the Board and quasi-permanent alternate directors resident in India sit continuously on the Board. Section 313(2) may be amended as follows:—

S. 313(2)

“An alternate director appointed under sub-section (1) shall not hold office for a period longer than that permissible to the original director in whose place he is appointed and shall vacate office if and when the original director returns to the State in which meetings of the Board are ordinarily held.”

Section 314: Directors not to hold office of profit

129. This provision has evoked considerable criticism which to some extent is well-founded. A breach of the provisions of this section results in an automatic cessation of directorship. This would be the result even if the appointment of a relative was made by the appointing authority, such as a managing director or managing agent, without the knowledge of the director or even against his wishes. In big concerns with several branches in different parts of the country appointments of subordinate staff may be made by the local manager without reference to or without the knowledge of the director concerned. Even if it were in every case practicable, it would be inconvenient if all the relations of a person employed in the company before he is appointed a director have to be ascertained and special resolutions of the company have to be passed consenting to the appointment of each of them. The condition of obtaining previous consent by special resolution of the company may create hardship where relationship by marriage or adoption is subsequently established. As the section stands, previous consent of the company by special resolution would be necessary even if a relative of a director is appointed to a petty post carrying a small salary. The appointment of a relative in contravention of section 314(1) results in the director losing his office with liability to refund his remuneration to the company as from the date of his appointment. This is a drastic penalty which, in some cases, may not be deserved at all. It would have been more equitable if only so much of the emoluments as has been received subsequent to the contravention were required to be refunded.

The term "office or place of profit" is so wide that it might conceivably include an ordinary broker who gets commission on the business brought by him to the company. Again, the term "technical adviser" has a vague connotation. A retiring auditor has to be and can be re-appointed by an ordinary resolution at the annual general meeting except in cases provided for by section 224(2). If a director who happens to be related to such an auditor is not to lose his office, the consent of the company by way of special resolution has to be given for the director to continue in office, notwithstanding the fact that the auditor is a retiring auditor. The object of section 314 would not be achieved if the special resolution passed by the company did not specify the remuneration

or scale of remuneration and other emoluments which the holder of the office or place was expected to receive from the company. It has also been suggested that section 314 should not be made applicable to private companies which are not subsidiaries of public companies, to companies licensed under section 25 and to non-profit making companies. We do not see our way to accept this suggestion. We do not recommend that sanction of the Central Government should be obtained for appointments to which the section applies or that the employment of relatives should be prohibited or that the qualifications for the post or office should be fixed in the articles. It was urged that the prohibition contained in the section should be extended to directors of a subsidiary company or their relatives or partners holding an office of profit under the holding company and that a special resolution of the company should be secured for such appointment. We have given due consideration to the various suggestions put forward before us and S. 314 we suggest that Section 314 might be amended as follows:—

Section 314 sub-section (1) shall run as follows:—

“314(1). Except with the previous consent of the company accorded by a special resolution—

- (a) no director of a company shall hold any office or place of profit, and
- (b) no partner or relative of such a director, no firm in which such a director or relative is a partner, no private company of which such a director is a director or member, and no director, managing agent, secretaries and treasurers, or manager of such a private company shall hold any office or place of profit carrying a total monthly remuneration of three hundred rupees or above,

except that of managing director, managing agent, secretaries and treasurers, manager, legal or technical adviser, banker, or trustee for the holders of debentures of the company,

- (i) under the company; or
- (ii) under any subsidiary of the company, unless the remuneration received from such subsidiary in respect of such office or place of profit is paid over to the company or its holding company.

Explanation.—For the purpose of this sub-section, a special resolution according consent shall be necessary for every appointment in the first instance to an office or place of profit and to every subsequent appointment to an office or place of profit on a higher remuneration not covered by the resolution, excepting cases where the special resolution has already approved an appointment on a time-scale.”

(2) Section 314 sub-section (2) shall run as follows:—

“Where a relative of a director or a firm in which such a relative is a partner, is appointed without the knowledge of the director, the approval of the company may be obtained within three months from the date of the appointment, failing which the person holding the appointment shall cease to hold it and shall be liable to refund to the company any remuneration drawn by him.”

(3) Add the words “or sub-section (2)” after the words “the provisions of sub-section(1)” in the existing sub-section (2) and renumber the existing sub-section (2) as sub-section (3).

(4) In section 314, sub-section (3), as it stands at present, which would be sub-section (5) under the amendment proposed above, the words “in a company” occurring at the beginning of the sub-section shall be omitted. In sub-section (3), clauses (a) and (b), now proposed to be renumbered as sub-section (5), add the words “from the company” between the words “obtains” and “anything”.

(5) Section 314 sub-section (4) will run as follows:—

“Every person proposed to be appointed to any office or place of profit to which this section applies shall, at or before the time of such appointment, declare in writing whether he is or is not connected with a director of the company in any of the ways referred to in sub-section (1).”

(6) The existing sub-section (3) of section 314 will be renumbered as sub-section (5).

Sections 324 to 331: Managing Agency

130. The future of the managing agency system has been the subject of keen controversy both inside and outside Parliament. One view, strongly held, is that the system has outlived its utility and leads to so much abuse that it should be abolished. Others hold the view that the system has still a useful function to fulfil and should be reformed instead of being ended. The provisions embodied in the Act are the result of a compromise. On one view they provide for gradual abolition; on the other, the system is put on trial. The effect of sections 324, 326, 328 (2) (c) and 330 is (1) to eliminate managing agency in notified industries or businesses (2) to eliminate undesirable persons being appointed or reappointed as managing agents and (3) to set a date, 15th August, 1960, by which time the Government would have assessed the position industry-wise and formulated a policy for the purpose.

Many managing agencies came to an end on 15th January 1957, by virtue of section 87A of the Act of 1913. Most of them have been renewed for a term of 10 years. It is for consideration whether these renewals are covered by section 330 so that these managing agencies will not come to an end by 15th August, 1960. A large number of other managing agencies will come up for renewal after 15th August, 1958, by virtue of section 328 (1) (c). We are informed that from 1st April, 1956, to the end of September, 1957, there were 98 applications for fresh appointment as managing agents out of which 83 applications were granted; there were 202 applications for re-appointment out of which 193 applications were granted. The Government do not appear to have laid down any policy regarding the future of the managing agency system. The Chairman of the Advisory Commission informed us that in considering applications for appointment or reappointment as managing agent, the Commission principally concerned itself with the question of remuneration. Further, renewals have been granted on a liberal scale and such re-appointments will not terminate on 15th August, 1960, notwithstanding the provisions of section 330. It is true that these appointments and re-appointments are made without prejudice to any action the Government may take under section 324. It is now desirable that the Government should formulate a definite policy so that by the 15th August, 1960, action can be taken under section 324 and the present state of suspense removed.

Sections 326, 327, 329 and 355: Managing Agency of private companies

131. In the case of private companies, the appointment of a managing agent or the variation of the terms of the managing agency agreement is subject to the approval of the Central Government under sections 326 and 329 of the Act. The remuneration payable to the managing agents is, however, not subject to the control of Government and there is no ceiling on such remuneration as has been provided for by section 198 or section 348 in the case of managing agencies of public companies or of private companies which are subsidiaries of public companies. The result, therefore, is that there is no control over the remuneration payable to managing agents of private companies except under section 326 (2)(b). Section 355 of the Act states that sections 348 to 354 shall not apply to a private company unless it is a subsidiary of a public company and thereby makes it clear that the remuneration of the managing agents of private companies is not subject to any ceiling under the Act. While the appointment of managing agents of private limited companies is subject to the control of Government, the remuneration payable to them which is an integral part of the terms of such appointment, is left uncontrolled by Government. To this extent, the principle underlying section 355 is inconsistent with the principle of sections 326, 327 and 329. The logical position would be to delete section 355 and make the ceiling on managerial remuneration provided in sections 198 and 348 applicable to managing agents of private companies also. Alternatively, the provisions of section 327 (c) should be deleted. As, however, these matters were so recently, as in 1955, debated in Parliament and the decision embodied in section 355 was arrived at, we consider it too soon for us to commend a change in the law.

Section 326: Approval of Central Government

132. A Chamber of Commerce has pleaded for abrogation of the control of the Central Government in the matter of fixing the remuneration of managing agents within the limits prescribed by section 198(1). Section 326 has been advisedly framed so as to empower the Government to consider whether the conditions of the managing agency agreement proposed are fair and reasonable having regard to the financial resources of the company, the nature of the business and the qualifications and fitness of the managing agent. There is no need for any amendment of section 326.

Sections 328, 329, 330 and 331: Duration and terms of managing agency agreements

133. If a variation of the terms of a managing agency agreement is necessary to bring it in conformity with the Act, the previous sanction of the Central Government should not be necessary. The following words may be added at the end of the section 329:— S. 329

“except where the resolution seeks only to bring the terms of the managing agency agreement in conformity with the provisions of the Act.”

Section 332: Restrictions on number of managing agencies

134. In view of the provisions of section 325, read with section 379, the words “secretaries and treasurers” in section 332 (4)(b) may be omitted. S. 332 (4)(b)

Section 340: Removal of disqualification

135. There is no parallel provision in the Indian Act of 1913. For sub-section (1) of section 340, the following might be substituted:— S. 340(1)

“The disqualifications imposed by sections 334(a), 335(1), 336 and by any resolution passed in pursuance of clause (ii) of section 337 shall take effect subject to the result of any appeal or petition of revision or review from the order of adjudication, appointment of receiver, sentence or finding of the Court as the case may be.”

Section 342: Resignation of office by a managing agent

136. Sub-sections (2) to (5) do not clearly carry out the intention underlying them. Resignation cannot absolve the managing agent from his liability for his acts of omission or commission during his managing agency. Though he cannot be allowed to work after his resignation, the company may not desire to accept his resignation unconditionally or at all. In many cases, however, it would be necessary to require the managing agent, who has been in close touch with the affairs of the company, to prepare the statement of affairs and accounts of the company as

provided by sub-section (3) and furnish such other information as may be necessary in order to enable the Board of directors and the company to have a clear idea of the state of the company's affairs at the date of the notice of resignation by the managing agent. Section 342, sub-sections (2) and (5), may be amended as follows:—

S. 342(2)
to (5).

S. 342(2): For the words "but his resignation shall not be effective until it is considered as provided in sub-section (3)", substitute the words "but the managing agent shall not be absolved from liability to the company for his acts of commission or omission during the period of his managing agency."

"(3) When notice of resignation is given as aforesaid, the Board may require the managing agent within such time as may be fixed by it or such further time as may be allowed by it, to prepare a report on the state of affairs of the company as on the date specified in the notice of resignation or such subsequent date (as the Board may think suitable), not being later than that on which the managing agent ceases to act as such under sub-section (2), together with a balance sheet made out as on that date and a profit and loss account for the period commencing from the date upto which the last such account was prepared and laid before the company in general meeting and ending with the date on which the managing agent ceases to act as such."

"(4) In case of default by the managing agent in complying with the requisition of the Board under sub-section (3), the Board shall itself cause a report on the state of affairs of the company, together with a balance sheet and profit and loss account for the period specified in sub-section (3), to be prepared and also obtain a report from the auditors of the company on such balance sheet and profit and loss account in accordance with sections 227, 228 and 229 and place the managing agent's resignation, together with the report on the state of the company's affairs, balance sheet, profit and loss account and auditors' report mentioned above, before the company in general meeting."

"(5) The company at such meeting may, by resolution, accept the resignation of the managing agent or take such further action with reference thereto as it may deem fit."

Section 343: Transfer of office by managing agent

137. It has come to our notice that apparently with a view to evade the requirements of section 343 as to the approval of the Government to a transfer of the managing agency and, in due course, of section 332 under which one managing agent can manage not more than 10 companies, some managing agents have given an irrevocable power of attorney to third parties to manage the affairs of the company of which they are in charge, reserving to themselves a portion of the profits. Opinion has differed as to the legal effect of such an arrangement, one view being that it is not distinguishable from a transfer of the office and the other view being that it is the creation of an agency without a transfer of the right. In order to remedy these defects, section 343 might be recast as follows:—

“S. 343. A transfer of his office by the managing agent of a company or any arrangement entered into by him which has the effect of transferring his right to manage the whole or substantially the whole of the affairs of the company to another person, shall not take effect unless it is approved both by the Company in general meeting and by the Central Government”.

Section 346: Changes in managing agency

138. The section which is based on section 87-BB of the Indian Companies Act, 1913 is framed in a comprehensive manner in order to ensure that when a change likely to affect the composition of the managing agency as already approved by Government occurs, Government should have an opportunity to re-assess the position. It has been represented that applications under this section have to be made for approval by Government of matters which do not involve any material change in the constitution of the managing agency. The instances which have been mentioned are:—transfer of preference shares carrying no voting rights; change of one of the directors whether by death, retirement or otherwise, where the managing agency is a body corporate; death or retirement of a partner or the introduction of a new partner where the managing agency is a firm; appointment of alternate directors for period not exceeding six months and issue of unissued shares to existing members.

It has been pointed out that sub-section (1), as it stands, requires sanction to be obtained after a change takes place and, if for any reason, approval is not granted by the Government, the consequence is that the managing agent ceases to act as such. The proper thing is to provide that the change shall not be effective until approval is granted.

The question has been raised before us whether Explanation (c) to section 346(1) would apply to cases where there has been a change in the ownership of preference shares without voting rights. The suggestion has been made that it will obviate the necessity for frequent applications to the Government for their approval if Explanation (c) is confined in its application to a change in the ownership of equity shares of the managing agency company. On the language of the Explanation, as it stands, it would apply to changes in the ownership of preference shares as well as equity shares.

Explanation (1)(b) to section 87-BB of the Act of 1913 (as amended by the Amendment Act of 1951) was also to the same effect. Though it is the equity share capital that really counts in determining the composition of the directorate of a company, there may be cases of preference shares with voting rights secured under the terms of the issue of such shares and of preference shareholders having acquired voting rights by reason of accumulation of arrears of dividends in accordance with section 87(2). If section 346(1), Explanation (c), has to provide only for these cases, it will lead to a series of complicated amendments, which in our opinion, are not imperatively required. We gather that applications made to the Central Government for recognition of transfer of shares are usually granted without difficulty and, in these circumstances, we consider that section 346(1), Explanation (c), had better be left as it is.

In Explanation (b) to section 346(1), the legislature has expressly treated changes caused by the death or retirement of a director or manager as a change in the constitution of the managing agency and we see no sufficient reason for recommending an abrogation of this provision, particularly when we find that applications to Government for approval in the circumstances specified in Explanation (b) have been very small in number.

The only change that we recommend in section 346 is as follows:— S. 346(1)

For the latter part of section 346(1) beginning with the words "the managing agents shall cease to act", substitute the following:—"such change shall not have effect unless approved by the Central Government within six months from the date on which the change took place or such further time as the Central Government may (whether before or after the expiry of the six months) allow in that behalf."

Section 348 : Managing Agency Remuneration

139. Naturally much attention was bestowed by the representatives of managements in their submissions before us on this and the following sections relating to managing agents. Shareholders' representatives, also pointed out that in the case of some big companies, certain managing agents earned as much as half a crore of rupees by way of remuneration in recent years and that the ceiling on the managing agency commission must be lowered. It was also pointed out that directors' remuneration even in the case of some of the biggest English companies never exceeded 2% of the net profits whereas in India managing agents drew a much larger percentage of the profits. A chamber of Commerce has suggested that the percentage of managing agency commission should be fixed on a graduated scale according to the paid-up capital of the companies. There may be some equity in fixing the commission at a percentage of the profits, but none in fixing it at a percentage of the paid-up capital. A sliding scale according to the amount of annual profits earned or, alternatively, an upper limit or ceiling of 5% of the profits in the case of public companies making large profits was suggested. We see no sufficient grounds for revising the percentage of profits fixed by the legislature so recently as in 1955 after prolonged discussion. Section 348 does not prohibit payments to managing agents under the provisions of sections 354, 356, 357, 358 and 360 and the opening words of section 348 could be construed as saving such payments from the operation of that section. Section 361 also proceeds on that basis. Sections 356 to 360 refer to services other than those of managing agent like selling and buying agency services,

S. 348

which might as well be rendered by strangers, but which, if rendered by the managing agent, could be paid for subject to the conditions prescribed in the sections. To make this clear, it may be desirable to omit the opening words of the section, *viz.*, "Save as otherwise expressly provided in this Act" and to add sub-section (2) to section 348 in these terms:—

"(2) Nothing contained in sub-section (1) shall be deemed to affect the operation of sections 354 to 360."

The existing section should be numbered as sub-section (1).

Section 349 : Determination of profits and losses

140. This section has given rise to a number of difficulties in its interpretation and application. While a company is required to prepare its accounts in the form laid down in Schedule VI to the Act, its ascertained profits will differ for various purposes. For example, profits for income-tax purposes will be determined from these accounts but on the basis laid down in the Indian Income-tax Act; the accounts themselves will disclose the profit available for distribution as dividends but these will have been first debited with the remuneration payable to the staff and workpeople, the management and the directors and in determining such remuneration separate computations of "profits" may have been required to be made in respect of two or more of these classes.

"Net profits of a company in any financial year" in their ordinary commercial sense, which no businessman would misunderstand, mean the excess of revenue receipts over the revenue expenditure incurred for earning those profits in a given period. It is in this light that many of the expressions used in section 349(4) like "usual working charges", "outgoings", "repairs" have to be understood. Any attempt at defining them is not practicable.

With reference to sub-sections (4)(f) and (g) of section 349, it was urged that interest on borrowings by way of debentures or otherwise should not be deducted in arriving at profits during the period of construction before the company starts manufacturing, such interest being attributable to capital and going to enhance the capital value of the asset. If this interest is not capitalised

it will be part of the loss but it can be regarded as a loss of a capital nature within the meaning of sub-section (4)(1) and there is no need for making any change in this respect. Losses of previous years have to be carried forward and deducted from the profits of subsequent years under section 349(4)(1). The loss contemplated by section 349(4)(1) is the loss appearing in the audited accounts and balance sheet of the company and the entirety of this loss in so far as it has been incurred in any financial year which begins at or after the commencement of the Act must be written off before the managing agent or managing director can claim a percentage of profits. Section 349(4)(1) may be amended by the insertion of the words "computed according to this section and" before the word "incurred".

S. 349(4)(E)

It has been suggested that a specific provision should be made for deduction of bad debts in section 349(4). On the mercantile accountancy basis applicable to companies, amounts that have accrued due but are not received and amounts that are exigible though not paid, are taken into account and amounts due in respect of earlier years but which during the year of account are found to be, or are considered likely to become, irrecoverable as bad debts are deducted in arriving at the balance of profits and gains. At present, there is no obligation cast on a company to write off bad debts though every honestly-managed company should make proper provision therefor before computing its profits. Bad debts might properly be included as one of the usual working charges referred to in section 349(4)(a). As section 349(4) descends into a few details but does not exhaust them, a managing agent might, without writing off bad debts, try to take a commission by way of a percentage on imaginary or inflated profits. The following subclause might, therefore, be added to section 349(4):—

S. 349(4)(C)

“(o) debts considered to be bad or doubtful in the year of account.”

It was said that the expression "usual working charges" in section 349(4)(a) is vague but we do not think this is so; it means revenue expenditure usually incurred by companies and treated as such. Pointed reference in this connection was made to the treatment for account purposes of contributions to religious

and secular charities, funds of political parties and associations organised for sport, recreation, etc. If these contributions are recurring and reasonable, they would, in our view, be part of the "usual working charges" in section 349(4)(a) or "outgoings" in 349(4)(j). To put this matter beyond doubt, however, we suggest that section 349(4)(j) might run as follows:—

"(j) All other outgoings inclusive of contributions made under section 293(1)(c)."

With reference to section 349(4)(c), a question has been raised as regards bonus paid in a subsequent year for work done by workmen in the previous year. If no appropriation for bonus has been made and the bonus is payable in a subsequent year say, under an award of an Industrial Tribunal, the bonus is an outgoing of that year. However, a provision made to meet a bonus which, it is known at the time of the closing of the accounts, will have to be paid, is properly to be included as a working charge; any additional bonus awarded by a tribunal can only be treated as we have already indicated, as an outgoing of the subsequent year in which the amount is ascertained or becomes payable. We are suggesting in paragraph 147 *infra* a provision for a statement with relevant details showing the computation of the commissions payable by way of a percentage of the profits to managing agents, directors, etc. being attached to the profit and loss account.

Section 350 : Ascertainment of Depreciation

141. We received many representations regarding the difficulties which have arisen in giving effect to the provisions of this section. The object of providing that the depreciation to be charged against profits for the purpose of calculating managerial remuneration, should be ascertained in the manner laid down in the section is clear, *viz.* that there should be a uniform basis and the matter not simply left to the discretion of the management which is being remunerated. On this consideration, the procedure provided by section 350 is apparently satisfactory to the extent that it requires an amount to be taken into account as depreciation which is equal to the normal allowance for income-tax purposes and that it operates equitably as between different

companies. The practical difficulty arises, however, because at the time when a company's accounts are made up, the amount of the depreciation allowance for income-tax purposes is not known with certainty. Furthermore, in subsequent years, after the first year in which this procedure is followed, either the written down value on which depreciation is to be calculated will differ for income-tax and accounts purposes or, if the section is strictly construed, the result will be that over the life of any asset, commission will be allowed to the managing agents and others on profits which exceed the true profits by an amount which is roughly equal to the extra shift, initial and special allowances for income-tax purposes. The basis is not, therefore, satisfactory and this is particularly the case where the income-tax written down values of a company's assets are substantially below the values at which the same assets stand in the company's books. In such cases, the result is that the managing agents, who have probably received their remuneration in the past either calculated on sales or on profits before charging any depreciation at all, will now receive commission on profits considerably in excess of the profits which will be found available for the shareholders after writing off what may be termed "commercial" depreciation. This result appears to be at variance with the principle underlying the Act and was presumably not intended.

Having given this matter careful consideration, we are of the opinion that the most equitable manner of dealing with it will be to provide that the amount of depreciation to be deducted in pursuance of clause (k) of sub-section (4) of section 349 should be ascertained by applying the rates prescribed in the Indian Income-tax Rules to the written down values of the assets in respect of which depreciation allowances are admissible for income-tax purposes, such written down values being the values, at which these assets stand in the company's books at the end of each financial year after deducting amounts written off as depreciation in earlier years. This proposal, if adopted will have the effect of charging against profits each year, for purposes of calculating managerial remuneration, an amount in respect of depreciation which will be approximately the same as the amount which should properly be written off as depreciation in the company's profit and loss account for that year, if such account is to show a true and fair view of the profit or loss for the year, as required by section 211(2). We have

already suggested in paragraph 89 of this Report that section 205 should be amended to secure that dividends, when they are proposed to be paid out of the profits of the financial year, may only be declared after an amount has been provided for depreciation and we have further suggested that this amount should be ascertained in terms of section 350, which we now recommend be recast as follows:—

S. 350

“The amount of depreciation shall be the amount calculated with reference to the written down value of the asset as shown by the books of the company at the end of the financial year ending on 1-4-1956, or immediately thereafter and, at the end of each subsequent financial year, at the rates specified for the asset by the Income-Tax Act and the rules framed thereunder for the time being in force, as normal depreciation including therein extra and multiple shift allowances, but not any special, initial or other depreciation or any development rebate, whether allowed by that Act or the rules framed thereunder or otherwise or any arrears of depreciation.”

Section 354 : Office allowance

142. This section embodies the principles of sections 69 and 70 of the Contract Act as applied to managing agents. It would be a patent misapplication of this section if it is now used, as it was done in the past, as a means of earning additional remuneration by or for the managing agents for their services as such. The case of a single managing agent in charge of a number of companies employing an expert engineer or scientist on his staff and lending his services to the several managed companies are instances where this section could be invoked. If the work done by the expert is allocated to the managed companies and a *pro rata* distribution of the salary paid to him is made and realised from the managed companies, the arrangement would not be within the mischief of section 360, but would be saved by this section. But, if the managing agent made a profit out of such service, then section 360 would be attracted. In view of the antecedent history and the abuses which led to the enactment of this section, the sanction for reimbursement of expenses should be based on a certificate of

the auditor of the company or of the managing agent. We, therefore, recommend that in the section, after the words "on behalf of the company", the words "certified by the auditor of the managing agent or of the managed company", should be added. S. 354.

Sections 356 to 360 : Managing agents and Selling and buying agencies

143. These sections have been enacted in order to check certain abuses of the managing agency system and prevent the unjust enrichment of the agent in several ways. They have had the effect of compelling disclosure and probably also a deterrent effect, but on the evidence before us, we do not find that managing agents have had any difficulty in getting special resolutions passed by the companies as required by these sections. There has been criticism of these provisions from opposite quarters, the management pleading for the abrogation of restrictions on freedom of contract and shareholders pressing for a total ban on all such contracts which involve a conflict of interest and duty. We do not pursue these arguments but follow the middle course taken by the Act. Chambers of Commerce have suggested that Government should have discretionary power to exempt companies from the operation of sections 356 to 360, when necessary or desirable. Shareholders' associations have asked for the imposition of a condition of prior approval by the Central Government to the arrangements falling within sections 356 to 360. We do not consider it proper or practicable that the Government should take up these responsibilities. The shareholders must decide whether to approve or disapprove of these transactions after insisting on a full and proper disclosure of all material facts. A special resolution approving of the transactions referred to in these sections is necessary in order to act as a check on managements using their position unjustly to enrich themselves at the expense of the shareholders and this provision should not be abrogated as urged on behalf of the management. Managing agents occupy a fiduciary position in relation to the managed company and the making of contracts between themselves or their associates and the company whereby they stand to gain, has properly been subjected to conditions in the light of past experience and the wide prevalence of the *benami*

system. The real remedy lies in the growth of active shareholders' organisations and the ability and public spirit of the shareholders in exposing the irregularities of the management.

If a managing agent keeps an office outside India only for selling the goods of the several companies of which he is the managing agent, it could not be said that he is keeping an office for his own business or for a business not connected with that of the managed company. In that case the managing agent would be charging the managed companies *pro rata* and recovering his expenses under section 354. Section 356 (2) might be clarified so as to bring out this point by the addition of the words "or any other company managed by the managing agent" at the end of section 356 (2)(a). A similar amendment might be made in section 358 by the addition of the words "or any other company managed by the managing agent" after the words "business not connected with that of the company" in section 358(2).

S. 356(2)
S. 358(2)

Section 359: Commission earned by managing agents

144. While it has been claimed that this section gives rise to difficulties due to the multiplicity of transactions involved, it has also been pointed out that where the main contract for sale or purchase of goods or supply of services ranging over a period, has secured the approval of the company by a resolution, each transaction of sale or purchase or instalment of service taking place under the main contract need not get separate approval by way of a resolution of the company. The section, as it stands, supports this construction and no amendment is called for.

Section 360: Contracts between companies and managing agents

145. The section deals with principal to principal contracts between the company and its managing agent or his associates. It limits the scope for managing agents making profits for themselves or in the names of their associates. It was said that the section works serious hardship as it interferes with transactions in the usual course of business between a company and its managing agent or his associates. This is particularly so where

a group of public companies have the same managing agents, as it requires the previous approval of the company by a special resolution to the dealings between the company and the managing agent or his associates. It also makes it difficult for a company to meet temporary shortages of stores, chemicals, machine parts or other materials in an associate company required in order to avert a breakdown in the latter. Such temporary services or arrangements have sometimes to be made available at very short notice. In such cases, it should be sufficient if the company gives its consent at the next general meeting. The language of section 360(1) is permissive and it looks as if the approval of the company was not mandatory, but the intention of the framers was otherwise. The opening portion of section 360(1) may, therefore, run as follows:—

“A contract between a company and its managing agent or an associate of the managing agent

- (a) for the sale, purchase or supply of any property, movable or immovable, or for the supply or rendering of any service other than that of managing agent, or
- (b) for the underwriting of any shares or debentures to be issued or sold by the company

shall not be valid as against the company unless the company either previously or at its next meeting within a period of three months from the date of the contract approves of the contract by a special resolution”.

A minor amendment we suggest is the addition of the words “or rendering” after the words “or supply” in section 360(4).

We would recommend the addition of an Explanation to the section at the end in these terms:—

“*Explanation.*—Where it is not possible to set out in the special resolution all the terms and conditions of the contract or the details regarding quantities or rates or times of delivery of goods or rendering of services, it shall be deemed to be a sufficient compliance with the section, if the special resolution approves generally of the terms relating to the duration of the contract, the goods or services to be supplied or rendered, the approximate quantities thereof, the rate

S. 360 (1)

S. 360(4)

S. 360(4)
Expl.

or rates of payment therefor and the remuneration, if any, payable to the managing agent or his associates, provided that full particulars of the transactions resulting from the contract are entered in the register kept under sub-section (3).”

Section 361: Termination of existing contracts

146. The drafting of the section is unhappy and the intention of the legislature is not clearly discernible. The section does not, in terms, save the operation of existing contracts for the intervening period upto 1st March, 1958 or if they, by their own force, terminate on an earlier date, upto that date. Sections 356 to 360 prohibit certain arrangements with and payments to managing agents and section 361 does not purport to make them lawful so far as existing contracts relating to such matters are concerned. As it was evidently intended to save existing contracts from the ban imposed by sections 356 to 360 until 1st March, 1958 or an earlier date if they terminate earlier, the section might run as follows:—

S. 361.

“Nothing contained in sections 356 to 360 shall affect any contract relating to any of the matters specified in these sections in force at the commencement of this Act, to which a company and its managing agent or associate are parties, and such contract shall continue to remain in force until the first day of March, 1958 unless it terminates on an earlier date according to its own terms.”

Section 362A: Statement of remuneration of managerial personnel

147. We would recommend the addition of a section in these terms:—

S. 362A.

“362A.—Every company shall, in its profit and loss account or in a statement annexed thereto, give full particulars of—

- (a) managerial remuneration that is to say, amounts paid during the financial year to the managing agent, secretaries and treasurers, directors, including managing directors, or manager, if any;

- (b) expenses reimbursed to the managing agent under section 354;
- (c) commission or other remuneration payable by the company separately to a managing agent or his associate under sections 356, 357 and 358 ;
- (d) commission received by the managing agent as buying or selling agent of other concerns under section 359; and
- (e) the money value of the contracts for sale or purchase of goods or supply of services, entered into by the company with the managing agent or his associate under section 360 during the financial year."

Section 363: Liability for breach of trust

148. For the word "account", the words "be liable to pay" should be substituted so as to prevent any defence of limitation on the part of the managing agent or his associate who has received monies in contravention of sections 348 to 354 and 356 to 360.

S. 363.

Sections 369 and 370: Loans to managing agents and associates etc.

149. Section 295 deals with loans to directors and section 369 with loans to managing agents and their associates. Both the management and the Department have pointed out difficulties caused by these provisions. The restriction in section 369 which is absolute was designedly introduced to prevent abuse of their position by managing agents or their associates by appropriating the company's funds under the guise of loans. It is pointed out that the provisions of section 370 are restricted in scope as they cannot be made use of in cases where managing agents hold $33\frac{1}{3}$ per cent. or more of the shares in companies in the same group because they would be associates of the managing agents to whom loans are forbidden under section 369. These provisions, though stringent, are designed to safeguard the funds and the interests of the lending company and we cannot recommend any change therein. The amended definition of "relative" in section 6 would, to some extent, minimise the hardship arising from the inclusion of associates in section 369.

- S. 369(1)(a) It has been pointed out that the restriction in section 369(1)(a) is avoided by a loan to an intermediary who in turn lends the money to the managing agent or associates. To prevent this, the words "shall directly or indirectly make" may be substituted for the words "shall make" in section 369(1)(a). In order to prevent an abuse of the facility given by section 369(2), the following Explanation might be added to the sub-section:—
- S. 369(2)

Explanation.—The credit referred to in sub-section (2) refers only to the cash advance given by way of a permanent advance or imprest for facilitating the carrying on of the company's business, transactions on such advance or imprest accounts being settled as far as possible on a monthly basis."

- As regards loans made before the Act in contravention of sections 369 and 370, a provision similar to that of section 295 should be inserted as section 370A in these terms:—
- S. 370A.

Section 370A.—Where any loan made or guarantee given or security provided by a company hereinafter in this section referred to as the "lending company" remains outstanding at the commencement of this Act, which, if section 369 or section 370 had been then in force, could not have been made, given or provided, the lending company shall, within six months of the commencement of this Act or such further time as might be granted by the Central Government on application by the company, enforce the repayment of the loan made, or the loan in connection with which the guarantee was given or the security was provided notwithstanding any agreement to the contrary."

- A minor drafting omission may be rectified by the insertion of the words "or for" after the word "to" in section 370(2)(b).
- S. 370(2)(b)

- It might be provided by a new sub-section (3) to section 370 to the effect that nothing in the section shall apply to a book debt unless the transaction represented by the book debt was, from its inception, in the nature of a loan or an advance.
- S. 370(3)

It has been suggested that loans by a subsidiary to its holding company or to another subsidiary of the same holding company should be included in section 370(2) and exempted from the ope.

ration of section 370(1). Sections 295 and 370 do not allow loans by a subsidiary to its holding company, evidently because such loans might be granted under compulsion or pressure from a quarter having a controlling interest and might not be to the advantage of the lending company. The case of a loan by a wholly-owned subsidiary to the holding company or to another wholly-owned subsidiary of the same holding company, might stand on a different footing. There is no sufficient reason for an alteration of the law in this respect.

Instances of inter-company loans opposed to the spirit of section 370(2) have come before the Department. Lending company A has subsidiaries B, C, D and E of which B alone is a public company. F, a subsidiary of B gives loans to C, D and E as well as to A. The loans given by F would not strictly fall under section 370(2). To make the position clear the word "or" might be added at the end of clause (ii) to the Explanation under section 370(1) and a new clause may be inserted in these terms:—

"(iii) if the ultimate holding in the shares of the two bodies is controlled by the same company or individuals having a controlling share-holding interest therein, despite the interposition of one or more companies in the chain of holding company and subsidiaries".

S. 370(1)
Expln.

The restrictions in section 370(1), Explanation (ii), could be defeated if the majority are nominee directors representing a company having a predominant shareholding interest in either the borrowing or lending company or in both. There may also be cases where the directors of the lending company, whether nominees of the holding company or not, are accustomed to act in accordance with the directions or instructions of other persons. A provision analogous to section 369(1)(b) might be added at the end of section 370, Explanation (ii), in these terms:—

"For the purpose of this Explanation, any person in accordance with whose instructions the Board of directors of a company is accustomed to act, shall be deemed to be a director."

It is also desirable to make a provision that in some cases a subsidiary company shall be deemed to be under the same management as that of the holding company irrespective of whether they are both actually managed by the same managing agency or secretaries and treasurers. In section 370(1), Explanation, the following sub-clause might be added:—

“(iv) If the holding company of one is under the same management as the other within the meaning of the foregoing clauses (i) to (iii).”

A bank can have no managing agents and a director of one bank cannot be a director of another. Banks should be permitted not only to lend to other banks but also to companies under the same management in the usual course of business. A sub-clause might be added to section 370(2) in these terms:—

“(c) by a bank in the ordinary course of its business.”

Section 372: Inter-company investments

150. It has been urged by a Chamber of Commerce that when a new joint stock enterprise is sponsored by an existing company, it often becomes necessary that a substantial block of shares in the new enterprise should be taken up by the sponsoring company, with a view to inspiring confidence in the public and that the existing limit of 10 percent is inadequate in such cases. Section 372(3) allows this limit to be exceeded if the investing company by its resolution sanctions such investment and the Central Government approves of it. This restriction is necessary to safeguard the interests of companies under a common management. Clarification has been sought on the point whether investments made within the same group during the course of the year, but which did not exist at the date of the balance sheet should be entered in the list required to be filed under section 372(9). This information might be necessary to the shareholders of the companies concerned and the meaning of section 372(9) could be made clear by inserting the words “during the course of the financial year as well as those in which shares or debentures held by it at the end of such year” after the words “made by it”.

Section 377: Appointment of director by managing agent

151. It has been claimed by some managing agents that, by an agreement with the company, they might acquire a right to nominate the Chairman of the Board of the managed company in the exercise of their power of appointment of directors. While it might be open to the directors to elect the nominee of the managing agents as its Chairman, he should not be forced upon the Board at the will of the managing agents. We recommend an amendment of section 377(1) by the addition of the following words:— S. 377 (1)

“but the Chairman of the Board, if any, shall always be elected by the directors.”

Sections 384 to 388: Managers

152. For the words “No public company, and no private company which is a subsidiary of a public company” occurring in section 384, the words “No company” might be substituted. S. 384. Though section 387 is not explicit on the point, the intention of the legislature appears to have been that even if the remuneration of the manager is fixed on the basis of a fixed monthly payment, the total remuneration drawn by him should not exceed five per cent of the net profits. This might be made clear by omitting the words “not exceeding five” and adding the following at the end of the section :— S. 387.

“but such remuneration shall not exceed in the aggregate five per cent of the net profits.”

A new section, section 388A might be added in these terms:—

“Sections 384, 386, 387 and 388 shall not apply to a private company which is not a subsidiary of a public company.” S. 388 A.

If this amendment is carried out, section 386(5) has to be deleted. The object of the amendment is to make it clear that the provisions of sections 384 to 388 are not applicable to private companies which are not subsidiaries of public companies.

Section 390 : Compromises or arrangements with creditors

153. Section 390(a) may be amended as follows:—

“The expression ‘company’ means any company including a foreign company liable to be wound up under this Act”.

A reference to such foreign companies will be found in para 190 *infra*.

Section 391(2) : Proxies at Meetings

154. The expression “where proxies are allowed” occurring in section 391(2) requires clarification. The expression “where proxies are allowed” may mean “where proxies are allowed under the articles or other provisions of the Act”. If that is so, the Court would have no power to allow voting by proxy where it is not allowed by the articles or the other provisions of the Act, as for instance, in the case of a meeting of creditors or in the case of a meeting of the members or class of members of a company not having a share capital, the articles of which do not provide for voting by proxy. Under the corresponding section 153 of the Indian Companies Act, 1913, and section 206 of the English Act, voting by proxy is provided for in absolute terms without the qualifying words “where proxies are allowed”. The expression “where proxies are allowed” in section 391(2) might also mean “where proxies are allowed by the Court dealing with the application”. The Act does not provide for voting by proxy in the case of:—

- (i) general meeting of members or meetings of a class of members or of debenture holders of a company having no share capital except where the articles so provide;
- (ii) meetings of creditors; or
- (iii) meetings held in respect of companies under liquidation where the Supreme Court has power to frame rules under section 643.

The power to fix a quorum or permit voting by proxy might be said to be implied in the expression “held and conducted in such manner as the Court directs” occurring in section 391(1) and also by the rule-making power under section 643(1)(b) (iii). In this

view, the expression "where proxies are allowed" occurring in sub-section (2) of section 391, might mean "allowed by the Court under the powers conferred on it by sub-section (1) of section 391 or under the rule-making power conferred by section 643(1) (b) (iii)". There is no reason why the creditors should have no right to vote by proxy (which they had under the previous Act) and the Court should be powerless to grant them the right. The purpose of introducing the words "where proxies are allowed" might have been to give the Court the discretion, where it thinks fit, to disallow voting by proxy. In order, however, to avoid any controversy, we would suggest that the words "where proxies are allowed" in section 391(2) should be deleted so as to empower the Court to allow voting by proxy when it orders meetings to be held in the course of liquidation proceedings. S. 391(2)

Section 408 : Appointment of Directors by Government

155. In our opinion, directors appointed by Government need not hold qualification shares under section 270 nor need they be members of the company. They may be removed by the Government before the expiry of the term of their appointment. In practice difficulties are experienced in finding suitable members of the company who can be appointed by the Government. Government may appoint members if proper persons are available but need not be bound to appoint only members. The words "being members of the company" in section 408(1) may therefore, be omitted. A consequential amendment may be made in sub-section (2) by substituting the word "persons" for the words "members of the company." It has been represented to us that the requirement that 200 members should join in the application is difficult of compliance. The number might be reduced to 100 but the alternative provision of one-tenth of the voting strength might remain. The following new sub-section may be added as sub-section (4):— S. 408(1)
S. 408(2)
S. 408(4)

"A director appointed by the Central Government under sub-section (1) or (2) shall not be required to hold any qualification shares nor shall he be liable to retire by rotation but may be removed by the Central Government at any time and another person appointed in his place".

Section 409 : Change in Board of Directors

156. In the case of public companies with appreciable reserves and good annual profits attempts are sometimes made by speculators to corner shares with a view either to supersede the existing management or to compel the management to purchase the shares at extortionate prices in order to retain their control. The power given to the Government under this section is primarily designed to check this evil. As against the argument that the section is violative of the fundamental right to hold and enjoy property it might be urged that some restriction on this right is reasonable in the public interest. Quite recently a Bill (I of 1957) was introduced in Parliament and withdrawn in view of the reference to this Committee. Shares of public companies are a valuable form of property intended to be transferable by the holder. If any restriction is to be imposed upon the right to hold, enjoy or dispose of shares or on the right to exercise the rights and privileges appurtenant to the holding of shares, such restriction must be reasonable and in the interest of the general public under Article 19 of the Constitution. Section 247 of the Act provides for investigation of the ownership of a company whose shares have been cornered or acquired to a considerable extent with a view to controlling the policy of the company and the management of its affairs. In para 99 *supra* we have suggested an amendment of section 250 so as to empower the Central Government to direct that for a specified period, [say three years, voting rights shall not be exercised by transferees of shares if, owing to such a transfer, a change in the managing agency or directorate of a company prejudicial to the public interest is likely to take place. It has also to be noted that if the Central Government makes an order under section 250 imposing restrictions or refuses to make an order that any shares shall cease to be subject to such restrictions, the person aggrieved has a right to apply to the Court for appropriate reliefs. The Government also has special powers under section 408 to prevent oppression or mismanagement by the appointment of two directors of its choice. Section 346 requires the approval of the Government for changes in the constitution of a managing agency. Under sections 397 and 398 the members of a company, who complain that its affairs are conducted in a manner oppressive to the share-holders or prejudicial to their interest, have a right to apply to the Court for relief. The powers of the Court under section 402 are extensive, but

very often by the time these powers are exercised, the mischief might have been done. In addition to these provisions, section 409 empowers the Central Government to prevent changes in the Board of Directors likely to affect a company prejudicially. The paramount consideration in the exercise of this power is the interest of the company.

The complaint of shareholders has been that managing agents or managing directors wield real control directly by themselves or through their nominees on the Board. The theoretical control exercised by shareholders over the management is of a shadowy character, particularly when there are a large number of shareholders dispersed over the whole country without sufficient business experience or means to organise themselves and assert their rights. Though the management point to the theory of control exercisable by shareholders through their directors and through them over the managing agents, the real position has been set out by the Company Law Committee in their report as follows:—

“The comparatively low standard of business knowledge and experience of the average investor, the absence of any well-informed and reliable financial press, and long distances, which make it difficult for investors to combine in the exercise of their rights, have rendered them particularly ineffective.”

Objection has been taken by a shareholders' association to the provisions of section 409 on the ground that it recognises the right of a director or a managing agent to make a complaint against the members of the company who happen to hold the majority of shares on the plea that the management will slip into undesirable hands, but actually for the purpose of retaining the management in the existing hands. Section 409, as it stands, is an inroad on the right of the shareholders to have an effective say in the election of the Board of Directors. Even a single director is given the right without reference to the Board or even against its wishes to complain to the Government that a change in the Board of Directors is likely to take place and that the change is likely to prove prejudicial to the affairs of the company. The Private Members' Bill referred to above, proposed the addition of a sub-section to section 409 in these terms:—

“Subject to section 324 of the Act, in the case of a scheduled industry, the Central Government may, if they are of the

view that a change in the ownership of the shares would involve a change in the Board of Directors or in the managing agents of the company or the non-renewal or termination of the agreement in this regard, pass orders suspending for a period not exceeding three years the exercise of voting rights by the owners of the shares concerned in the cornering”.

The result would be the maintenance of the existing management for a period of three years, if the Government chose to take action under the proposed legislation. As it is, very large and extensive powers of regulating the management of public companies have been taken by the Government under the Act. The proposal contained in the Bill would cast upon the Government a large measure of responsibility by making it a sort of surety or guarantor for the existing management for a few years. One possible method of preventing cornering would be to restrict the maximum number of shares that could be held by a single person. This too might not be effective in the face of the prevalent practice of *benami* shareholdings. Another method would be to restrict the right of voting by proportionately reducing the voting rights on a sliding scale, *i.e.* by providing that if the holder of ten shares has one vote, the holder of 100 shares would not have 10 votes but only say, four votes. This would run counter to the principle of section 87 and is not acceptable to certain sections of the investing public or to the majority of the Committee. In spite of these restrictions, the system of *benami* holding and blank transfers of share would enable the acquisition of voting strength through nominees. This problem of the cornering of shares of companies is not peculiar to this country and while it is true that there have been instances where shares of a company have been cornered by speculators having no experience of the industry in which the company is engaged who have then ousted the management and taken it over themselves, there have been other cases where a change of management following a cornering of a company's shares has had results beneficial to shareholders, who have seen the value of their holdings increase and have received higher dividends. All cornering is not evil and the threat of it serves in some measure to stimulate existing managements to greater activity in their companies' interests to ensure that in the event of an attempted cornering of the shares of these companies, they will, by their previous performance, have

merited the support of their shareholders and the possible protection of section 409. Viewing the problem in all its aspects we are constrained to say that no case has been made out for such an amendment of the law as was proposed by the Private Members' Bill. Adequate experience of the working of the present Act and of the exercise of the fairly extensive powers already vested in the Government under this and other enactments has not yet been gained and it would be premature to recommend any change in the law in this respect.

Section 411 : Duties of Advisory Commission

157. The Advisory Commission has been constituted in the place of the Central Authority recommended by the Bhabha Committee with a view to maintaining flexibility in administration and effective regulation of company affairs. Though the Commission is advisory in character, the Government gave an assurance on the floor of the House that the advice of the Commission would mostly be accepted by the Government. This has been done in actual working. The Commission has been functioning in close touch with the Department with a common secretariat, thereby achieving a certain amount of economy and uniformity in administration. The Chairman of the Commission informed us that, except in a very few cases, the advice of the Commission had been accepted by the Government. He further informed us that the Commission had no separate staff of its own, but the Department made the necessary enquiries and gathered information in respect of the applications referred to the Commission and the Commission made its recommendations on the basis of the information so obtained. The Chairman of the Commission was not entirely satisfied with this state of affairs. It appears that the Commission has asked for a separate staff of its own but the Government did not consider it necessary to accede to its request.

Section 411 casts a duty on the Commission to enquire into and advise the Government on all applications made under the enumerated sections and section 413 confers upon the Commission certain powers of enquiring as witnesses officers of the company and others engaged in management of companies, for the purpose of making enquiry under section 411. The Department assured us that its staff was available for utilisation by the Commission. The Commission at present does not make

the whole of the enquiry itself nor does it exercise the powers referred to in section 413 but acts mainly upon the information gathered by the Department. The applications referred to the Commission under section 411 do not include applications under sections 234 and 235. The result is that if the Commission were to function as envisaged by section 411, making its own enquiry on the applications referred to it, particularly under sections 408 and 409, there would be a parallel enquiry or investigation on the one hand by the Government and on the other hand by the Commission. This is not a satisfactory state of affairs. We recognise the necessity for economy and flexibility in administration and the necessity to leave with the department the powers for effective regulation of companies. At the same time, it is desirable that the Advisory Commission should make its own enquiries and exercise the powers conferred upon it by section 413 in order to be able to advise Government as required by the Act.

It was pressed upon us on behalf of the Government that applications under sections 408 and 409 should be removed from section 411(b) and left to be covered by section 411(c) in appropriate cases. It was suggested that in view of sections 235 to 240 and 248 providing for investigation of the affairs of a company under the directions of the Central Government without reference to the Advisory Commission, a parallel enquiry by the Commission into allied matters arising out of applications under sections 408 and 409 is not only unnecessary but also a source of embarrassment. On the other hand it was suggested that in view of the wide powers vested in the Commission under section 413 in the matter of compulsory production of evidence and the non-availability of similar powers to the agency constituted by the Central Government, it was desirable to entrust investigations under sections 235 to 240 and 248 to the Advisory Commission in addition to the matters specified in section 411(b). The Department claims the right to screen applications made to the Central Government under sections 408 and 409 and to refer to the Advisory Commission only such applications as it considers deserving of an inquiry. This practice, however, is not in consonance with the language of section 411 and if a change in that direction has to be made it should be made by an amendment of section 411. The majority of the Committee are of the opinion that until sufficient experience is gained of the actual working of the aforesaid provisions, it is premature to set about amending them now.

Section 416(3) Contracts by agents of companies

158. In section 416(3)(a) the word "unenforceable" might be substituted for "voidable". S. 416(3)(a)

Section 417 and 418 : Securities and Provident Funds of Employees

159. On the language of section 417, as it stands, when a company with which monies or securities of employees have been deposited is itself a Scheduled Bank, the retention of the monies or securities by the Bank itself in a special account opened for the purpose would not be a compliance with the section and the Bank would have to deposit the monies and securities with another Scheduled Bank. We consider that section 417(1) might be amended by substituting the following words for the words "in a special account to be opened by the company for the purpose in a Scheduled Bank" occurring at the end of the sub-section :— S. 417(1)

"in a Post Office Savings Bank Account or in a special account to be opened by the company for the purpose in a Scheduled Bank or where the company itself is a Scheduled Bank, in a special account to be opened for the purpose with that or any other Scheduled Bank."

Section 418 (1) requires that the provident fund monies of employees of the company should be invested either in approved trust securities or in a Post Office Savings Bank account and only when a certain percentage of the monies exceeds the limit for deposits in the Post Office Savings Bank account, the excess may be deposited in a Scheduled Bank. There are no restrictions at present on the maximum amount that may be deposited in a Post Office Savings Bank and all the provident fund monies have therefore to be kept only in the Post Office Savings Bank till they are invested in trust securities. It is pointed out that there are practical difficulties in adopting this course. Contributions received from branch offices in the shape of cheques, interest warrants, etc., cannot be credited in the Post Office Savings Bank account, into which only cash is received. It has been urged that restrictions relating to deposits into and withdrawals from Post Office Savings Bank accounts, despite relaxations recently introduced, render it difficult for companies to keep their monies in the Post Office

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Savings Bank as required by this section and operate upon it when occasion requires. It has also been pointed out that substantial payments have to be made on account of withdrawals, refund, etc., of provident fund deposits and large establishments have to keep a certain amount of liquid cash at the disposal of the trustees of the Provident Fund. Funds exempted under section 17 of the Employees' Provident Fund Act, 1952, are required to keep their reserves deposited in Scheduled Banks except to the extent that they have to be invested. We recommend that the words "or in the State Bank of India in an account opened for the purpose" might be added after the words "Post Office Savings Bank account" in section 418(1) and the proviso to sub-section (1) should be deleted.

S. 418 (1) and Proviso. It has been suggested by some Chambers of Commerce that section 418(4) impinges unnecessarily on the law of trusts and should be deleted as inappropriate. This provision is intended to facilitate collection of contributions of employees through the agency of the company and is necessary. The only amendment desirable is the omission of the unnecessary word "separate".

S. 418(4)

Section 426 : Debts due to creditors

160. Clause (g) of sub-section (1) is not happily worded. The words "who is not a past or present member" occurring in the latter part of the clause creates an anomaly since it restricts the protection granted by the clause only to debts of creditors who have not been past or present members. There is no reason why a debt due to a creditor who is a past or present member, for loans made to the company or for the price of goods sold to the company by such member, should not have priority over debts due to a past or present member by way of dividends etc., in his character as such member. The intention apparently was that debts due by way of dividends etc., to past or present members should not count as debts of the company as against debts of creditors *not claiming as past or present members*. In that case, the clause should be amended, by substituting the words "not claiming in his character as a past or present member of the company" for the words "who is not a past or present member of the company" and omitting the word "other" occurring in the latter part of the clause. As it stands, the meaning of the clause is obscure.

S. 426 (1)(g).

Section 439 : Applications for winding up

161. For the words "clauses (b), (c) and (e)" in section 439(5) s. 439(5). the words "clauses (b), (c), (d) and (e)" should be substituted.

Sections 440 and 521 : Winding up by Court

162. Section 440 is new, and sub-section (1) of the section provides that where a company is being wound up voluntarily or subject to the supervision of the Court, a petition for its winding up by the Court may be presented by any person authorised to do so under section 439 of the Act. A creditor is one of the persons authorised to present a petition under section 439. Section 440(2) requires that where such a petition is presented, the Court shall not make a winding up order unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of creditors or contributories or both. But under section 521 of the Act, it would seem that this requirement is to apply only to petitions by contributories and not to petitions by creditors. A creditor is presumably not bound to show prejudice. This inconsistency between section 440(2) and section 521 has to be removed. Section 521 may well be repealed for it is partly repetitive and partly inconsistent with section 440(2). The Company Law Committee (at page 320) suggested the deletion of section 218 of the Act of 1913 (corresponding to section 521). S. 521.

Section 445 : Filing of winding up order

163. A suggestion has been made that, in the present set up, where the Official Liquidator automatically steps in as Liquidator of the company on the making of a winding up order, it would be appropriate to fix the responsibility for filing the certified copy of the order with the Registrar on the Official Liquidator himself. This is so under section 230 of the English Act, and Rule 42(1)(b) of the Winding up Rules. Since the Official Liquidator steps in only after the order for winding-up is made it is not inappropriate that the responsibility for filing the certified copy of the order of winding up should be laid on the petitioner or the company. We see no reason for any amendment.

Section 446 : Suits and proceedings

164. A suggestion has been made that the Court winding up the company should have full power to decide all claims made by or against any company and all questions of priorities and all other questions whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of the company coming within the cognizance of the Court. Such a provision would be on the lines of section 4 of the Provincial Insolvency Act, section 7 of the Presidency Towns Insolvency Act and section 45B of the Banking Companies Act and would speed up the winding up proceedings. There is no danger of the provisions being abused in view of the fact that it is the High Court or the District Court that has jurisdiction under the Act and there is a right of appeal.

Sec. 446.

Section 449 : Official Liquidator

165. There may be cases where the Official Liquidator is interested in the directors or managing agents or those who have had transactions and commitments with the company. Such cases would be very few and the Official Liquidator should normally be the liquidator of the company. In special circumstances, however, the Court should have power to appoint as liquidator a person other than the Official Liquidator stating the reasons for the appointment.

Sec. 449

Section 454 : Statement of company's affairs

166. It has been the complaint of Official Liquidators that the statement of affairs is not filed in spite of repeated reminders and warnings, and if filed at all, is filed only after considerable delay. The penal provision is hardly ever enforced, apparently because a complaint has to be made by the Official Liquidator to the Criminal Court, and this involves delay. Much of the delay in winding up is caused by the statement of affairs of the company not being filed in time to enable the Official Liquidator to take the necessary action. It would facilitate his work and speed up the winding up of companies, if the power to punish the officers of the company who default in filing the statement of affairs, is vested in the winding up Court instead of in the ordinary criminal Courts. The winding up Court, which in most cases will be the

High Court, will be in a better position to judge the degree and nature of the default of the officers concerned and mete out appropriate punishment where necessary. The fear that the winding up Court would take immediate cognizance of any delay and deal adequately with those in default would by itself do much to ensure prompt filing of the statement of affairs. Section 454 of the Act should, therefore, be amended, vesting the power of punishment under the section in the windingup Court.

Sec. 454.

Section 455 : Report by Official Liquidators

167. Power should be given to the winding up court to extend the time of six months in cases where, on account of the time taken by the directors and chief officers of a company in filing the statement of affairs under section 454, difficulty is experienced by the Official Liquidator in complying with the requirements of this section.

Sec. 455.

Section 456 : Custody of Company's property

168. It was represented by an Official Liquidator that considerable difficulty was experienced by him in reducing [to his possession the books, papers, properties and assets of the company. Sub-section (2) might be numbered as sub-section (3) and the following might be inserted as sub-section (2) :—

Sec. 456.

“For the purpose of enabling the Official Liquidator to take into his custody or under his control, all property and effects to which a company which has been ordered to be wound up is or appears to be entitled, the Official Liquidator may request in writing the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction any property, books of account or other documents of such company are to be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may, on such request being made to him, and after such notice as he may think fit to give to any party, take possession of such property, books of account or other documents and forward them to the Official Liquidator. For the purpose of securing compliance with the above provision the Chief Presidency Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary”.

It is not possible to make any provision, as suggested by some, that the expenses incurred by the Official Liquidator in preserving the assets of the company should be paid initially by the State on the off chance of reimbursement from assets realised. Suitable directions would have to be got from the Court for raising money as a first charge on the assets in cases where there are no available liquid resources.

Section 457 : Powers of Liquidators

169. The Official Liquidator might be empowered to inspect the records and returns of the company in liquidation on the files of the Registrar without payment of any fee. We suggest the addition of a new clause in sub-section (2) to this effect.

Sec. 457.

Sections 460 and 463 : Control of Liquidator's Powers

170. We are unable to accept the proposal of an Official Liquidator that section 460 should be deleted. It is said that creditors and contributories frequently interfere with the work of the Liquidator and delay the winding up. It is in the interests of proper administration that creditors and contributories who stand to lose should keep a vigilant watch on the course of the liquidation proceedings. We do not also consider it necessary to recommend an amendment of section 463 by removing the provision enabling creditors or contributories to complain against the Liquidator in proper cases. It is extremely unlikely that the Central Government would take action against the Liquidator on frivolous or irresponsible complaints. In section 463 (1) the words "or by the Indian Companies Act, 1913 (VII of 1913)", will have to be inserted after the words "requirements imposed on him by this Act". The reason for this amendment is adverted to in paragraph 207 *infra*.

Sec. 463(1).

Sections 464 and 465 : Committee of Inspection

171. A Committee of Inspection under the Indian Act has hardly any functions other than "the right to inspect the accounts of the Liquidator at all reasonable times" according to section 465(2). In our Act, all the powers exercisable by a Committee of Inspection under the English Act can be exercised only by the Court. And yet the elaborate provisions relating to the Committee

of Inspection under the English Act are repeated, one such provision being that the Committee should meet at least once every month, unless it decides to meet at shorter or longer intervals. This provision is unnecessary. In spite of a similar provision in the previous Act, Committees of Inspection hardly met and the provision remained a dead letter. If provision is made in the Rules for payment of travelling and other allowances to members of the Committee attending meetings of the Committee, monthly meetings of the Committee might consume a good part of the assets of the company. Under section 464 of the Act, it is obligatory on the part of the Liquidator to convene meetings of creditors and contributories to consider whether a Committee of Inspection should be appointed, and if so, who are to be the members thereof. Where the creditors and contributories agree that a Committee should be appointed, and also agree as to who should be the members of it, the Committee gets automatically appointed. Where they differ, the Official Liquidator has to apply to the Court for directions whether there should be a Committee of Inspection, and who should be the members thereof. In view of the fact that the Committee has hardly any important functions under the Act and that the need for vigilance would be much less under the present Act where an officer appointed by the Central Government functions as the Official Liquidator in every winding up by the Court, the Court should be required to give directions at the time of making the order for winding up or at any time thereafter whether there should be a Committee of Inspection or not and only where the Court directs the appointment of a Committee of Inspection, should section 464 come into operation. In any case, the obligation cast by section 465 on the Committee of Inspection to meet once a month might be removed and the members might be left free to meet whenever necessary. Sec. 465.

Section 468 : Delivery of Property

172. The suggestion has been made by an Official Liquidator that the Liquidator should be empowered to file in the winding up Court an application for an order against any person for payment of money or delivery of property with him to which the company in liquidation is *prima facie* entitled. On such application being made, the Court may require any such person to produce any documents in his custody or power relating to the company, its dealings or property and may examine him on matters

concerning the company, its dealings or property. The proceedings would be analogous to those under section 36 of the Presidency Towns Insolvency Act, and would tend to facilitate the winding up. We recommend the addition of a similar provision in the Act. It appears desirable that this section should be amended to include any employee of the company by inserting the words "or employee" after the words "or officer". The words "in his custody or power" may be substituted for the words "in his hands".

Sec. 468.
(New provision).

Sec. 468.

Sections 469 and 470 : Calls on contributories

173. Sub-section (1) of section 469 provides that at any time after making a winding-up order, the Court may make an order against a contributory for the payment of any money due from him or from the estate of the person whom he represents "exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act." Section 470 came up for consideration in a recent Madras case* and on a construction of the words quoted above, the Court held that it had no power to make an order for payment against a contributory in respect of moneys due for calls made prior to the winding up. This could not have been the intention of the legislature. It is probable that only moneys due on calls made subsequent to winding up, for which separate provision is made under section 470, were intended to be excluded from the operation of section 469. The words "made in pursuance of section 470 of this Act" might be substituted for the words "in pursuance of this Act". If this amendment is made

Sec. 469 (1), the Court could make an order under section 469 for payment of moneys due on calls made prior to the winding up as moneys due from a contributory to the company.

Section 477 : Examination of debtors

174. This section provides *inter alia* for the summoning and examination of any person suspected to be indebted to the company or to be in possession of the property of the company. Under the analogous provisions of the Presidency Towns Insolvency Act where a person examined admits his indebtedness, or admits possession of property belonging to the insolvent, the insolvency

*Application No. 1598 of 1956 in O.P. No. 187 of 1955.

Court is empowered to pass an order against such person for payment of such sum or delivery of such property to the Official Assignee [See section 36(4) and (5) of the Presidency Towns Insolvency Act]. It seems desirable to have similar provisions under the Companies Act. Section 446(2) and (3) introduced in the present Act, giving jurisdiction in all matters to the winding up Court, do not appear to be adequate for the purpose.

Sec. 477.
(New provision).

Section 481 : Dissolution of Company

175. Section 481(1) provides that when the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order and the company shall stand dissolved accordingly. There are several instances when the Official Liquidator finds himself in a position when no funds or assets of the company come into his hands and the petitioning creditor or the other creditors are not prepared to put him in funds. The company's assets may consist, in such cases, of only book debts, to recover which contentious suits will have to be filed and heavy expenses incurred. In such cases, it cannot be said that the company's affairs are "completely wound up". The Official Liquidator may not be able to proceed in the matter for want of funds. It, therefore, appears desirable to empower the Court to make an order that the company be dissolved in such circumstances and the present section 481(1) may be amended suitably for the purpose. It is suggested that the following words may be inserted after the words "wound up" in section 481(1):—

Sec. 481(1).

"or the Court is of the opinion that the liquidator cannot proceed with the winding up of the company for want of funds or for other reasons"

Sections 490 and 515 : Remuneration of liquidator

176. An Advocates' Association has represented that where winding up proceedings take a much longer time than originally estimated, the remuneration of the liquidator should be enhanced to an extent commensurate with the work done. The legislature has, for intelligible reasons, deliberately inserted a provision to the contrary in section 490(2) and we see no reason to recommend

Sec. 490(1) any change on this point. Sub-section (1)(b) might, however,
(be amended as follows:—

“(1)(b) fix the remuneration, if any, to be paid to the liquidator or liquidators and the time and manner of such payment”

This would enable the liquidator to draw his remuneration at intervals without waiting till the liquidation proceedings are over. Section 515 gives power to the Court to appoint a liquidator in a voluntary winding up and in that event, the Court should be empowered to fix remuneration, after taking into consideration the views of the Committee of Inspection, if any, or the creditors or contributories. In case the Official Liquidator himself is appointed liquidator, the remuneration fixed by the Court should be credited to the Central Government.

Sections 502, 504 and 515 : Appointment of Liquidator

177. Section 502(2) provides for the Court appointing, in the circumstances set out therein, the Official Liquidator or some other person to be liquidator in a creditors' voluntary winding up. Section 515 provides that, if from any cause whatever, there be no liquidator acting, the Court may appoint a liquidator, remove him for sufficient cause and appoint another liquidator. Where the Court appoints a liquidator in a voluntary winding up, it is not given the power to fix the remuneration of the liquidator unless it can be taken to be implied in the power to appoint. Section 504 which applies to a creditors' voluntary winding up provides that in case the Committee of Inspection, or if there is no such Committee, the creditors do not fix the remuneration to be paid to the liquidator or liquidators, the Court shall determine it. These provisions presumably apply also to appointments of liquidators by the Court in a creditors' voluntary winding up under section 502 or section 515. This would result in the anomaly that while the Court appoints the liquidator, his remuneration is to be fixed, not by the Court, but by the Committee of Inspection or the creditors. It is desirable to provide that where the Court appoints a liquidator in a voluntary winding up, it shall fix his remuneration after taking into consideration the views of the Committee of Inspection or creditors or contributories, as the case may be. If the Official Liquidator is appointed in a creditors' voluntary winding up under section 502(2), the remuneration so fixed should be credited to the Central Government.

Section 512 : Powers of Official Liquidator

178. This section, which deals with the powers and duties of a liquidator in a voluntary winding up, discloses an anomalous situation. Reading sections 512(1)(a) and (b) with section 457(2)(i) to (iv), it will be found that in a voluntary winding up the liquidator has to obtain sanction of the appropriate authority mentioned in section 512(1)(a) for the exercise of such necessary and routine powers as executing receipts for moneys received, proving in the insolvency of a contributory and receiving dividends in the insolvency, and taking out letters of administration to the estate of a deceased contributory, while in respect of the more serious matters set out in clauses (a) to (e) of sub-section (1) of section 457 and clause (v) of sub-section (2) of the said section, he could exercise his powers without any sanction. The powers which he could exercise without sanction are: to institute or defend suits or other legal proceedings, to carry on the business of the company for its beneficial winding up, to sell immovable and movable property and actionable claims of the company, to raise money on the security of the assets of the company, to do all things necessary for winding up the affairs of the company and distributing its assets, and to appoint an agent to do any business which the liquidator is unable to do himself. It seems odd that while he could exercise these very important powers without sanction, sanction should be necessary for much less important routine matters. Section 303 of the English Act of 1948 corresponds to section 512 of our Act. No sanction is necessary for the exercise of the powers set out in clauses (i) to (iv) of sub-section (2) of Section 457 of our Act which correspond to paragraphs (b), (c), (d) and (f) of sub-section (2) of section 245 of the English Act. No doubt, under the Indian Act also, sanction is necessary for the exercise of the powers set out in paragraphs (d), (e) and (f) of sub-section (1) of section 245 of the English Act, but this is provided for in section 546 of our Act. Section 512(1)(a) of our Act is traceable to section 212 of the Indian Companies Act of 1913 as amended in 1936, which was a substantial reproduction of section 248 of the English Act of 1929. But, in incorporating the provisions of section 248(1)(a) of the English Act into clause (a) of sub-section (1) of section 212 introduced into the 1913 Act by the Amending Act of 1936, it is possible that the framers of the Amending Act of 1936 assumed that section 191(1)(d), (e) and (f) of the English

Act was the same as section 179(1)(d), (e) and (f) of the Indian Act of 1913. Section 512 of our present Act has reproduced section 212 of the Act of 1913. We would suggest that the provision in section 512 (1)(a) requiring sanction for the exercise of the routine powers under section 457(2)(i) to (iv) should be deleted. If sanction is considered necessary for the exercise of any of the other powers mentioned in section 457 which are of a substantial character, section 512(1) should be suitably amended.

Sec. 512 (1)
(a).

Section 513 : Body corporate as liquidator

179. While the section prohibits the appointment of a body corporate as liquidator in a voluntary winding up it is silent as regards firms. The Department has suggested that no firm should be appointed as liquidator. A partner or partners by name, though not the firm as such, could be appointed. Section 513 (1) might be amended as follows:—

Sec. 513(1).

“No firm or body corporate shall be appointed as liquidator in the voluntary winding up of a company.”

Sections 515, 522 and 524 : Power of Registrar to apply to Court

180. It has been brought to our notice that liquidation proceedings are often unduly delayed on account of the apathy or indifference of shareholders or in cases where there is no liquidator functioning or where the liquidator has not taken any active steps to hasten the winding up of the company. It is suggested on behalf of the Department, that in order to speed up liquidation proceedings and to ensure the proper conduct of the liquidation by a competent liquidator, the Registrar should be given power to apply to the Court under sections 515, 522 and 524 for an order appointing or removing a liquidator. Under the law, as it stands, it is only a creditor or a contributory who is entitled to make the application and not the Registrar. We consider that it will be in the interests of speedy disposal of liquidation proceedings that the Registrar should be empowered to apply to the Court for an order either appointing or removing a liquidator for sufficient

cause. A new sub-section (3) may be added to section 515 in Sec. 515(3) these terms:—

“(3) The Registrar shall be entitled to make an application to the Court under this section.”

Similarly, in sections 522 and 524, a new sub-section might be added in the same terms.

Sec. 522.
Sec. 524.

Section 524 : Liquidator in Voluntary Winding up

181. Where an order is made for a winding up subject to the supervision of the Court, there is no provision in section 524 similar to the proviso to section 502(2) enabling the Court, if it thought fit, to appoint the Official Liquidator, as liquidator in the place of the liquidator already acting. Section 524 might be amended so as to provide for this situation. Sec. 524.

Section 529 : Secured Creditor's rights.

182. The insolvency law contained in Schedule II to the Presidency Towns Insolvency Act and section 47 of the Provincial Insolvency Act relating to the rights of secured creditors is applicable in the winding up of an insolvent company. It has been pointed out by an Official Liquidator that a secured creditor who realises his security should be made liable to reimburse the Liquidator all amounts spent by the latter for the preservation or protection of the asset before it is sold by or at the instance of the secured creditor. If the secured creditor does not relinquish the security and prove for his debt, but proceeds to realise the asset given as security, it is proper that he should pay the expenses of preservation or protection of the asset during the pendency of the liquidation proceedings and before the sale of the asset. A sub-section to this effect might be added to section 529. S. 529.

Sections 531 and 533 : Transfer of company's assets

183. While sections 531 and 533 provide for cases of fraudulent preference, there is no provision applicable to voluntary transfers dealt with in section 55 of the Presidency Towns Insolvency Act

S. 531A and section 53 of the Provincial Insolvency Act. A new section, (new). section 531A might be framed in these terms:—

“Any transfer of property, movable or immovable, or delivery of goods made by a company not being a transfer or delivery made in the usual course of business or in favour of a purchaser or incumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by or subject to the supervision of the Court or the passing of a resolution for the voluntary winding up of the company, shall be void against the Official Liquidator or Liquidator, as the case might be.”

Section 535 (4) : Disclaimer of onerous property

184. Where the property to be disclaimed is a contract and notice is given by any person interested to the Liquidator requiring him to elect whether or not he will disclaim, the latter part of sub-section (4) provides that if the Liquidator does not, within a period of 28 days after receipt of the notice or such extended period as may be allowed by the Court, disclaim the contract, the company shall be deemed to have adopted it. The Liquidator can disclaim only with leave of the Court and it may not be possible for him to disclaim within a period of 28 days. What he can do is to apply to the Court for leave to disclaim, and give notice of such application within the period of 28 days. Further, it seems incorrect to say that in default of disclaimer, the ‘company’ shall be deemed to have adopted the contract. The contract is already the company’s contract. It would be more appropriate to say ‘the liquidator shall be deemed to have adopted it.’ The concluding portion of section 535(4) should be amended accordingly.

S. 535(4).

Section 537 : Proceedings by Government

185. Section 537(2) is vague and general in its terms. The intention apparently was to enable the Government to realise its dues from the assets of a company by attachment, distress or sale.

S. 537(2). Section 537(2) might be amended as follows:—

“Nothing in this section shall apply to any proceedings for the recovery of any tax, cess or dues payable to the Central Government.”

Section 548 : Company's Book as evidence

186. We do not accept the suggestion of an Official Liquidator that entries in the books of account or records of a company should be accepted as proof of their correctness, even as against strangers. If the books have been regularly kept in the usual course of business, entries therein will be admissible in evidence against others but not by themselves sufficient to establish liability. The value of such evidence would depend on the circumstances of the case. It may be that without the co-operation of the erstwhile manager, managing director or managing agent, it would be difficult in many cases to prove the entries in the books and the claim of the company, and such co-operation is rarely forthcoming and is ruled out where there has been mis-management of the company's affairs. At the same time, it is not proper to make a violent departure from the normal rules of evidence in order to fix pecuniary liabilities on third parties.

Section 549 : Inspection of Company's Books and Papers

187. The Supreme Court is empowered to make rules with regard to the inspection and grant of the copies of records that come into existence after the winding up order is made and in the course of the winding up [see sections 454(6), 461(2), 462(4) and 551(3)]. With regard to the books and papers of the company, section 549 provides that after the making of an order for winding up by or subject to the supervision of the Court, any creditor or contributory may, if the Central Government by Rules prescribed so permits and in accordance with and subject to such rules but not further or otherwise, inspect the books and papers of the company. Under the previous Act, the Court had the discretion to order inspection. Section 266 of the English Act is to the same effect. It is not clear why under the present Act the Government is invested with the power to make rules and not the Supreme Court. The records with regard to the inspection of which the Central Government has to frame rules are different in kind from those in respect of which the Supreme Court is to frame rules and the considerations applicable to the one may not apply to the other. The inspection of the books and papers of a company would not be granted as a matter of course as in the case of an inspection of the proceedings in the liquidation

itself. Under the previous Act, orders of the Court had to be obtained before inspection could be had of the books and papers of a company. In view of the considerations set out above, it seems desirable to vest the rule making power under the section in the Supreme Court instead of in the Central Government.

S. 549(T).

Section 550 : Disposal of Books and Papers

188. It is sometimes found that companies are voluntarily wound up and their books and papers are destroyed whenever an inconvenient situation develops in regard to tax liability, the claims of creditors etc. It is essential that the books and papers should be preserved for a period not exceeding 5 years and since the Government has the power to make the rules to this effect there is no need to incorporate a provision in the Act itself.

Section 555 : Unclaimed Dividends etc.

189. It would be desirable to make it clear that all unclaimed dividends and undistributed assets should be deposited into the 'Companies Liquidation Account' in the Reserve Bank of India. Though these words occur in the head-note to the section, they are omitted in the body of the section. Section 555(9)(c) provides that where the winding up is by or under the supervision of the Court, the Liquidator retaining any moneys which should have been paid by him into the Companies Liquidation Account shall be liable to have all or such part of his remuneration, as the Court may think just, disallowed and to be removed from his office by the Court. In the case of the Official Liquidator no remuneration is allowed to him by the Court, since he is a paid officer of the Central Government. As regards the disallowance of remuneration and the liability to be removed by the Court, this provision, in so far as it relates to the Official Liquidator, seems to be in conflict with the general scheme of the Act and particularly section 463 which makes it clear that the Official Liquidator functions under the control of the Central Government and that it is for the Central Government to enquire into his conduct and take such action thereon as it may think expedient. If the power of removal of the Official Liquidator is to be vested in the Court it must be so provided with due regard to Article 311 of the Constitution.

S. 555 (9).

Section 582(b) : Unregistered Companies

190. Section 582(b) reproduces section 270 of the Act of 1913, the meaning and effect of which were the subject of a difference of opinion between the Courts. One view was that a foreign company could not be wound up as an unregistered company under the Act unless it consisted of more than seven members. The other view was that it could be so wound up even if it did not consist of more than seven members. Section 398 of the English Act provides that an "unregistered company" shall include *inter alia*.....any partnership, whether limited or not, any association and any company with the following exceptions:—

* * * * * * *

“(c) a partnership, association or company which consists of less than eight members and is not a foreign partnership, association or company.”

Section 399 of the English Act provides for the winding up of unregistered companies as defined by section 398. The object of our section 582(b) read with section 583 is to authorise the winding up of a company incorporated in another country, but not in this country, which has an office and assets here. Even the pendency of a foreign liquidation does not affect the jurisdiction of Indian Courts to make a winding up order. If at the date of the petition for winding up, the members are not more than seven in number, there is no jurisdiction under the Act to wind up an unregistered company and the remedy against the company is by way of a suit. To make this meaning clear, we would suggest an amendment of section 582(b) by substituting the words “if S. 582 (t). it consists” for the word “consisting”.

Sections 591 to 602 : Foreign companies

191. Sections 591 to 602 apply to foreign companies which “establish a place of business within India.” The precise meaning and scope of this phrase have been the subject of debate. Under section 602(c), a share transfer or share registration office is a place of business. It has been brought to our notice that several foreign companies which have places of business in India have failed to comply with the provisions of Part XI of the Act. In such cases, the proper course is to take appropriate action in the Courts which will decide, on the facts of each case, whether

501 C.L.A.—12.

the company had established a place of business in India. The provision of the English Act corresponding to our section 591 is section 406 under which it has been held that a company incorporated outside the United Kingdom which employed agents within the United Kingdom, but had no office there, had not established a place of business within the United Kingdom within the meaning of section 406. There are foreign companies which ostensibly carry on their business in India through agents, but in fact the office and the staff of the agency are mainly, if not solely intended for the foreign companies. In such cases, though the agent is supposed to maintain the office and staff as his own, the foreign companies must be regarded as having really established their places of business in India. A company, like an individual may have more than one residence, and a foreign company which has an office and staff and carries on business in this country falls within section 591 of the Act. The case would be different if the only office here is an agent's office and not the company's office and no person in the company's service is working there. Border line cases are likely to arise from time to time where a conclusion has to be reached on a conspectus of all the facts and circumstances.

Section 594 : Accounts of foreign companies

192. Some Chambers of Commerce have drawn pointed attention to the inconvenience caused by this section to foreign shipping companies and world-wide trading companies operating in India. They find it difficult to comply with the provisions of section 211 and Schedule VI, the latter of which is, in many respects stated to be inappropriate. It is stressed that the particulars of the accounts of subsidiaries and branches of foreign companies need not be filed when such subsidiaries or branches are carrying on business wholly outside India. It is urged that balance sheets and profit and loss accounts and the auditor's report of foreign companies prepared and placed before the meeting of the shareholders in compliance with the provisions of the law applicable in the country of their incorporation together with a balance sheet and profit and loss account of the Indian branch prepared in accordance with the requirements of section 211 and Schedule VI of the Act should be sufficient. The power given to the Central Government under the proviso to section 594(1) to grant exemption

from the operation of section 594(1)(a) and (b) to foreign companies in cases of genuine hardship or difficulty taken with Government's general powers to relax the provisions of section 211 in regard to the form and content of accounts of companies, is, in our opinion, sufficient to meet the situation. We gather that the points raised by the Chambers of Commerce have been discussed with their representatives and a notification under the proviso to section 594(1) has also been issued by the Government so as to remove any possible hardship to foreign companies.

Section 595(c) : Particulars of foreign companies

193. In the case of companies registered in India, we have recommended in paragraph 59 *supra* that mere trade advertisements for marketing the goods produced, manufactured or sold by a company registered in India may be exempted from the requirements of section 147(1)(c), and the same exemption may be granted in the case of advertisements of foreign companies. S. 595(c).

Section 610 : Inspection of Registrar's Records

194. Section 610(4) is inappropriate inasmuch as clause (ii) of the proviso to sub-section (1) does not require a person, desiring to inspect, to state that he is a creditor or member. This sub-section would appear to have been copied from the corresponding section 426(4) of the English Act, where it was appropriate. We have already recommended (in para 67 *ante*) that copying charges payable under section 163(3) might be increased from the six annas to twelve annas for every hundred words. The copying charges prescribed by section 610 may also be similarly increased. S. 610(1)(b).

Section 611 : Scale of Fees

195. The scale of filing fees which has recently been raised by Government is stated by a shareholders' association to be unduly burdensome to companies in view of the large number of returns and documents required to be filed with the Registrar. An Advocates' Association has represented that fees should be charged only for filing the annual return. In view of the machinery set up for the administration of the Act, we do not consider that the levy is disproportionate to the service rendered. We understand that in spite of the issue of successive warnings returns are either not sent or delayed inordinately in some cases. Launching

of prosecutions, except in cases of gross default, would involve time and expense and would fail of its purpose in view of the nominal fines imposed in many cases. To meet this situation we would recommend the addition of a second proviso to section 611 in these terms :—

S. 611 new
proviso.

“Provided further that where any document, return or statement required or authorised by this Act to be filed or registered with the Registrar, is not filed or registered within the time specified in this Act, the Registrar may file or register such document, return or statement on payment of the prescribed fees and such penalty as may be imposed by him not exceeding the amount specified in Schedule X as fees payable for the document, return or statement, as the case may be.”

The Act has multiplied the number of returns or documents to be filed with the Registrar and the fees under Schedule X have, in some cases, been doubled. There are particularly three sections under which the returns or documents to be filed are frequent, namely, sections 192, 264 and 303(2). In view of the amendments which we have proposed to sections 264 and 303(2), the returns or documents to be filed under these sections will be appreciably reduced. As regards section 192, it requires a copy of every resolution or agreement, to which that section applies, to be filed and under the Rules framed under the Act, Form No. 23 has been prescribed for filing such copies. It has been contended by companies that it should be open to them to file under one return all resolutions passed at one meeting, instead of having to file a separate return for each resolution or agreement. Section 192, read with items 5 and 13 of Schedule X has been sought to be interpreted to mean that every resolution or agreement under section 192 should be separately filed. This interpretation is likely to cause hardship to companies particularly those which have to file numerous returns under this section. In our opinion, it should be open to companies to file under one return copies of all resolutions passed at a particular meeting as prescribed by the Form and only one fee need be paid for such return. If, in order to give effect to this recommendation, an amendment of section 192 or of any of the items in Schedule X is necessary, (which we think is not the case) such amendment should be made.

S. 192. Sche-
dule X.

Section 614 : Default in making returns

196. It has been pointed out that section 614 does not provide any punishment for disobedience of the Court's order and that even where a prosecution is launched and a conviction and sentence follow, there is no provision for compelling the performance of the duty of filing the returns, accounts, or other documents. In order to exercise proper control, it is necessary that the Registrar should have filed with him up to date statements of accounts, returns and documents etc. but criminal courts trying these offences do not direct the filing of these documents for want of statutory authority. It has been found from experience that nominal fines are imposed by Courts for default in filing returns, accounts or other documents with the Registrar and that the persons who are so prosecuted and fined claim that they are thereby absolved from filing such returns, accounts or other documents with the Registrar. To remedy this state of affairs, we would suggest the renumbering of the existing sub-section (3) as (4) and the addition of the following provision as sub-section (3) :— S. 614.

“Where a complaint has been made before a criminal Court against any company or any of its officers for default in compliance with any of the provisions of the Act which require it or him, as the case may be, to file or register with or deliver or send to the Registrar any return, account or other document, the Court may, while convicting, acquitting or discharging the accused person, direct by its order such company or the officer, as the case may be, to file or register with or deliver or send to the Registrar such return, account or other document within such time as might be specified in the order on payment of the penalty prescribed in section 611. Whoever fails to act in accordance with an order made as aforesaid shall be punishable with imprisonment which may extend up to six months.”

Section 615 : Information and statistics

197. It has been represented by an Incorporated Law Society that the powers of the Central Government are unduly wide and capable of being exercised in such a manner as to involve the company in considerable expense in complying with the requirements of a Government order under this section in the matter of

furnishing statistics or other information. There is no reason to suppose that the Government would act unreasonably or put companies to needless expenditure. If statistics or information is required in order to enable the Government to guide its industrial or economic policies, it should be the duty of the company to supply it and in the case of well-managed companies, the time and expenditure involved would be inconsiderable.

Section 616 : Exemptions

S. 616 (c). 198. In clause (c) of the section, the words "the Indian Electricity Act, 1910 (IX of 1910) or " should be inserted after the words "the provisions of".

Section 617 : Government Company

S. 617. 199. For the words "share capital", the words "paid up share capital" might be substituted.

Section 620 : Exemption of Government Companies

200. It has been represented by a Chamber of Commerce that Government companies should be placed on the same footing as other companies. Section 620 is of a wide and sweeping character and it is desirable that these companies should, as far as possible, be put on the same footing as other public companies. It appears, however, that only exemptions of a minor character have so far been granted.

Sections 621 and 622 : Offences under the Act

201. We are unable to accept a suggestion made to us that shareholders should be allowed to commence proceedings against the management in respect of offences under the Act only after obtaining the prior sanction of the Government or the Registrar for the charges preferred. Nor is it necessary to provide that no complaint could be preferred by shareholders holding less than a fixed percentage of the shares. We do not recommend that jurisdiction should be conferred on the Registrar to try any class of offences under the Act.

Section 624 : Offences under the Act

202. An offence under the Companies Act is non-cognizable and action could be taken by the Court only on a complaint by the Registrar or a shareholder or a person authorised by the Central Government. The Registrar may now prosecute for minor offences such as default in filing returns. In respect of graver or more serious offences disclosed in the reports of Inspectors, the responsibility now lies with the Central Government under section 242 to prosecute the offender. Under the Act of 1913 prosecutions were made in consultation with the Law Officers of State Governments and these Governments were responsible for all company law prosecutions. But the Act of 1913 was one of the most under-administered Acts of the Central Government and in spite of the stringent provisions of the present Act there has not been sufficient awareness of the objectives of the legislation. Offenders are still let off with very light fines and even these fines are passed on by the management to the companies. It has been brought to our notice that it is desirable that prosecutions under the Companies Act should be conducted by a prosecutor appointed for the purpose and that the present practice of entrusting such prosecutions to local public prosecutors appointed by the State Governments is not conducive to the efficient or speedy conduct of the proceedings. It is desirable that a legal practitioner with adequate knowledge of company law who could give his whole time to the task should be entrusted with the work of conducting prosecutions and filing appeals from the orders of criminal courts in trials for offences under the Act. The Act being a Central legislation, it is appropriate that the Central Government should provide the machinery for conducting prosecutions for offences under the Act. It is also desirable that the Central Government should have the authority to direct an appeal against acquittal to be filed in the case of offences under the Act. Under section 417(2) of the Criminal Procedure Code, that power now lies with the State Government. We accordingly suggest the addition of the following provision as section 624 A :—

“Section 624A.

S. 624 A
new.

- (1) Notwithstanding anything contained in the Criminal Procedure Code (V of 1898), the Central Government shall have power to appoint one or more persons to

act as company law prosecutors for the conduct of prosecutions arising out of this Act generally for a specified local area or in particular cases. The persons so appointed as prosecutors shall have all the power and privileges conferred by the Criminal Procedure Code on public prosecutors appointed by a State Government under section 492 of the said Code.

- (2) Notwithstanding anything contained in the Criminal Procedure Code (V of 1898), the Central Government may, in any case arising out of this Act, direct or authorise any person, either by name or by reference to his office, to prefer an appeal from an order of acquittal passed by any Court, and an appeal preferred by such person shall be deemed to be validly presented to the appellate Court”.

Section 626 : Application of fines

S. 626. 203. We recommend that section 626 be amended so as to read as follows:—

“Section 626. *Application of fines and reimbursement of expenses:—*

(1) The Court imposing any fine under this section may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information or at whose instance the prosecution has been made.

(2) Notwithstanding anything contained in sub-section (1), if, in any proceedings instituted by a shareholder against a company or any officer thereof in respect of an offence under this Act, such company or officer is convicted, the Court may, by an order, direct the payment by the company or such officer, of any reasonable expenses incurred by the shareholder aforesaid.”

Section 629A : Penalties

204. It has been stated by the Department that when the Companies Bill was under consideration, it was the intention that a general provision should be inserted on the lines of section 188 of Indian Penal Code or the relevant section of the Banking Companies Act, 1949 making it an offence punishable with fine and/or

imprisonment for a person, who does not carry out any order given by a public servant, in the discharge of his duties under Companies Act. It is, therefore, proposed to implement this by inserting a new section as section 629A in the Act as follows:—

S. 629A
(New)

“629A. In cases not expressly provided for in the Act, if any provision of the Act is contravened, or if any default is made in complying with any requirement of the Act, or of any order made thereunder, every director and other officer of the company who is knowingly a party to the contravention or default shall be punishable with a fine not exceeding five hundred rupees, and where the contravention or default is a continuing one, with a further fine not exceeding fifty rupees for every day during which it continues.”

Section 643 : Rule making powers of Supreme Court

205. The significance of the use of “shall” in one place, and ‘may’ in another in the same clause [section 643(1)(a)] and in respect of the same matters is not clear. In the context, ‘all such matters as may be prescribed’ occurring in the second part of clause (a), can only refer to ‘matters relating to the winding up of companies, which by this Act, are to be prescribed’ occurring in the first part. The exception provided to the rule-making power is only in respect of matters reserved to the Central Government under the three sections referred to, all of which relate to winding-up, and there is no reference by way of exception to the powers of the Central Government to make rules in respect of other matters under the Act. Similarly, the significance of the use of the expression ‘to be prescribed’ in one place and ‘as may be prescribed’ in another, is not clear. For the reasons indicated in paragraph 21 *supra*, the power of the Supreme Court to frame rules under sections 552 and 555(3) has to be taken away and section 643(1)(a) should be amended by adding the words “and sections 552 and sub-section (3) of section 555” after the words “sub-section (3) of section 550”. As suggested in paras 21 and 187 *supra*, the reference to “sub-section (1) of section 549” in section 643(1)(a) should be omitted. Section 643(1)(b) requires that the rules should be ‘consistent with the code of Civil Procedure’. ‘Code’ is defined in the Code of Civil Procedure as including the Rules, and ‘Rules’ are defined as meaning the ‘rules in the first Schedule, or made under section.

S. 643 (1) (a)
and (b).

122 or 125' [See section 2(1) and (18) C.P. Code]. Under sections 122 and 125 of the Code, the High Courts are empowered to make rules to regulate their own procedure and the procedure of the subordinate courts, and by such rules to annul, alter or add to the rules in the first Schedule to the Code, but such rules are to be consistent with the sections in the body of the Code (see section 128 of the Code). The rules made by the various High Courts, though they have to be consistent with the body of the Code, need not necessarily be, and as a matter of fact, are not consistent with each other. The adoption of the definition of the word 'Code' as given in the Code would result in the anomaly that the rules made under section 643 of the Companies Act will have to be consistent not only with the main body of the Code, but, in respect of each High Court, with the Rules in the first Schedule as annulled, altered or added to by that High Court. The anomaly can be avoided if the rules to be made under the Companies Act are required to be consistent with the sections in the body of the Code of Civil Procedure. The Rules to be framed by the High Courts under section 45(u) of the Banking Companies Act are not required to be consistent with the Civil Procedure Code, but only with that Act and with the rules made by the Central Governments in consultation with the Reserve Bank under section 52 of that Act.

While the reduction of capital requires the sanction of Court and an appropriate procedure has to be prescribed in connection with it, it is not clear why any rules of Court are necessary regarding the sub-division of shares. Under section 94, a company may sub-divide its shares only if authorised by its articles, and if not so authorised, the articles would have to be altered by inserting the power, whereupon the sub-division may be effected by the company at a general meeting. Neither for the alteration of the articles, nor for the sub-division of shares, is confirmation by Court necessary under the Act. The position was the same under the previous Acts of 1882 and 1913. However, in the power conferred on the High Courts to make rules under section 254 of the Companies Act, 1882, the 'sub-division of the shares of a company', was added along with the reduction of share capital as one of the matters in respect of which rules had to be made, though there was no analogous provision in the English Act. This provision has since been repeated in the subsequent enactments including the

present Act, though in the present Act, an express provision is added in section 94(2) that the powers under that section, which include the power to sub-divide the shares, shall not require to be confirmed by the Court. Nevertheless, section 643 of the Act provides that the Rules are to be made for giving effect to the 'provisions of the Act' relating to sub-division of shares, and the only provision in the Act relating to sub-division of shares as such appears to be section 94. Hence, the words "and the sub-division of the shares of a company" are inappropriate in section 643(1) (b)(iv) and should be deleted.

S. 643(1)
(b) (iv).

Section 645 : Effect of Repeal

206. Section 645 is taken from section 459(2) of the English Act and the first part of the section is unnecessary in view of section 6 of the General Clauses Act. Section 9 of the Companies Act overrides any provision to the contrary contained in a memorandum, articles, agreement or resolution executed or passed before it came into force. For instance, the rights of parties under managing agency agreements entered into before the Act are subject to the provisions of the Act. There appears to be no provision in the English Act corresponding to section 9 of our Act. Sections 645, 647(2), 648, 656 and 658 would be redundant in view of section 6(a) to (e) of the General Clauses Act. In view of the definition of 'company' in section 3 of the Act, section 656 is unnecessary and might be omitted. Section 658 is also otiose and may be deleted.

Ss. 645, 647
(2), 648,
656 and
658.

Section 647 : Pending proceedings for winding up

207. Liquidation proceedings begun under the Act of 1913 in respect of a large number of companies have been going on for years and in most of the cases the companies have no assets worth the name. It may be desirable in some cases that the liquidators appointed under the 1913 Act should be discharged and the cases transferred to the Official Liquidators appointed under section 448 of the Act. There has been some difference of opinion on the question whether the Official Liquidator could take charge of pending liquidations. It has been the view of some Courts that a liquidator appointed under the Act 1913 does not become *functus*

S. 647. *officio* until the winding up is completed. We would recommend an amendment of this section as follows:--

“Where the winding up of a company which commenced before the date of the coming into force of this Act is pending on that date—

- (i) sections 471, 472, 552 and 555 shall apply in respect of any moneys paid into the Companies Liquidation Account, whether before or after such commencement;
- (ii) the further proceedings in liquidation after the order for winding up made by the Court may, on an application made to the Court by the Registrar or any person interested, stand transferred to the Official Liquidator appointed under this Act;
- (iii) in other respects the company shall be wound up in the same manner and with the same incidents as if this Act had not been passed.”

Nidhis and Benefit Societies

208. We have now to advert to a class of companies which are *sui juris* and which present peculiar features. There are a large number of concerns in South India variously styled as Nidhis, Mutual Benefit Societies, Permanent Funds etc. They are companies incorporated and registered under the Act of 1913 or the earlier Companies Acts. Their objects *inter alia* are to enable the members to save money, to invest their savings, and to secure loans at favourable rates of interest. They inculcate the idea of thrift and compulsory saving in the minds of the poor and middle class people. These companies have a fixed capital consisting of shares of one rupee each. The shares are not offered to the public for subscription but allotted to those who desire to take advantage of the benefits offered for depositing or borrowing money. These companies have transactions only with the members and not with the public. They help the members to save money by receiving from them recurring deposits of small sums every month and repaying the accumulated sum at the end of 4, 5, 6 or 7 years, as the case may be, with interest calculated on the amount standing to the credit of the depositor each month. Loans are granted to members on the security of their recurring deposits or of jewels or house property repayable with a moderate

rate of interest during a period of 4 to 7 years in monthly instalments. For instance, a member who subscribes one rupee every month for a period of 7 years gets Rs. 100 at the end of the period, the rate of interest working out at 6 per cent. Similarly, a member who borrows Rs. 500 on the security of his recurring deposit or other security has to pay Rs. 5 every month at the rate of one rupee for every Rs. 10 of loan and, if he continues to pay the same for 7 years, the total amount he will pay will come to Rs. 420 but the loan of Rs. 500 is automatically discharged at the end of 7 years, the difference of Rs. 80 representing the interest contributed by the company on the monthly instalment of 5 rupees paid by the member. As these companies deal only with their members and their business is restricted to receiving deposits from and lending money to members, their main source of income or profits is the difference between the interest paid to and earned from the members. They do not open current accounts. Some of these companies by reason of thrifty management have built up reserves and acquired assets in the shape of buildings, Government securities etc. To take the case of Mylapore Hindu Permanent Fund Ltd., Madras, the authorised capital is Rs. 1,00,00,000 and the paid up capital is Rs. 30,000. The membership of the company fluctuates and in 1956 it was 30,000. Each member is allotted one share of the face value of Re. 1. The annual dividend declared in 1956 was one anna six pice per share. The shares are not quoted on any Stock Exchange or dealt in on the market, but are transferable. There are twelve directors, of whom one is styled the President and another is the internal auditor. The annual remuneration of all the twelve directors is Rs. 10,000 and they are not paid any sitting fees. The company was established in 1872 and its reserves are about Rs. 10,00,000. The other Nidhis and Benefit Societies are of the same general pattern and function in different parts of the City of Madras or in the urban areas in the mofussil. They are not co-operative societies but are run on the same principles and their number is appreciable.

It has been represented to us that the application of some of the provisions of the Companies Act, 1956 to companies of the aforesaid type has resulted in considerable hardship to them and seriously crippled their slender resources.

Section 53 of the Act relating to service of documents on members individually involves considerable expenditure by way of stationery, printing and postage in the case of these Nidhis whose membership runs into several thousands. Publication on the notice board of the company and an advertisement in a local daily newspaper in one or two issues should be deemed to be sufficient.

Nidhis whose membership is generally unwieldy have to be exempted from the obligation to file every year a return of members, past and present, under section 159. The compiling of such a list comprising thousands of names is a laborious task involving a huge amount of clerical work with no corresponding advantage. It is enough if the changes in membership that have taken place during the year are alone returned.

In view of the large membership of these companies the provisions of section 166 might be relaxed so as to allow the holding of annual general meetings at places other than the company's registered office and on holidays. Section 207 also requires to be relaxed in these cases. The requirement of posting dividend warrants to members should not apply to these companies with a share capital of nominal value and declaring a paltry sum of a few naye paise as dividend, in view of the expense involved in postage which exceeds the amount of the dividend. The dividend should be made payable at the counter on demand by the shareholder or credited to his account with the company. The requirement of section 219 as regards the supply of copies of the balance sheet and profit and loss account to each of the members might be relaxed and it might be provided that their publication on the notice board of the company and in one or two local newspapers shall be sufficient and any shareholder who applies to the company in writing for a copy of these documents shall be entitled to receive a copy at the office of the company. Since these companies are carrying on business of a more or less stereotyped character, they might be exempted from the provisions of section 280 relating to the age limit of directors. In view of the petty nominal value of the shares, the provision in section 270 allowing a time limit for the acquisition of the share qualification of a director might be abrogated and the companies might be allowed to provide by their articles

that no person who does not possess the requisite share qualification shall be eligible for election as a director. In view of the fact that loans are advanced to members only on the security of their recurring deposits or gold, jewellery or house property, the restrictions imposed by section 295 in regard to loans to directors or their relatives might be relaxed and such loans might be permitted in conformity with the articles. There is no justification for exempting these companies from the operation of section 314, particularly when we are fixing a minimum salary limit for the office in the amendment proposed by us. The filing fee of Rs. 5 laid down in Schedule X, subsequently increased to Rs. 10 in the case of companies having an authorised capital of rupees one lakh and above, in respect of the return of allotments to be filed under section 75(1) of the Act works serious hardship in the case of these companies. Before the present Act they were paying only 4 annas for each allotment of the value of Rs. 1 to 25. In the case of joint stock companies other than Nidhis, further allotment of shares after the initial allotment is made occasionally. In the case of Nidhis, the membership is increasing monthly and the number of shares allotted in a month may not, in most cases, exceed 25 shares of Re. 1 each. Even if one share is allotted in a month, the company has to pay Rs. 10 a month, which is forty times the rate charged under the Act of 1913 and is incidentally ten times the amount of the capital involved. It is necessary that in the case of Nidhis, the fee leviable in respect of the return of allotments, to be filed under section 75(1) should be considerably reduced so as to enable them to extend their usefulness and service to the poor and the lower middle class people. The Central Government might reduce the fee in the exercise of its powers under section 613 of the Act.

The S.N.D.P. Yogam, which is a non-profit making concern, has made a representation that it should be exempted from the operation of certain provisions of the Act, in view of its large membership of over 12,000, its numerous branches numbering 1270 and its social and educational activities. As regards the requirements of sections 53, 166 and 172 regarding notices, venue, date and hours of the annual general meeting, from which the Yogam wants to be exempted, the considerations that apply to the case of Nidhis which we have adverted to above, apply also to the

Yogam. The same is the position with regard to the applicability of sections 280 and 314. If, as stated before, the so-called branches of the Yogam are autonomous bodies having separate constitutions and memberships and acquiring properties and disposing of them in their own right without reference to the Yogam, then they are not, strictly speaking, branches of the company and there is no need for any special exemption from section 209. They have to get themselves registered as companies. We are of the opinion that Nidhis and Benefit Societies of the type mentioned above should confine their business activities to the State wherein they are registered and should be governed by appropriate State legislation.

Acknowledgement

209. We wish to express our warm appreciation of the work done by Shri F. N. Sanyal, our Secretary, who analysed and collated a mass of notes and memoranda received from different quarters and also rendered us valuable assistance in the preparation of our report. Our Administrative Officer, Shri V. K. Venkataraman, performed the tasks assigned to him with comendable thoroughness and promptitude. The small staff of the Committee consisting of two assistants and two typists have willingly worked overtime and got ready our draft and fair reports without delay. We conclude our report with the hope that our recommendations may serve to achieve the objects of our enquiry.

(A. V. Visvanatha Sastri)
Chairman.

(G. Basu)

(J. D. K. Brown)

(C. C. Shah)

(K. R. P. Aiyangar)

(F. N. Sanyal)
Secretary.

NEW DELHI :
Dated the 9th November, 1957

ANNEXURE

[See PARA (89)]

ACCOUNTS

The Institute of Chartered Accountants of India furnished us a detailed memorandum containing the results of their examination of the requirements of the balance-sheet and profit and loss account as set out in Schedule VI. We have generally accepted their suggestions, as we found there was considerable weight of opinion for adhering to the pattern of a prescribed form of balance-sheet adopted in the Companies Act. It has been brought to our notice, however, that there are some technical accounting defects in the present classification and, besides rectifying these, there would also be advantage in stream-lining to some extent the headings of the balance sheet. We are setting out here the nature of the changes which we suggest be made in Part I of Schedule VI for this purpose and at the same time to help the draftsman we have attached a copy of the balance-sheet form as proposed to be revised by us. We appreciate that section 211 gives the administration considerable flexibility in the matter of meeting difficulties encountered by particular companies or classes of companies in complying with the statutory form. Inasmuch as the Schedule can be altered by notification of Government, any further difficulties that might arise, even after companies have begun to adopt the slightly revised form that we have suggested, can be met by making such changes as would be found necessary in the light of subsequent practical experience.

A suggestion has been made that the present headings "Assets" and "Liabilities" shown in the form of the balance sheet as prescribed by Schedule VI are inappropriate and unnecessary and had better be omitted. Though this criticism is in accord with current accounting thought, it has to be admitted that a layman is not normally interested in the technical intricacies of accounting and it is doubtful whether the present headings have caused any confusion. On the other hand, the average shareholder has been used to such headings and we do not feel that the time has yet come for omitting them altogether.

The following are the changes to be made in the form of the balance sheet:—

- (1) Numbering of the major headings may be dropped, but they will continue to be shown distinctly in capitals.

2. *Share Capital :*

- (a) The words "of the above shares shares are allotted as fully paid up by way of bonus shares" be replaced by the words "of the above shares shares are allotted as fully paid up by way of bonus or other shares by way of capitalisation of profits or reserves or/and from share premium account."
- (b) "Issued Capital" be also shown separately in similar manner as Subscribed Capital.
- (c) A note be given in the margin requiring the showing of different classes of Preference Capital separately.
- (d) In the heading "Add Forefeited shares," delete the words and brackets "(amount paid up)".
3. The heading "Share Premium Account" may be transferred from "Share Capital" to "Reserves and Surplus" as item (3).
4. *Reserves and Surplus :* Item (2).—The word "Fund" should be deleted and the word "Account" substituted.

Item (3).—As suggested above, this should read "Share Premium Account" and the present item (3) changed to item (4).

Item (4).—The word "fund" should be changed to "Reserve" and the numbering be changed to (5).

Item (5) should be changed to item (6).

Item (6) should be changed to item (7).

Item (7) should be transferred to "Current Liabilities and Provisions" as item "(14) other provisions" under the proposed sub-major head "B. Provisions".

Item (8) remains as item (8).

Item (9) should be transferred under "Current Liabilities and Provisions" as item "(13) For Insurance, Pension, and similar Staff Benefit Schemes" under the proposed sub-major head "B. Provisions".

A marginal note should be inserted against the heading "Reserves and Surplus" to the effect that the word "Fund" in relation to any reserve should be used only where such reserve is specifically represented by readily realizable and earmarked assets.

5. *Secured Loans.*—A note should be added in the margin requiring disclosure of similar information as under Redeemable Preference Shares so far as Debentures are concerned.

6. *Unsecured Loans.*—A note similar to the existing note against Secured Loans should be added.

7. *Current Liabilities and Provisions.*—This should be split up in to—

- (A) Current Liabilities; and
- (B) Provisions.

Under “Current Liabilities,” items (1), (2), (5), (6), (8), (9), (10) and (11) should be re-numbered as items (1) to (8) and items (3) and (4) as (9) and (10).

Under “Provisions”, will stand included the following detailed headings:—

- (11) For contingencies.
- (12) For Provident Fund Scheme.
- (13) For Insurance, Pension and similar Staff Benefit Schemes.
- (14) Other provisions.

8. A foot-note to the balance sheet should be added to show separately the following, and the major heading “Contingent Liabilities Not Provided for” deleted:—

- (1) Claims against the company not acknowledged as debts.
- (2) Uncalled liability on shares partly paid.
- (3) Arrears of fixed cumulative dividends.
- (4) Estimated amount of contracts remaining to be executed on capital account and not provided for.
- (5) Other money for which the company is contingently liable.

9. *Investments.*—Item (3) should be deleted and at the end of the words in brackets in item (2) the following should be added:—

“and showing in similar detail separately investments in shares, debentures and bonds of subsidiary companies”.

Item (4) Immovable Property should be re-numbered as (3).

10. The existing main heads III and IV should be grouped as a major head “Current Assets and Loans and Advances” with sub-major heads—

- (A) Current Assets ; and
- (B) Loans and Advances

11. The existing major head “Interest Accrued on Investments” should be transferred as a detailed head—item (1)—under “Current Assets”, the existing items (1) to (5) being re-numbered as (2) to

(6). The major head "V. Cash and Bank Balances" should also be added instead as a detailed head—item (7)—under "Current Assets". The detailed head re-numbered as item (6). "Sundry Debtors" should be split up into the following sub-detailed heads:—

- (a) Debts outstanding for a period exceeding six months.
- (b) Other debts.

A marginal note may be added against "Sundry Debtors" as follows:—

"The reserves to be shown under this head should not exceed the amount of debts stated to be considered doubtful or bad and any surplus of such reserves, if already created, should be shown at every closing under "Reserves and Surplus" under a separate head "Reserve for Doubtful or Bad Debts".

13. Under "Loans and Advances", a new item (8) "Advances and Loans to Subsidiaries" may be added and the existing items (1) to (4) should be re-numbered as (9) to (12).

13. The group heading "Miscellaneous Expenditure and Losses" should be split up into the following major headings:—

"Miscellaneous Expenditure" ; and

"Profit and Loss Account."

Under the former, the existing detailed items (1) to (4) should be included along with two new items, namely, items "(5) Development expenditure not adjusted", and "(6) Other items (specifying nature)."

The existing item (5) should be omitted in view of the inclusion of the new major head "Profit and Loss Account—Loss brought forward/Less Reserves set off."

14. In Note (c) to the form of the balance sheet, the cross reference should be to the heading "Share Capital" instead of to "Investments" as at present.

A further addition should be made at the end of this Note as follows:—

"The auditor is not required to certify the correctness of such share holdings as certified by the management."

15. A Note (cc) should be added after the present Note (c) as follows:—

"(cc) The item 'Share Premium Account' shall include full details of its utilization in the manner provided in section 78."

16. Note (g):—The words "to the extent" should be added between the word "contracts" and the words "not executed".

17. Note (h) :—After the words “General Reserve” the words “if any,” should be added and the rest of the note should be deleted.
18. Note (l) :—The following should be added at the end:—
“A trade investment means an investment by a company in the shares or debentures of another company, not being its subsidiary for the purpose of promoting the trade or business of the first company”.
19. Note (o) :—The concluding sentence should be deleted.
20. A new note should be added as follows:—
“(p) Advances by directors, managing agent, secretaries and treasurers, manager as also balances on current account with them, whether they are in credit or in debit, shall be shown separately.”

Revised form of Balance Sheet as recommended by the Committee

See Annexure

SCHEDULE VI

[See section 211]

PART I

Form of balance sheet

Balance Sheet of (Here enter the name of the company)
 At dt. (Here enter the date as at which the balance sheet is made out)

Instructions in accordance with which liabilities should be made out	Liabilities	Assets	Instructions in accordance with which assets should be made out
<p>*Terms of redemption or conversion (if any) of any Redeemable Preference Capital to be stated, together with earliest date of redemption or conversion.</p> <p>Particulars of any option on unissued share capital to be specified.</p> <p>†Particulars of the different classes of preference shares to be given.</p>	<p>Figures for the previous year</p> <p>Rs. (b)</p> <p>*SHARE CAPITL: Authorised, ... shares of Rs. each. †Issued (distinguishing between the various classes of capital and stating the particulars specified below, in respect of each class) ... shares of Rs. each. †Subscribed (distinguishing between the various classes of capital and stating the particulars specified below, in respect of each class.) (c) shares of Rs. each.</p>	<p>Figures for the previous year</p> <p>Rs. (b)</p> <p>*FIXED ASSETS : Distinguishing as far as possible between expenditure upon: (a) goodwill, (b) lands, (c) buildings, (d) leaseholds, (e) railway sidings, (f) plant and machinery, (g) furniture and fittings, (h) development of property, (i) patents, trade marks and designs, (j) live-stock and (k) vehicles etc.</p>	<p>Figures for the current year</p> <p>Rs. (b)</p> <p>*Under each head the original cost, and the additions thereto and deductions therefrom during the year, and the total depreciation written off, or provided up to the end of the year to be stated.</p> <p>In case where original cost cannot be ascertained, the valuation shown by the books shall be given and where any of the assets are sold and the original cost in respect thereof is not ascertainable, the amount of the sale proceeds shall be shown as deduction.</p>

Rs.....called up.
 Of the above shares,.....
 shares are allotted as
 fully paid up pursuant
 to a contract without
 payments being re-
 ceived in cash.
 Of the above shares,.....
 shares are allotted as
 fully paid up by
 way of bonus shares
 or other shares by way
 of capitalisation of pro-
 fits or reserves or /and
 from share premium
 account.

Less : Calls unpaid :
 (i) By managing agents
 or Secretaries and
 treasurers and where
 the managing agent
 or secretaries and
 treasurers are a firm,
 by the partners there-
 of, and where the
 managing agent or
 secretaries and trea-
 surers are a private
 company, by the
 directors or members
 of that company.

(ii) By directors.

(iii) By others.

Add Forfeited shares

Where sums have been written
 off on a reduction of capital or
 a revaluation of assets, every
 Balance Sheet, (after the first
 Balance Sheet) subsequent to
 the reduction or revaluation
 shall show the reduced figures
 and with the date of the re-
 duction in place of the ori-
 ginal cost.

Each Balance Sheet for the
 first five years subsequent to
 the date of the reduction, shall
 show also the amount of the
 reduction made.

Similarly, where sums have
 been added by writing up
 the assets, every Balance

Instructions in accordance with which liabilities should be made out	Liabilities	Assets	Instructions in accordance with which assets should be made out
<p>*Additions and deductions since last Balance Sheet to be shown, under each of the specified heads.</p> <p>The word "fund" in relation to any "Reserve" should be used only where such Reserve is specifically represented by readily reliable and earmarked assets.</p>	<p>Figures for the previous year.</p> <p>Rs. (b)</p> <p>*RESERVES AND SURPLUS :</p> <p>(1) Capital Reserves not available for Dividend.</p> <p>(2) Capital Redemption Reserve.</p> <p>(3) Share Premium Account (cc)</p> <p>(4) Other Reserves specifying the nature of each reserve and the amount in respect thereof.</p> <p>Less : Debit balance in Profit and Loss Account (if any).</p> <p>(5) Any other Reserve created out of Net Profit.</p> <p>(6) Surplus that is balance in Profit and Loss Account after providing for proposed allocations, viz., Di-</p>	<p>Figures for the current year</p> <p>Rs. (b)</p> <p>INVESTMENTS :</p> <p>Showing nature of investments and mode of valuation, for example cost or market value and distinguishing between—</p> <p>* (1) Investments in Government or Trust Securities.</p> <p>(2) Investments in shares, debentures or bonds (showing separately shares, fully paid up and partly paid up and also distinguishing the different classes of shares</p>	<p>Sheet subsequent to such writing up shall show the increased figures with the date of the increase in place of the original cost. Each Balance Sheet for the first five years subsequent to the date of writing up shall also show the amount of increase made.</p> <p>*Aggregate amount of company's quoted investments and also the market value thereof shall be shown. Aggregate amount of company's unquoted investments shall also be shown.</p>

vidend, Bonus or Reserves.
 (7) Proposed additions to reserves.
 (8) Sinking Funds.

SECURED LOANS

- * (1) Debentures
- (2) Loans and Advances from Banks.
- * (3) Loans and Advances from subsidiaries.
- * (4) Other Loans and Advances.

*The nature of the security to be specified in each case.

Where loans have been guaranteed by managing agents, secretaries and treasurers managers and/or directors, a mention thereof shall also be made and also the aggregate amount of such loans under each head.

†Terms of redemption or conversion (if any) of debentures issued to be stated together with earliest date of redemption or conversion.

and showing also in similar details investments in shares, debentures or bonds of subsidiary companies.
 (3) Immovable properties.

CURRENT ASSETS, LOANS AND ADVANCES.

- (A) Current Assets.
- (1) Interest accrued on Investments
- ††(2) Stores and Spare Parts
- ††(3) Loose Tools.
- ††(4) Stock-in-trade.
- * (5) Works in Progress.
- †(6) Sundry Debtors.

(a) Debts outstanding for a period exceeding six months.

(b) Other debts.

Less: Reserve.

†(7) Cash and bank balances.

††Mode of valuation of stock shall be stated and the amount in respect of raw materials shall also be stated separately where practicable.

**Mode of valuation of works-in-progress shall be stated.

†In regard to Sundry Debtors particulars to be given separately of—(a) debts considered good and in respect of which the company is fully secured; and (b) debts considered good for which the company holds no security other than the debtor's personal security; and (c) debts considered doubtful or bad.

Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies res-

Instructions in accordance with which liabilities should be made out	Liabilities		Assets		Instructions in accordance with which assets should be made out
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
	Rs. (b)	Rs. (b)	Rs. (b)	Rs. (b)	<p>Debits due from other companies under the same management to be disclosed with the names of the companies (<i>vide</i> section 370).</p> <p>The maximum amount due by directors or other officers of the company at any time during the year to be shown by way of a note.</p> <p>The Reserves to be shown under this head should not exceed the amount of debts stated to be considered doubtful or bad and any surplus of such Reserves, if already created, should be shown at every closing under "Reserves and Surplus" (in the Liabilities side) under a separate sub-head "Reserve for Doubtful or Bad Debts".</p>

†The balances lying with bankers on current accounts, call accounts and deposit accounts shall be shown separately.

UNSECURED LOANS:

- †Where loans have been guaranteed by managing agents, secretaries and treasurers, managers, and/or directors, a mention thereof shall also be made and also the aggregate amount of such loans under each head.
- (1) Fixed Deposits.
 - †(2) Loans and Advances from subsidiaries.
 - †*(3) Short Term Loans and Advances:
 - (a) From Banks.
 - (b) From others.
 - †(4) Other Loans and Advances:
 - (a) From Banks.
 - (b) From others.

CURRENT LIABILITIES AND PROVISIONS:

- A. Current Liabilities
- (1) Acceptances.
 - (2) Sundry Creditors.
 - (3) Subsidiary Companies.
 - (4) Provision for Taxation.
 - (5) Proposed Dividends.
 - (6) Advance Payments and Unexpired Discounts for the portion for which value has still to be given *€*5. in the case of the following classes of companies:
 - (7) Fire Insurance, Theatre, Clubs, Banking, Steamship Companies etc.)

†(B). Loans and Advances.

- (8) Advances and Loans to Subsidiaries.
- (9) Bills of Exchange.
- (10) Advances recoverable in cash or in kind or for value to be received, *e.g.*, Rates, Taxes, Insurance, etc.
- (11) Balances on current account with Managing Agents or Secretaries & Treasurers.
- (12) Balances with Customs, Port Trust, etc. (where payable on demand).

†The above instructions regarding "Sundry Debtors" apply to "Loans and Advances" also. In addition, Loans and Advances to subsidiary companies shall be separately stated.

*See note (d) at foot of form.

Instructions in accordance with which liabilities should be made out	Liabilities		Assets		Instructions in accordance with which assets should be made out
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
	Rs. (b) (7) Unclaimed Dividends. (8) Other Liabilities (if any). (9) Interest accrued and accruing on secured loans. (10) Interest accrued and accruing on unsecured loans. B. Provisions. (11) For contingencies. (12) For Provident Fund schemes. (13) For insurance, pension and similar staff benefit schemes. (14) Other provisions.	Rs. (b)	Rs. (b)	Rs. (b)	
††The period for which the dividends are in arrear or if there is more than one class of shares, the dividends on each such class are in arrear, shall be stated.	[A footnote to the balance sheet may be added to show separately:— (1) Claims against the company not acknowledged as debts. (2) Uncalled liability on shares partly paid.				
	††(3) Arrears of fixed cumulative dividends.				

The amount shall be stated before deduction of income-tax, except that in the case of tax free dividends the amount shall be shown free of income-tax and the fact that it is so shown shall be stated.

††The amount of any guarantees given by the company on behalf of directors or other officers of the company shall be stated and where practicable, the general nature and amount of each such contingent liability, if material, shall also be specified.

(4) Estimated amount of contracts remaining to be executed on capital account and not provided for.

††(5) Other money for which the company is contingently liable.]

MISCELLANEOUS EXPENDITURE (to the extent not written off):

- (1) Preliminary expenses.
- (2) Expenses including commission or brokerage on underwriting or subscription of shares or debentures.
- (3) Discount allowed on the issue of shares or debentures.
- (4) Interest paid out of capital during construction (also stating the rate of interest).
- (5) Development expenditure not adjusted.
- (6) Other items (specifying nature).

PROFIT AND LOSS ACCOUNT.

Loss brought forward
Less Reserves set off.

NOTES

General instructions for preparation of balance sheets.—(a) The information required to be given under any of the items or sub-items in this Form, if it cannot be conveniently included in the Balance Sheet itself, shall be furnished in a separate Schedule or Schedules to be annexed to and to form part of the Balance Sheet. This is recommended when items are numerous.

(b) Annas and pies can also be given in addition to Rupees, if desired.

(c) In the case of subsidiary companies etc., the number of shares held by the ultimate holding company and its subsidiaries must be separately stated.

The auditor is not required to certify the correctness of such share-holdings as certified by the management.

(cc) The item "Share Premium Account" shall include full details of its utilization in the manner provided in section 78.

(d) Short Term Loans will include those which are due for not more than one year as at the date of the Balance Sheet.

(e) Depreciation written off or provided shall be allocated under the different asset heads and deducted in arriving at the value of Fixed Assets.

(f) Dividends declared by subsidiary companies after the date of the Balance Sheet cannot be included unless they are in respect of a period which closed on or before the date of the Balance Sheet.

(g) Any reference to benefits expected from contracts to the extent not executed shall not be made in the Balance Sheet but shall be made in the Board's report.

(h) The debit balance in the Profit and Loss Account shall be set off against the General Reserve, if any.

(i) As regards Loans and Advances, amounts due by the Managing Agents or Secretaries and Treasurers, either severally or jointly with any other persons, to be separately stated; the amounts due from other companies under the same management should also be given with the names of the companies *vide* section 379; the maximum amount due from every one of these at any time during the year must be shown.

(j) Particulars of any redeemed debentures which the company has power to issue should be given.

(k) Where any of the company's debentures are held by a nominee or a trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

(l) A list of Investments separately classifying Trade Investments and Other Investments should be attached to the Balance Sheet stating the names of the bodies corporate (with the names of their managing agents or secretaries and treasurers, if any) in whose shares, debentures or

bonds, investments have been made and also stating the amounts in respect of each item ; provided however that it shall not be necessary to give such particulars (a) in respect of Investments made by Managing Agency companies in managed companies' shares, debentures or bonds, or (b) in respect of Investments made by Investment companies, provided that particulars in respect of Investments in shares of Private Companies shall be given. The amount in respect of the holdings by Investment Companies in unquoted share or shares of private limited companies shall be separately stated, specifying the name of each such company and the amount invested therein.

A "Trade Investment" means an investment by a company in the shares or debentures of another company, not being its subsidiary, for the purpose of promoting the trade or business of the first company.

(m) If, in the opinion of the Board, any of the current assets have not a value on realisation in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion shall be stated.

(n) Except in the case of the first Balance Sheet laid before the company after the commencement of the Act, the corresponding amounts for the immediately preceding financial year for all items shown in the Balance Sheet shall be also given in the Balance Sheet. The requirement in this behalf shall in the case of companies preparing quarterly or half-yearly accounts etc. relate to the Balance Sheet for the corresponding date in the previous year.

(o) The amounts to be shown under Sundry Debtors shall include the amounts due in respect of goods sold or services rendered or in respect of other contractual obligations but shall not include the amounts which are in the nature of loans or advances.

(p) Advances by Directors, Managing Agents, Secretaries and Treasurers, Managers as also balances on current account with them whether they are in credit or debit shall be shown separately.

PART II

Profit and Loss Account

1. 3(iii) : For the words "works remained to be executed" the words "such works have been completed" should be substituted.
2. 3(v) : The words "paid or payable" should be substituted for the word "payable".
3. 3(x)(d) and (e) : The following may be added as an Explanation:—"Expenditure under various heads such as Salaries and Wages, Stores, etc. should be allocated Repairs Accounts and the aggregate figures allocated under each such head should also be indicated by way of note".
(f) (3) : The item should be modified by adding "to the extent not provided from any previous provision or reserve" and require the information to be given in the Balance Sheet under the relevant provision or reserve account.
4. 3(xii) (a) : The item should be modified by adding "to the extent not provided from any previous provision or reserve" and require the information to be given in the Balance Sheet under the relevant provision or reserve account.
5. A note should be added requiring the Board of Directors to furnish to the auditors statements in writing which are to be required to be supplied to the Board by all persons who receive remuneration required to be disclosed to the company in the form prescribed for the purpose (draft form appended).

Schedule VI, Part II, Clause (4)

The opening sentence should be revised as follows :—

"To comply with the requirements of section 362 (A), the profit and loss account shall also contain or give by way of note detailed information in regard to the following matters

(inclusive of payments to Managerial personnel as per form hereto annexed).

Proforma

Name of the Company

Period ended

From the company	From the company's subsidiaries	From any other person
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I. REMUNERATION

- (a) As Director.
- (b) As Managing Agent.
- (c) As Secretaries and Treasurers.
- (d) As Managers.
- (e) As Managing Director.
- (f) Otherwise in connection with the company's management.

2. OTHER EMOLUMENTS

- (a) Expense allowances.
- (b) Other allowances (give details)
- (c) Any other perquisites or benefits in cash or in kind (stating approximate money value where practicable).

3. PENSIONS, ETC.

- (a) Pensions.
- (b) Gratuities.
- (c) Payments from Provident Funds, in excess of own subscriptions, and interest thereon.
- (d) Compensation for loss of office.
- (e) Consideration in connection with retirement from office.

Date

Signature

APPENDIX I

(See para. 9)

List of Chambers of Commerce, Trade and other Associations, firms, companies and individuals who presented their views before the Committee.

*Indicates those who gave oral evidence in addition to submitting written memoranda.

†Indicates those who did not submit written memoranda but gave oral evidence.

The others (*i.e.* those not marked with any sign) submitted written memoranda only.

I.—Chambers of Commerce.

- *1. Andhra Chamber of Commerce, Madras.
- *2. Associated Chambers of Commerce of India, Calcutta.
- *3. Bengal Chamber of Commerce and Industry, Calcutta.
- *4. Bengal National Chamber of Commerce and Industry, Calcutta.
- *5. Bharat Chamber of Commerce, Calcutta.
- 6. Bihar Chamber of Commerce, Patna.
- *7. Bombay Chamber of Commerce and Industry, Bombay.
- 8. Cochin Chamber of Commerce, Cochin.
- 9. Federation of Indian Chambers of Commerce and Industry, New Delhi.
- *10. Hindustan Chamber of Commerce, Madras.
- *11. Indian Chamber of Commerce, Calcutta.
- *12. Indian Merchants' Chamber, Bombay.
- 13. Iron, Steel and Hardware Merchants' Chamber of India, Bombay.
- 14. Kanara Chamber of Commerce, Bangalore.
- 15. Madhya Bharat Chamber of Commerce and Industry, Gwalior.
- *16. Madras Chamber of Commerce, Madras.
- *17. Madura-Ramnad Chamber of Commerce, Madurai.
- 18. Maharashtra Chamber of Commerce, Bombay.
- 19. Maharatta Chamber of Commerce and Industries, Poona.
- 20. Merchants' Chamber of U.P., Kanpur.
- *21. Mysore Chamber of Commerce, Bangalore.
- 22. Rajasthan Chamber of Commerce and Industry, Jaipur City.

- *23. Southern India Chamber of Commerce, Madras.
- 24. Tamil Chamber of Commerce, Madras.
- 25. Travancore Chamber of Commerce, Alleppey.
- 26. Upper India Chamber of Commerce, Kanpur.
- 27. Virudhunagar Chamber of Commerce Ltd., Virudhunagar.

II.—*Trade and Other Associations*

- 28. Advertising Agencies Association of India, Bombay.
- *29. Advocates' Association, Madras.
- 30. Ahmedabad Mill and Gin Stores Merchants' Association, Ahmedabad.
- *31. Ahmedabad Millowners' Association, Ahmedabad.
- 32. All-India Exporters' Association, Bombay.
- 33. All-India Importers' Association, Bombay.
- *34. All-India Investors' Association, Calcutta.
- *35. All-India Manufacturers' Organisation, Bombay.
- 36. All-India Plastic Manufacturers' Association, Bombay.
- 37. Assam Tea Planters' Association, Jorhat, Assam.
- *38. Associated Body of Nidhis and Chit Funds, Madras.
- 39. Audit Bureau of Circulations Ltd., Bombay.
- 40. Automobile Association of Southern India, Madras.
- *41. Bar Council Association, Madras.
- 42. Bihar Industries Association, Patna.
- 43. Bombay Exchange Banks' Association, Bombay.
- 44. Bombay Incorporated Law Society, Bombay.
- *45. Bombay Industries Association, Bombay.
- 46. Bombay Oilseeds and Oils Exchange Limited, Bombay.
- *47. Bombay Shareholders' Association, Bombay.
- 48. Bombay Shop Assistants' Federation, Bombay.
- 49. Bombay Stock Exchange (Shri K.R.P. Shroff), Bombay.
- 50. Bombay Yarn Merchants' Association and Exchange Limited, Bombay.
- 51. Calcutta Stock Exchange Association Limited, Calcutta.
- 52. Central Circuit Cine Association, Bhusaval.
- 53. Chartered Accountants' Association, Ahmedabad.
- 54. Chartered Institute of Secretaries India Association, Calcutta.
- *55. Delhi Shareholders' Association, Delhi.
- 56. Delhi Stock Exchange Association Limited, Delhi.
- 57. East India Cotton Association Limited, Bombay.
- 58. Engineering Association of India, Calcutta.
- 59. Federation of Biscuit Manufacturers of India, Delhi.

60. Federation of Gujerat Mills and Industries, Baroda.
61. Federation of Hotel and Restaurant Associations of India, Delhi.
62. Gandhidham Welfare Association, Gandhidham, (Kutch).
63. Gujarat Vepari Mandal, Ahmedabad.
- *64. Incorporated Law Society of Calcutta, Calcutta.
- *65. Indian Banks Association, Bombay.
66. Indian Insurance Companies' Association, Bombay.
67. Indian Society of Advertisers, Bombay.
- *68. Indian Stock Exchange, Bombay.
69. Indian Tea Planters' Association, Jalpaiguri.
- *70. Indore Stock and Shareholders Association, Indore.
71. Institute of Chartered Accountants of India, New Delhi.
- *72. Institute of Company Secretaries, Calcutta.
- *73. Institute of Cost and Works Accountants, Calcutta.
74. Institute of Secretaries, Bombay.
75. Kerala Bankers' Association, Trichur.
76. Madras Regional Council of the Institute of Chartered Accountants of India, Madras.
- *77. Madras Shareholders' Association, Madras.
78. Madras Traders' Association, Madras.
79. Madura College Board, Madurai.
- *80. Millowners' Association, Bombay.
- *81. Native Share and Stock Brokers' Association, Bombay.
82. Post Graduate's Study Circle, Durbar College, Rewa.
83. Property Owners' Association, Bombay.
84. Shareholders' Association, Calcutta.
85. Society of Incorporated Accountants and Auditors of India, Delhi.
86. Southern India Millowners' Association, Coimbatore.
87. S.N.D.P. Yogam, Kottayam.
88. Tamilnad Foodgrains Merchants' Association, Madurai.
89. United India Shareholders' Association, Calcutta.
90. Uttar Bharat Shareholders' Association, New Delhi.

III—Companies and Firms

91. Abhirampuram Fund Limited, Madras.
92. Anderson Wright Limited, Calcutta.
93. Basantram and Sons, Chartered Accountants, Lucknow.
94. Batliboi, S. R. and Company, Chartered Accountants, Calcutta.
95. Bharat Khand Textile Manufacturing Company Ltd., Ahmedabad.
96. Bird & Company (Private) Limited, Calcutta.

97. Bombay Cycle & Motor Agency of Secunderabad Limited, Secunderabad.
98. Bombay Law Reporter, Bombay.
99. Caltex Oil Refining (India) Limited., Visakhapatnam.
100. Central Industrial Syndicate, Bangalore.
101. Shri Changdeo Sugar Mills Limited, Bombay.
102. Cricket Club of India Limited, Bombay.
103. Dalmia Cement (Bharat) Limited, New Delhi.
104. Deccan Flour Mills Limited, Aurangabad.
105. Delhi Cloth and General Mills Company Limited, Delhi.
106. Dholpur Glass Works Limited, Dholpur, Rajasthan.
107. Estrella Batteries Limited, Bombay.
108. General Investment and Commercial Corporation Private Ltd., Udiipi.
109. Gutgutia, K.N. & Company, Calcutta.
110. Harbans Singh Mehta & Company, New Delhi.
111. Hindustan Equipment Suppliers Limited, Bombay.
112. Indian Aluminium Company Limited, Calcutta.
113. Indian Telephone Industries (Private) Limited, Bangalore.
114. Jaipur Metals & Electricals Limited, Jaipur.
115. Joshi, R.D. & Company, Chartered Accountants, Indore.
116. Kumbakonam Mutual Benefit Fund Limited, Kumbakonam.
117. Madras Mutual Benefit Fund Limited, Madras.
118. Madura Hindu Permanent Fund Limited, Madurai.
- *119. Mylapore Hindu Permanent Fund, Madras.
120. National Carbon Company (India) Limited, Calcutta.
121. N.S.D.R. Nidhi Limited, Nungumbhakkam, Madras (Signatories to the memorandum).
122. Park Club Limited, Bombay.
123. Peepul Iron & Steel Industries Limited, Kanpur.
124. Peirce Leslie and Company Limited, Kozhikode.
125. Premier Automobiles Limited, Kurla (Bombay).
126. Premier Construction Company Limited, Bombay.
127. Punjab Distilling Industries Limited, Khasa, Punjab.
128. Punjab National Bank Limited, Delhi.
129. Saraf, C. L. & Company, Calcutta.
130. Shri Mayuram Bank Limited, Mayuram, (Rules Committee).
131. Standard Vacuum Oil Company, New Delhi.
132. Taranath Rasoushodhi Works (Private) Limited, Chikmagalur.
- *133. Thana District Rural Electric Supply Company Limited, Kalyan (Bombay).
134. Trivellore Janapakara Saswatha Nidhi Limited, Madras.

135. Wood R. E. & Company Private Limited, New Delhi.
 136. Zandu Pharmaceutical Works Limited, Bombay.

IV—Individuals

137. Shri Ahmed Fazelbhoj, Bombay.
 138. Shri Balkrishnalal N. Pittie, Bombay.
 139. Shri B. K. Banerjee, B.L., Jalpaiguri.
 140. Shri R.C. Banerjee, Howrah.
 141. Shri G. A. Bhonsle, Nagpur.
 142. Shri A. R. Bose, Calcutta.
 143. Shri N. K. Bose, Calcutta.
 144. B. L. Chakravarthy, Calcutta.
 145. Shri Chandulal Jivabhai Shah, Ahmedabad.
 146. Shri L. M. Chatterjee, Calcutta.
 147. Shri N. K. Chaudhary, Sakchi, Jamshedpur, Bihar.
 148. Shri S. Chaudhuri, Bar-at-Law, Calcutta.
 149. Shri N. V. Dalal, of M/s. Batliboi & Purohit, Chartered Accountants, Bombay.
 150. Shri B.C. Das Gupta, of M/s. Orr Dignam & Co., New Delhi.
 151. Shri S.C. De, Calcutta.
 152. Shri W. T. Desai, Sakharwadi.
 *153. Shri N.V. Deshpande of M/s Batliboi Purohit & Co., Bombay.
 154. Shri C.S. Deva, New Delhi.
 155. Shri V. Doraiswamy Ayyangar, Tiruvallur, Madras.
 156. Shri Ehsan ul-Haq, Kanpur.
 157. Shri George Mathai, Kottayam, T. C. State.
 158. Shri T. L. George, Trichur.
 159. Shri B. N. Ghose, Calcutta.
 160. Shri S.M. Ghose, Calcutta.
 *161. Shri F. R. Ginwalla, B.A., LL.B., Assistant Registrar, City Civil Court, Bombay.
 162. Shri T. S. Gopalakrishnan, Palghar.
 163. Shri S. N. Gupta, Chartered Accountant, Agra.
 164. Dr. Hardit Singh Giani, New Delhi.
 165. Shri Haridas Motilal Parikh, Bombay
 166. Shri Hari Narayan De, M.A., LL.B., Calcutta.
 167. Shri Indra Kumar Datta, Karimganj (Assam).
 168. Lt. Col. R. Janardhanam, Poona.
 169. Shri P.M. John, Coimbatore.
 170. Shri Kasturbhai Lalbhai Safi, Bombay.
 171. Shri Kaza Dattajah, Perala, Andhra

- *172. Shri B. P. Khaitan, Solicitor, Calcutta.
- 173. Shri Kishan Das, Agra.
- 174. Shri K. Kishore, M.A., A.C.C.S., Calcutta.
- 175. Shri C. V. Krishnamurthy, Madras.
- 176. Shri K. Krishnaswamy, Bangalore.
- 177. K. Krishnaswamy Ayyar, O.S.D. Supreme Court, New Delhi.
- 178. Shri Y. Kuppaswamy Aiyer, F.C.A., Calcutta.
- 179. Shri K. Lakshminarayanan, Calcutta.
- 180. Shri K. C. Law, Calcutta.
- †181. Shri D. L. Mazumdar, I.C.S., Secretary, Department of C.L.A. Ministry of Finance, New Delhi.
- 182. Shri Maganlal Matalia, Calcutta.
- 183. Shri R. D. Mathur, Sikka (Saurashtra).
- 184. Shri T. K. Menon & other shareholders of the Star Tile Works Limited, Kozhikode.
- 185. Shri A.K. Mitra, Cost Accountant, Calcutta.
- 186. Shri N. R. Mody of M/s. A.F. Ferguson & Co., Bombay.
- 187. Shri K. Mukerji, Serampore, Hooghly District.
- 188. Shri K. B. Mukherjee, Calcutta.
- 189. Shri C. L. Murarka, Calcutta.
- 190. Mylapore Hindu Permanent Fund Ltd. Madras—(some members).
- 191. Shri C. V. Narahari Rao, M.A., B.L., Coimbatore.
- *192. Shri R. Narasimhachari, Advocate, Madras.
- 193. Shri A. Narayana Aiyar, Madras.
- 194. Shri S. N. Nehrotra, Bareilly.
- 195. New Motor Station (Proprietor), Rewa.
- *196. Official Liquidator, Calcutta (Shri Monoj K. Ganguli).
- 197. Official Liquidator, Madras (Shri A. Arunachalam).
- †198. Shri N. A. Palkhiwala, Bar-at-law, Bombay.
- 199. Shri M. M. Panicker, Bombay.
- 200. Shri C. M. Parikh.
- 201. Shri F. R. Paymaster, Bombay.
- 202. Shri Pheroze J. Shroff, Bombay.
- 203. Shri Phulchand Chapsey, Latur City.
- 204. Shri K. J. Pilani, Bombay.
- 205. Shri P.N.V. Pillai, Hosdrug.
- 206. Shri Premjus Roy, Advocate, New Delhi.
- †207. Shri K. V. Rajagopalan, Madras.
- *208. Shri Raj K. Tandon, Chartered Accountant, Delhi.
- 209. Shri K. S. S. Rajan, Tanjore, Madras State

210. Shri R. Ramakrishnan, Coimbatore.
211. Shri M. Ramanunni Nayyar, Parli-Palighat.
212. A. Ramayya, Advocate, Madurai.
213. Seth Ramchandra Karmani, Calcutta.
214. Shri Rameshwar Das, Delhi.
215. Dr. M. Rangappa Kamath, Bajpe, S. Kanara.
- †216. Shri C. S. Rangaswami, Mg. Editor, "Indian Finance", Calcutta.
217. Shri B. S. Rao, Bombay.
218. Shri T. T. Rathnasabapathy Pillai, Coimbatore.
219. "Roamer", Bombay.
220. Shri Rochiram J. Jethra, Nakhtrana (Kutch).
221. Shri Sadanand Prasad, Jalpaiguri.
- †222. Shri C. S. Sastri, Former President of the Institute of Chartered Accountants of India and member, Advisory Commission, Madras.
223. Shri Satyendra Nath Maulik, Jalpaiguri.
224. Shri Satyendra Prasad Roy, M.P., Jalpaiguri.
- †225. Shri H. M. Seervai, Advocate-General, Bombay.
226. Shri S. N. Sengupta, Calcutta.
227. Shri K. R. Shenoy.
228. Shri B. B. Shetty, Mangalore.
229. Shri Shivkumar Sharan Gupta, Bombay.
230. Shri J. K. Sital Prasad, Kanpur.
231. Shri T. V. Srinivasachari, B.A., B.L., Madras.
232. Shri K. Srinivasan, Madras.
233. Shri R. Srinivasan, Madras.
234. Shri S. V. Srinivasan, Mannargudi, Madras State.
235. Shri V. K. Srinivasan, Madras.
236. Shri M. Subba Rao, Madras.
237. Shri P. S. V. Subramanian, Madras.
238. Shri Sudhendu Mohan Ghose, B.L., Calcutta.
239. "Sufferers" from Bombay.
240. Shri A.K. Sur, Calcutta.
241. Shri L. Swaminathan, Cost Accountant, Calcutta.
242. Dr. B. K. Tandon, Satna, Madhya Pradesh.
243. Sarvashri N. S. Tendulkar, J. Shankara Narayan Rao and others,
Mysore.
244. Shri T. P. Timothy, Trichur.
245. Shri B. L. Tholiya, Bombay.
246. Shri Trambaklal K. Chokshi, Junagadh.
247. Shri R. N. Trivedi, Mandsur, Madhya Pradesh.

248. Shri S. Vaidyanath Ayyar, President Institute of Chartered Accountants of India, New Delhi.
- †249. Shri Ved Vyas, Advocate, New Delhi.
250. Shri N. S. Venkatakrishnan, Calcutta.
- †251. Shri Tenneti Vishwanatham, Chairman, Company Law Advisory Commission, New Delhi.
252. Shri Yogendra Paul, New Delhi.

APPENDIX II

(See para 10)

S. No.	Sections of the Companies Act, 1956, affected	Suggestion made by the Committee	Reference to para number in the Committee's Report
1	2	3	4
1	2	Amendment of sub-sec. (3)(c)(i)	13
2	"	Amendment of sub-secs. (3)(c)(ii) and (4) (b)(ii).	
3	"	Amendment of sub-sec. (7)	14
4	2 & 8	Amendment of sub-sec. (9) of sec. 2 and of sec. 8.	15
5	2 & 10	Amendment of sub-section. (11) of sec. 2 and of s. 10	
6	2	Amendment of sub-sec. (17)	17
7	"	Insertion of a new sub-sec. as sub-sec. (18A).	18
8	"	Amendment of sub-sec. (26)	
9	"	Amendment of definition in sub-sec. (45) so as to accord with policy.	20
10	"	Amendment of sub-sec. (33) r/w. ss. 549 and 643.	
11	"	Amendment of sub-sec. (36)	22
12	3	Insertion of a proviso to sub-sec. (1) (iv)	23
13	4	Suggestion for amendment of section in line with policy.	24
14	"	Amendment of sub-secs. (1) (b) and (2) (c).	
15	6	Redraft of section	26
16	7 & 538	Amendment of sec. 7 and sub-sec. (3) of sec. 538.	27
17	13	Amendment of sub-sec. (1)(c)	
18	17	Amendment of sub-sec. (4)	29
19	18	Amendment of sub-secs. (1) and (4)	30
20	19	Amendment of sub-sec. (2).	
21	23	Insertion of a new sub-sec. as sub-sec. (4).	31

1	2	3	4
22	25	Amendment of sub-secs. (6) and (8)	32
23	28 & 29	Substitution of a new sec. for the sections.	} 33
24	31	Addition of a proviso to sub-sec. (1)	
	"	Insertion of a new sub-sec. (3) and re-numbering of the existing sub-sec. (3) as sub-sec. (4).	} 34
25	38	Addition of a few words at the end of the proviso to section	
26	39	Amendment of sub-sec. (1)	37
27	41	Amendment of sub-sec. (2)	38
28	49	Amendment of sub-secs. (1), (2), (5) (4) and (6).	} 39
29	60	Amendment of sub-sec. (3)	
30	73	Amendment of sub-sec. (1)	42
31	76	Amendment of sub-sec. (2)	43
32	80	Amendment of section.	45
33	81	Amendment of sub-sec. (1)	46
34	84	Addition of a sub-section	48
35	88	Amendment of section.	} 50
36	89	Amendment of sub-sec. (1)	
	"	Amendment of section to provide for company or shareholder to apply to Court.	} 51
37	106	Amendment of section	
38	108	Provision to be made for allowing transfers on execution of indemnity bond.	} 53
39	111	Amendment of sub-sections (2) (4), and (5).	
	"	Insertion of two new sub-secs. as sub-secs. (6) and (1c) and renumbering of existing sub-secs. (6) to (k) as (7) to (9) in the section.	} 54
	"	Further amendment of the section.	
40	113	Amendment of sub-sec. (1)	55
41	125	Amendment of sub-sec. (1) empowering Registrars to condone delays in applying for registration of a charge.	} 56
42	138 & 139	Substitution of a new section for the sections.	
43	142	Deletion of sub-sec. (1)(b)	57
44	145	Amendment of section	58
45	147	Amendment of sub-sec. (1)(c). Further amendment of sub-sec. (1)(c).	} 59

1	2	3	4
46	149 . . .	Omission of sub-sec. (8)	60
47	154 . . .	Amendment of section	62
48	155 . . .	Amendment of sub-secs. (1) and (3) and the addition of a new sub-section as sub-section (5). }	63
49	156 . . .	Amendment of section	64
50	159 . . .	Amendment of sub-secs. (1) and (2) } Further amendment of sub-sec. (1).	65
51	161 . . .	Amendment of sub-sec. (2)(c)	66
52	163 . . .	Addition of a proviso to sub-sec. (1). Amendment of sub-secs. (3) (b) and (4). }	67
53	165 . . .	Amendment of sub-sec. (4)	68
54	166 . . .	Amendment of sub-sec. (1) and addition of two provisos to sub-sec. (2) <i>inter-</i> <i>alia</i> empowering the Central Govt. to grant relaxations of the requirements of sub-sec. (2). }	69
55	169 . . .	Amendment of sub-sec. (4)	70
56	170 . . .	Amendment of sub-sec. (1)	71
57	171 and 190	Amendment of s. 171 (1) and s. 190	72
58	172 . . .	Amendment of sub-sec. (2) (i) by the addition of a proviso thereto. }	73
59	176 . . .	Amendment of sub-sec. (3)	75
60	187 . . .	Amendment of sub-sec. (2)	77
61	190 . . .	Amendment of sub-sec. (1)	78
62	192 . . .	Amendment of sub-secs. (1), (2) and (4) } (g).	79
63	193 . . .	Amendment of sub-sec. (1)	80
64	194 . . .	Redraft of the section.	
65	196 . . .	Amendment of sub-sec. (2)	81
65	197 . . .	Amendment of sub-sec. (1)	82
67	198 . . .	Amendment of heading of section. Amendment of sub-sec. (1). Deletion of sub-sec. (3)(b). Addition of a proviso to sub-sec. (1) Insertion of an Explanation in sub- sec. (1). }	83
	" . . .	Amendment of sub-sec. (2)	
	" . . .	Redraft of sub-sec. (3)(a).	
	" . . .	Amendment of sub-sec. (4).	
68	309 . . .	Redrafts of sub-secs. (2) and (3)	
	" . . .	Insertion of a new sub-sec. as sub-sec.(5A)	
	" . . .	Amendment of sub-sec. (8)	

I	2	3	4
69	310 . . .	Amendment of the section	83
70	204 . . .	Power for Govt. to relax provisions of sub-sec. (4).	} 85
	„	Amendment of sub-secs. (1) and (5)	
71	205 . . .	Redraft of section	86
72	207 . . .	Insertion of new sub-sec. as sub-sec. (1) in the section.	} 87
	„	Amendment of sub-sec. (2).	
73	209 . . .	Amendment of sub-sec. (1) and the addition of a proviso thereto.	} 88
„	„ . . .	Insertion of a new sub-sec. as sub-sec. (3A.)	
„	„ . . .	Amendment of proviso to sub-sec. (5)	
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