THE BURMA COMPANIES ACT.

CONTENTS.

PART I.

PRELIMINARY.

Sections.

1. * * * *
2. Definitions.
3. Jurisdiction of the Courts.

PART II.

CONSTITUTION AND INCORPORATION.

4. Prohibition of partnerships exceeding certain number.

Memorandum of Association.

Sections.

5. Mode of forming incorporated company.
6. Memorandum of company limited by shares.
7. Memorandum of company limited by guarantee.
8. Memorandum of unlimited company.
9. Printing and signature of memorandum.
10. Restriction on alteration of memorandum.
11. Name of company and change of name.
12. Alteration of memorandum.
13. Power of Court when confirming alteration.
14. Exercise of discretion by Court.
15. Procedure on confirmation of the alteration.
16. Effect of failure to register within three months.

Articles of Association.

17. Registration of articles.
18. Application of Table A.
19. Form and signature of articles.
20. Alteration of articles by special resolution.
20A. Effect of alteration in memorandum or articles.

General Provisions.

21. Effect of memorandum and articles.
22. Registration of memorandum and articles.
23. Effect of registration.
24. Conclusiveness of certificate of incorporation.
25. Copies of memorandum and articles to be given to members.
25A. Alteration of memorandum and articles to be noted in every copy.

Associations not for Profit.

26. Power to dispense with "Limited" in name of charitable and other companies.

Companies limited by guarantee.

27. Provision as to companies limited by guarantee.

PART III.

SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

28. Nature of shares.
29. Certificate of shares or stock.
30. Definition of "member."

Sections.

31. Register of members.
31A. Index of members of company.
32. Annual list of members and summary.
33. Trusts not to be entered on register.
34. Transfer of shares.
35. Transfer by legal representative.
36. Inspection of register of members.
37. Power to close register.
38. Power of Court to rectify register.
39. Notice to Registrar of rectification of register.
40. Register to be evidence.
41. Power of company to keep branch register in the United Kingdom.
42. Regulations as to British register.
43. Issue of share-warrants to bearer.
44. Effect of share- warrant.
45. Registration of name of bearer of share-warrant.
46. Position of bearer of share-warrant.
47. Entries in register when share-warrant issued.
48. Surrender of share-warrant.
49. Power of company to arrange for different amounts being paid on shares.
50. Power of company limited by shares to alter its share capital.
51. Notice to Registrar of consolidation of share capital, conversion of shares into stock, etc.
52. Effect of conversion of shares into stock.
53. Notice of increase of share capital or of members.
54. Reorganization of share capital.

Reduction of Share Capital.

54A. Restrictions on purchase by company or loans by company for purchase of its own shares.
55. Reduction of share capital.
56. Application to Court for confirming order.
57. Addition to name of company of "and reduced."
58. Objections by creditors and settlement of list of objecting creditors.
59. Power to dispense with consent of creditor on security being given for his debt.
60. Order confirming reduction.
61. Registration of order and minute of reduction.
62. Minute to form part of memorandum.
63. Liability of members in respect of reduced shares.
64. Penalty on concealment of name of creditor.
65. Publication of reasons for reduction.
66. Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

Variation of Shareholders' Rights.

Sections.

66A. Rights of holders of special classes of shares.

Registration of Unlimited Company as Limited.

67. Registration of unlimited company as limited.
68. Power of unlimited company to provide for reserve share capital on registration.

Reserve Liability of Limited Company.

69. Reserve liability of limited company.

Unlimited Liability of Directors.

70. Limited company may have directors with unlimited liability.
71. Special resolution of limited company making liability of directors unlimited.

PART IV.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

72. Registered office of company.
73. Publication of name by a limited company.
74. Penalties for non-publication of name.
75. Publication of authorized as well as subscribed and paid-up capital.

Meetings and Proceedings.

76. Annual general meeting.
77. Statutory meeting of company.
78. Calling of extraordinary general meeting on requisition.
79. Provisions as to meetings and votes.
80. Representation of companies at meetings of other companies of which they are members.
81. Extraordinary and special resolutions.
82. Registration and copies of special and extraordinary resolutions.
83. Minutes of proceedings of general meetings and of its directors.

Directors.

83A. Directors obligatory.
83B. Appointment of directors.
84. Restrictions on appointment or advertisement of director.
85. Qualification of director.

Sections.

86. Validity of acts of directors.
86A. Ineligibility of bankrupt to act as director.
86B. Assignment of office by directors.
86C. Avoidance of provisions relieving liability of directors.
86D. Loans of directors.
86E. Director not to hold office of profit.
86F. Sanction of directors necessary for certain contracts.
86G. Removal of directors.
86H. Restrictions on powers of directors.
86I. Vacation of office of director.
87. Register of directors, managers and managing agents.

Managing Agents.

87A. Duration of appointment of managing agent.
87B. Conditions applicable to managing agents.
87C. Remuneration of managing agent.
87D. Loans to managing agents.
87E. Loans to or by companies under the same management.
87F. Purchase by company of shares of company under same managing agent.
87G. Restriction on managing agent's powers of management.
87H. Managing agent not to engage in business competing with the business of managed company.
87I. Limit on number of directors appointed by managing agent.

Contracts.

88. Form of contracts.
89. Bills of exchange and promissory notes.
90. Execution of deeds.
91. Power for company to have official seal for use abroad.
91A. Disclosure of interest by director.
91B. Prohibition of voting by interested director.
91C. Disclosure to members in case of contract appointing a manager.
91D. Contracts by agent of company in which company is undisclosed principal.

Prospectus.

92. Filing of prospectus.
93. Specific requirements as to particulars of prospectus.
94. Meaning of " vendor " in section 93.
95. Application of section 93 to the case of property taken on lease.
96. Invalidity of certain conditions as to waiver or notice.
97. Saving in certain cases of non-compliance with section 93.
98. Obligations of companies where no prospectus is issued.

Sections.

98A. Document offering shares or debentures for sale to be deemed a prospectus.
99. Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.
100. Liability for statements in prospectus.

Allotment.

101. Restriction as to allotment.
102. Effect of irregular allotment.
103. Restrictions on commencement of business.
104. Return as to allotments.

Commissions and Discounts.

105. Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.
105A. Power to issue shares at a discount.
105B. Issue of redeemable preference shares.
105C. Further issue of capital.
106. Statement in balance-sheet as to commissions and discounts.

Payment of Interest out of Capital.

107. Power of company to pay interest out of capital in certain cases.

Certificates of Shares, etc.

108. Limitation of time for issue of certificates.

Information as to Mortgages, Charges, etc.

109. Certain mortgages and charges to be void if not registered.
109A. Registration of charges on properties acquired subject to charge.
110. Particulars in case of series of debentures entitling holders *pari passu*.
111. Particulars in case of commission, etc., on debentures.
112. Register of mortgages and charges.
113. Index to register of mortgages and charges.
114. Certificate of registration.
115. Endorsement of certificate of registration on debenture or certificate of debenture stock.
116. Duty of company and right of interested party as regards registration.
117. Copy of instrument creating mortgage or charge to be kept at registered office.
118. Registration of appointment of receiver.
119. Filing of accounts of receivers.
120. Rectification of register of mortgages.
121. Registration of satisfaction of mortgages and charges.
122. Penalties.

Sections.

123. Company's register of mortgages.
124. Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.
125. Right to inspect the register of debenture-holders and to have copies of trust-deed.
125A. Transitory provisions as respects Indian companies.

Debentures and Floating Charges.

126. Perpetual debentures.
127. Power to re-issue redeemed debentures in certain cases.
128. Specific performance of contract to subscribe for debentures.
129. Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

Statements, Books and Accounts.

130. Books to be kept by company and penalty for not keeping proper books.
131. Annual balance-sheet.
131A. Directors' report.
132. Contents of balance-sheet.
132A. Balance-sheet to include particulars as to subsidiary companies.
133. Authentication of balance-sheet.
134. Copy of balance-sheet to be forwarded to the Registrar.
135. Right of member of company to copies of the balance-sheet and the auditor's report.

Statement to be published by Banking and certain other Companies.

136. Certain companies to publish statement in schedule.

Investigation by the Registrar.

137. Power of Registrar to call for information or explanation.

Inspection and Audit.

138. Investigation of affairs of company by inspectors.
139. Application for inspection to be supported by evidence.
140. Inspection of books and examination of officers.
141. Results of examination how dealt with.
141A. Institution of prosecutions.
142. Power of company to appoint inspectors.
143. Report of inspectors to be evidence.
144. Qualifications and appointment of auditors.
145. Powers and duties of auditors.
146. Rights of preference shareholders, etc., as to receipt and inspection of reports, etc.

Carrying on Business with less than the Legal Minimum of Members.

Sections.

147. Liability for carrying on business with fewer than seven, or, in the case of a private company, two members.

Service and Authentication of Documents.

148. Service of documents on company.
149. Service of documents on Registrar.
150. Authentication of documents.

Tables, Forms and Rules as to Prescribed Matters.

151. Application and alteration of tables and forms, and power to make rules as to prescribed matters.

Arbitration and Compromise.

152. Power for companies to refer matters to arbitration.
153. Power to compromise with creditors and members.
153A. Provisions for facilitating arrangements and compromises.
153B. Power to acquire shares of shareholders dissenting from schemes or contract approved by majority.

Conversion of Private Company into Public Company.

154. Conversion of private company into public company.

PART V.

WINDING UP.

Preliminary.

155. Mode of winding up.

Contributories.

156. Liability as contributories of present and past members.
157. Liability of directors whose liability is unlimited.
158. Meaning of "contributory."
159. Nature of liability of contributory.
160. Contributories in case of death of member.
161. Contributories in case of insolvency of member.

Winding up by Court.

162. Circumstances in which company may be wound up by Court.
163. Company when deemed unable to pay its debts.
164. Winding up may be referred to District Court.
165. Transfer of winding up from one District Court to another.

Sections.

166. Provisions as to applications for winding up.
167. Effect of winding up order.
168. Commencement of winding up by Court.
169. Court may grant injunction.
170. Powers of Court on hearing petition.
171. Suits stayed on winding up order.
171A. Vacancy in the office of liquidator.
172. Copy of winding up order to be filed with Registrar.
173. Power of Court to stay winding up.
174. Court may have regard to wishes of creditors or contributories.

Official Liquidators.

175. Appointment of official liquidator.
176. Resignations, removals, filling up vacancies and compensation.
177. Official liquidator.
177A. Statement of affairs to be made to the liquidator.
177B. Statement by liquidator.
178. Custody of company's property.
178A. Committee of inspection in compulsory winding up.
179. Powers of official liquidator.
180. Discretion of official liquidator.
181. Provision for legal assistance to official liquidator.
182. Liquidator to keep books containing proceedings of meetings and to submit account of his receipts to Court.
183. Exercise and control of liquidator's powers.

Ordinary Powers of Court.

184. Settlement of list of contributories and application of assets.
185. Power to require delivery of property.
186. Power to order payment of debts by contributory.
187. Power of Court to make calls.
188. Power to order payment into bank.
189. Regulation of account with Court.
190. Order on contributory conclusive evidence.
191. Power to exclude creditors not proving in time.
192. Adjustment of rights of contributories.
193. Power to order costs.
194. Dissolution of company.

Extraordinary Powers of Court.

195. Power to summon persons suspected of having property of company.
196. Power to order public examination of promoters, directors, etc.
197. Power to arrest absconding contributory.
198. Saving of other proceedings.

Enforcement of and Appeal from Orders.

Sections.

199. Power to enforce orders.
200. Order made in any Court to be enforced by other Courts.
201. Mode of dealing with orders to be enforced by other Courts.
202. Appeals from orders.

Voluntary Winding up.

203. Circumstances in which company may be wound up voluntarily.
204. Commencement of voluntary winding up.
205. Effect of voluntary winding up on status of company.
206. Notice of resolution to wind up voluntarily.
207. Declaration of solvency.

Members' Voluntary Winding up.

208. Provisions applicable to a members' voluntary winding up.
208A. Power of company to appoint and fix remuneration of liquidators.
208B. Power to fill vacancy in office of liquidator.
208C. Power of liquidator to accept shares, etc., as consideration for sale of property of company.
208D. Duty of liquidator to call general meeting at end of each year.
208E. Final meeting and dissolution.

Creditors' Voluntary Winding up.

209. Provisions applicable to a creditors' voluntary winding up.
209A. Meeting of creditors.
209B. Appointment of liquidator.
209C. Appointment of committee of inspection.
209D. Fixing of liquidator's remuneration and cesser of directors' powers.
209E. Power to fill vacancy in office of liquidator.
209F. Application of section 208C to a creditors' voluntary winding up.
209G. Duty of liquidator to call meetings of company and of creditors at end of each year.
209H. Final meeting and dissolution.

Members' or Creditors' Voluntary Winding up.

210. Provisions applicable to every voluntary winding up.
211. Distribution of property of company.
212. Powers and duties of liquidator in voluntary winding up.
213. Power of Court to appoint and remove liquidator in voluntary winding up.
214. Notice by liquidator of his appointment.
215. Arrangement when binding on creditors.
216. Power to apply to Court to have questions determined or powers exercised.
217. Cost of voluntary winding up.

Sections.

218. Saving for rights of creditors and contributories.
219. * * * *
220. Power of Court to adopt proceedings of voluntary winding up.

Winding up subject to Supervision of Court.

221. Power to order winding up subject to supervision.
222. Effect of petition for winding up subject to supervision.
223. Court may have regard to wishes of creditors and contributories.
224. Power for Court to appoint or remove liquidators.
225. Effect of supervision order.
226. Appointment in certain cases of voluntary liquidators to office of official liquidator.

Supplemental Provisions.

227. Avoidance of transfers, etc., after commencement of winding up.
228. Debts of all descriptions to be proved.
229. Application of insolvency rules in winding up of insolvent companies.
230. Preferential payments.
230A. Disclaimer of property.
231. Fraudulent preference.
232. Avoidance of certain attachments, executions, etc.
233. Effect of floating charge.
234. General scheme of liquidation may be sanctioned.
235. Power of Court to assess damages against delinquent directors, etc.
236. Penalty for falsification of books.
237. Prosecution of delinquent directors.
238. Penalty for false evidence.
238A. Penal provisions.
239. Meetings to ascertain wishes of creditors or contributories.
240. Documents of company to be evidence.
241. Inspection of documents.
242. Disposal of documents of company.
243. Power of Court to declare dissolution of company void.
244. Information as to pending liquidations.
244A. Payments of liquidator into bank.
245. Court or person before whom affidavit may be sworn.

Rules.

246. Power of High Court to make rules.

Removal of defunct Companies from Register.

247. Registrar may strike defunct company off register.

PART VI.

REGISTRATION OFFICE AND FEES.

Sections.

248. Registration offices.
249. Fees.
249A. Enforcing submission of returns and documents to Registrar.

PART VII.

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS.

250. Application of Act to companies formed under former Companies Acts.
251. Application of Act to companies registered but not formed under former Companies Acts.
252. Mode of transferring.

PART VIII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

253. Companies capable of being registered.
254. Definition of "joint-stock company."
255. Requirements for registration by joint-stock companies.
256. Requirements for registration by other than joint-stock companies.
257. Authentication of statement of existing companies.
258. Registrar may require evidence as to nature of company.
259. On registration of banking company with limited liability, notice to be given to customers.
260. Exemption of certain companies from payment of fees.
261. Addition of "Limited" to name.
262. Certificate of registration of existing companies.
263. Vesting of property on registration.
264. Saving of existing liabilities.
265. Continuation of existing suits.
266. Effect of registration under Act.
267. Power to substitute memorandum and articles for deed of settlement.
268. Power of Court to stay or restrain proceedings.
269. Suits stayed on winding up order.

PART IX.

WINDING UP OF UNREGISTERED COMPANIES.

270. Meaning of "unregistered company."
271. Winding up of unregistered companies.

Sections.

272. Contributories in winding up of unregistered companies.
273. Power to stay or restrain proceedings.
274. Suits stayed on winding up order.
275. Directions as to property in certain cases.
276. Provisions of this Part cumulative.

PART X.

COMPANIES ESTABLISHED OUTSIDE THE UNION OF BURMA.

277. Requirements as to companies established outside the Union of Burma.
277A. Restriction on sale and offer for sale of shares.
277B. Requirements as to prospectus.
277C. Restriction on canvassing for sale of shares.
277D. Registration of charges.
277E. Notice of appointment of receiver.

PART X-A.

BANKING COMPANIES.

277F. Definition of banking company.
277G. Limitation of activities of banking company.
277H. Banking company not to employ managing agent.
277I. Restriction on commencement of business by banking company.
277J. Prohibition of charge on unpaid capital.
277K. Reserve fund.
277L. Penalties.
277M. Restriction on nature of subsidiary companies.
277N. Power of Court to stay proceedings.

PART XI.

SUPPLEMENTAL.

Legal Proceedings, Offences, etc.

278. Cognizance of offences.
279. Application of fines.
280. Power to require limited company to give security for costs.
281. Power of Court to grant relief in certain cases.
282. Penalty for false statement.
282A. Penalty for wrongful withholding of property.
282B. Penalty for misapplication of securities by employers.
283. Penalty for improper use of word "Limited."
284. Saving of pending proceedings for winding up.

Sections.

285. Saving of documents.
286. Former registration offices, registers and Registrars continued.
287. Savings for Life Assurance Companies Act and Provident Insurance Societies Act.

SCHEDULES.

THE FIRST SCHEDULE.

THE SECOND SCHEDULE.

THE THIRD SCHEDULE.

THE BURMA COMPANIES ACT.[1]

[INDIA ACT VII, 1913.] (1st April, 1914.)

PART I.

PRELIMINARY

1 * * * *

2. (*1*) In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) "articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in Table B[2] in the Schedule annexed to Act No. XIX of 1857 or in Table A[2] in the First Schedule annexed to the Indian Companies Act, 1882, or in Table A in the First Schedule annexed to this Act;

India VI, 1882.

(2) "company" means a company formed and registered under this Act or an existing company;

[3](2A) * * * *

(3) "the Court" means the Court having jurisdiction under this Act;

(4) "debenture" includes debenture stock;

(5) "director" includes any person occupying the position of a director by whatever name called;

(6) * * * *

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[1] The Indian Companies Act, 1913, was extensively amended by the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936). The latter Act came into force on the 15th January, 1937.

The provisions of this Act do not apply to co-operative societies, *see* section 8 of the Co-operative Societies Act.

[2] These Tables were printed as Appendices I and II to the Indian Companies Act, 1913 (India Act VII, 1913), which appendices were omitted from this Act by the Burma Laws (Adaptation) Act, 1940 (Burma Act XXVII, 1940).

[3] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

India X, 1866. India VI, 1882.

(7) "existing company" means a company formed and registered under the Indian Companies Act, 1866,[1] or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882 [1];

(8) "insurance company" means a company that carries on the business of insurance either solely or in common with any other business or businesses;

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

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

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

(10) "memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act;

(11) "officer" includes any director, managing agent, manager or secretary but, save in sections 235, 236, and 237, does not include an auditor;

(12) "prescribed" means, as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the High Court, and, as respects the other provisions of this Act, prescribed by the President of the Union.

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

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

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

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

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

India VI, 1882. India X, 1866.

(13A) "public company" means a company incorporated under this Act or under the Indian Companies Act, 1882 [1], or under the Indian Companies Act, 1866 [1], or under any Act repealed thereby, which is not a private company;

[1] The Indian Companies Act, 1866, was repealed by the Indian Companies Act, 1882, which in turn was repealed by the Indian Companies Act, 1913.

(14) 'prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company, but shall not include any trade advertisement which shows on the face of it that a formal prospectus has been prepared and filed,

(15) "the Registrar" means a Registrar or assistant Registrar performing under this Act the duty of registration of companies;

(16) "share" means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied;

[1](17) "Scheduled Bank" means a bank which has been notified under section 38 of the Union Bank of Burma Act, 1952, as a scheduled bank;

[2](18) "this Act" means, as respects any period before the coming into operation of the Constitution, the Burma Companies Act as then in force in the Union of Burma.

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

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

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

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

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

Jurisdiction of the Courts.

3. (*1*) The Court having jurisdiction under this Act shall be the High Court.

Provided that the President of the Union may, by notification in the Gazette and subject to such restrictions and conditions as he thinks fit, empower any District Court to exercise all or any of the jurisdiction by this

[1] Substituted by Act IX, 1952.
[2] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

Act conferred upon the Court, and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered offices in the district.

(*2*) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

(*3*) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.

PART II.

CONSTITUTION AND INCORPORATION.

Prohibition of partnerships exceeding certain number.

4. (*1*) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act [* * * *][1].

(*2*) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act [* * * *][1].

(*3*) This section shall not apply to a joint family carrying on joint family trade or business, and where two or more such joint families form a partnership, in computing the number of persons for the purposes of this section, minor members of such families shall be excluded.

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

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

Memorandum of Association.

Mode of forming incorporated company.

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

(i) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or

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[1] Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

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

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

Memorandum of company limited by shares.

6. In the case of a company limited by shares—

(1) the memorandum shall state—

(i) the name of the company, with "Limited" as the last word in its name;

(ii) that the registered office of the company will be situated in the Union of Burma;

(iii) the objects of the company;

(iv) that the liability of the members is limited;

(v) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount;

(2) no subscriber of the memorandum shall take less than one share;

(3) each subscriber shall write opposite to his name the number of shares he takes.

Memorandum of company limited by guarantee.

7. In the case of a company limited by guarantee—

(1) the memorandum shall state—

(i) the name of the company, with "Limited" as the last word in its name;

(ii) that the registered office of the company will be situated in the Union of Burma;

(iii) the objects of the company;

(iv) that the liability of the members is limited;

(v) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount;

(2) if the company has a share capital—

(i) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(ii) no subscriber of the memorandum shall take less than one share;

(iii) each subscriber shall write opposite to his name the number of shares he takes.

Memorandum of unlimited company.

8. In the case of an unlimited company—

(1) the memorandum shall state—

(i) the name of the company ;

(ii) that the registered office of the company will be situated in the Union of Burma ;

(iii) the objects of the company ;

(2) if the company has a share capital—

(i) no subscriber of the memorandum shall take less than one share ;

(ii) each subscriber shall write opposite to his name the number of shares he takes.

Printing and signature of memorandum.

9. The memorandum shall—

(*a*) be printed,

(*b*) be divided into paragraphs numbered consecutively, and

(*c*) be signed by each subscriber (who shall add his address and description) in the presence of at least one witness who shall attest the signature.

Restriction on alteration of memorandum.

10. A company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act :

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

Name of company and change of name.

11. (*1*) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires.

(*2*) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the Registrar, change its name.

(*3*) Except with the previous consent in writing of the President of the Union no company shall be registered by a name which—

(*a*) contains any of the following words, namely," Crown "," Emperor " " Empire ", " Empress ", " Federal ", " Imperial ", " King " " Queen ", " Royal ", " State ", " Reserve Bank ", [" Union "

" President "] [1], or any word which suggests or is calculated to suggest the patronage of His Britannic Majesty [* * *] [2] or any connection with His Britannic Majesty's Government [or the Government of Burma or of any Department thereof ;] [1] or

(*b*) contains the word " Municipal " or " Chartered ", or any word which suggests or is calculated to suggest connection with any municipality or other local authority or with any society or body incorporated by Royal Charter :

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

(*4*) Any company may, by special resolution and subject to the approval of the President of the Union signified in writing, change its name.

(*5*) Where a company changes its name, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of such a certificate, the change of name shall be complete.

(*6*) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company ; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Alteration of memorandum.

12. (*1*) Subject to the provisions of this Act, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

(*a*) to carry on its business more economically or more efficiently ; or

(*b*) to attain its main purpose by new or improved means ; or

(*c*) to enlarge or change the local area of its operations ; or

(*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or

(*e*) to restrict or abandon any of the objects specified in the memorandum ; or

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

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

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

(*3*) Before confirming the alteration, the Court must be satisfied—

(*a*) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration ; and

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Omitted *ibid.*

(*b*) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court :

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

Power of Court when confirming alteration.

13. The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

Exercise of discretion by Court.

14. The Court shall, in exercising its discretion under sections 12 and 13, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members ; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement :

Provided that no part of the capital of the company may be expended in any such purchase.

Procedure on confirmation of the alteration.

15. (*1*) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the Registrar, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

(*2*) * * * *

(*3*) The Court may by order at any time extend the time for the filing of documents with the Registrar under this section for such period as the Court thinks proper.

Effect of failure to register within three months.

16. No such alteration shall have any operation until registration thereof has been duly effected in accordance with the provisions of section 15, and if such 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 in accordance with the provisions of section 15, such alteration and order and all proceedings connected therewith shall, at the expiration of such period of three months or such further time, as the case may be, become absolutely null and void :

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.

Articles of Association.

Registration of articles.

17. (*1*) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(*2*) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule, and shall in any event be deemed to contain regulations identical with or to the same effect as regulation 56, regulation 66, regulation 71, regulations 78, 79, 80, 81 and 82, regulation 95, regulation 97, regulation 105, regulation 107 and regulations 112, 113, 114, 115, and 116 contained in that Table:

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

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

(*3*) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

(*4*) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

Application of Table A.

18. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, those regulations shall, so far as applicable be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Form and signature of articles.

19. Articles shall—

(*a*) be printed;

(*b*) be divided into paragraphs numbered consecutively; and

(*c*) be signed by each subscriber of the memorandum (who shall add his addresss and description) of association in the presence of at least one witness who must attest the signature.

Alteration of articles by special resolution.

20. (*1*) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

(*2*) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. XIX of 1857 [1] and Act No. VII of 1860 [1] or either of them, extend to altering any provisions in Table B annexed to Act XIX of 1857,[1] and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

Effect of alteration in memorandum or articles.

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

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

General Provisions.

Effect of memorandum and articles.

21. (*1*) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member and contained a covenant on the part of each member, his heirs, and legal representatives, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(*2*) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Registrati n of memorandum and articles.

22. The memorandum and the articles (if any) shall be filed with the Registrar and he shall retain and register them.

Effect of registration.

23. (*1*) On the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

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

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[1] India Acts XIX of 1857 and VII of 1860 were repealed by India Act X of 1866.

Conclusiveness of certificate of incorporation.

24. (*1*) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Act.

(*2*) A declaration by an advocate entitled to appear before the High Court who is engaged in the formation of a company, or by a person named in the articles as a director, manager or secretary of the company, of compliance with all or any of the said requirements shall be filed with the Registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance.

Copies of memorandum and articles to be given to members.

25. (*1*) Every company shall send to every member, at his request and within fourteen days thereof, on payment of one rupee or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding ten rupees.

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

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

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

Associations not for Profit.

Power to dispense with "Limited" in name of charitable and other companies.

26. (*1*) Where it is proved to the satisfaction of the President of the Union that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, science, religion, charity, or any other useful object, and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the President of the Union may, by licence, direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(*2*) A licence by the President of the Union under this section may be granted on such conditions and subject to such regulations as the President of the Union thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the President of the Union so directs, be inserted in the memorandum and articles, or in one of those documents.

(*3*) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members to the Registrar.

(*4*) A licence under this section may at any time be revoked by the President of the Union, and upon revocation the Registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that, before a licence is so revoked, the President of the Union shall give to the association notice in writing of his intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation.

Companies limited by Guarantee.

Provision as to companies limited by guarantee.

27. (*1*) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(*2*) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered after the commencement of this Act, purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

PART III.

SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

Nature of shares.

28. (*1*) The shares or other interest of any member in a company shall be moveable property, transferable in manner provided by the articles of the company.

(*2*) Each share in a company having a share capital shall be distinguished by its appropriate number.

Certificate of shares or stock.

29. A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the member to the shares or stock therein specified.

Definition of "member."

30. (*1*) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(*2*) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Register of members.

31. (*1*) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :—

(i) the names and addresses, and the occupations, if any, of the members and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member ;

(ii) the date at which each person was entered in the register as a member ;

(iii) the date at which any person ceased to be a member.

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

Index of members of company.

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

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

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

Annual list of members and summary.

32. (*1*) Every company having a share capital shall within eighteen months from its incorporation and thereafter once at least in every year make a list of all persons who, on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(*2*) The list shall state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and persons who have ceased to be members, respectively, and the dates of registration of the transfers, and shall contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars :—

(*a*) the amount of the share capital of the company, and the number of the shares into which it is divided ;

(*b*) the number of shares taken from the commencement of the company up to the date of the return ;

(*c*) the amount called up on each share ;

(*d*) the total amount of calls received ;

(*e*) the total amount of calls unpaid ;

(*f*) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any shares or debentures, since the date of the last return, or so much thereof as has not been written off at the date of the return ;

(*g*) the total number of shares forfeited ;

(*h*) the total amount of shares or stock for which share-warrants are outstanding at the date of the return ;

(*i*) the total amount of share-warrants issued and surrendered respectively since the date of the last return ;

(*k*) the number of shares or amount of stock comprised in each share-warrant ;

(*l*) the names and addresses of the persons who at the date of the return are the directors of the company and of the persons (if any) who at the said date are the managers or managing agents of the company, and the changes in the personnel of the directors, managers and managing agents since the last return together with the dates on which they took place ; and

(*m*) the total amount of debts due from the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act.

(*3*) The above list and summary shall be contained in a separate part of the register of members, and shall be completed within twenty-one days after the day of the first or only ordinary general meeting in the year, and the company shall forthwith file with the Registrar a copy signed by a director or by the manager or the secretary of the company, together with a certificate from such director, manager or secretary that the list and summary state the facts as they stood on the day aforesaid.

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

(*5*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every

day during which the default continues, and every officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

33. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the Registrar. Trusts not to be entered on register.

34. (*1*) An application for the registration of the transfer of shares in a company may be made either by the transferor or the transferee, provided that where such application is made by the transferor no registration shall in the case of partly paid shares be effected unless the company gives notice of the application to the transferee, and, subject to the provisions of sub-section (*4*), the company shall, unless objection is made by the transferee within two weeks from the date of receipt of the notice, enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for registration was made by the transferee. Transfer of shares.

(2) For the purposes of sub-section (*1*) notice to the transferee shall be deemed to have been duly given if despatched by prepaid post to the transferee at the address given in the instrument of transfer and shall be deemed to have been delivered in the ordinary course of post.

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

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

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

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

(*6*) Nothing in sub-section (*3*) shall prejudice any power of the company to register as shareholder or debenture-holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(*7*) Nothing in this section shall prejudice any power of the company under its articles to refuse to register the transfer of any shares.

Transfer by legal representative.

35. A transfer of the share or other interest of a deceased member of a company made by his legal representative shall, although the legal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

Inspection of register of members.

36. (*1*) The register of members, commencing from the date of the registration of the company, and the index of members shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions, as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one rupee, or such less sum as the company may prescribe, for each inspection. Any such member or other person may make extracts therefrom.

(*2*) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act, or any part thereof, on payment of six annas for every hundred words or fractional part thereof required to be copied, and the company shall cause any copy so required by any person to be sent to that person within a period of ten days, exclusive of non-working days and days on which the transfer books of the company are closed, commencing on the day next after the day on which the requirement is received by the company.

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

Power to close register.

37. A company may, on giving seven days' previous notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole forty-five days in each year but not exceeding thirty days at a time.

Power of Court to rectify register.

38. (*1*) If—

(*a*) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members of a company, or

(*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(*2*) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(*3*) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register:

Provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Procedure on the grounds mentioned in section 100 of that Code.

Notice to Registrar of rectification of register.

39. In the case of a company required by this Act to file a list of its members with the Registrar, the Court, when making an order for rectification of the register, shall, by its order, direct notice of the rectification to be filed with the Registrar within a fortnight from the date of the completion of the order.

Register to be evidence.

40. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Power for company to keep branch register in the United Kingdom.

41. (*1*) A company having a share capital may, if so authorized by its articles, cause to be kept in the United Kingdom a branch register of members (in this Act called a British register).

(*2*) The company shall, within one month from the date of the opening of any British register, file with the Registrar notice of the situation of the office where such register is kept and, in the event of any change in the situation of such office or of its discontinuance shall, within one month from the date of such change or discontinuance as the case may be, file notice of such change or discontinuance.

(*3*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Regulations as to British register.

42. (*1*) A British register shall be deemed to be part of the company's register of members (in this section called the principal register).

(*2*) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the locality wherein the British register is kept.

(*3*) The company shall transmit to its registered office in the Union of Burma a copy of every entry in its British register as soon as may be after the entry is made; and shall cause to be kept at such office, duly entered up from

time to time, a duplicate of his British register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(*4*) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a British register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a British register shall, during the continuance of that registration, be registered in any other register.

(*5*) The company may discontinue to keep any British register, and thereupon all entries in that register shall be transferred to the principal register.

(*6*) Subject to the provisions of this Act, any company may, by its articles, make such regulations as it may think fit respecting the keeping of a British register.

Issue of share-warrants to bearer.

43. (*1*) A company limited by shares, if so authorized by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share-warrant.

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

Effect of share-warrant.

44. A share-warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant.

Registration of name of bearer of share-warrant.

45. The bearer of a share-warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members ; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share-warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

Position of bearer of share-warrant.

46. The bearer of a share-warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

Entries in register when share-

47. (*1*) On the issue of a share-warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be

a member, and shall enter in the egister the following particulars, namely :— warrant issued.

(i) the fact of the issue of the warrant ;

(ii) a statement of the shares or stock included in the warrant, distinguishing each share by its number ; and

(iii) the date of the issue of the warrant.

(*2*) If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully continues or permits the default shall be liable to the like penalty.

48. Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members ; and, on the surrender, the date of the surrender shall be entered as if it were the date at which a person ceased to be a member. Surrender of share-warrant.

49. A company, if so authorized by its articles, may do any one or more of the following things, namely :— Power of company to arrange for different amounts being paid on shares.

(1) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares ;

(2) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up ;

(3) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

50. (*1*) A company limited by shares, if so authorized by its articles, may alter the conditions of its memorandum as follows (that is to say), it may— Power of company limited by shares to alter its share capital.

(*a*) increase its capital by the issue of new shares of such amount as it thinks expedient ;

(*b*) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;

(*c*) convert all or any of its paid-up shares into stock and re-convert that stock into paid-up shares of any denomination ;

(*d*) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;

(*e*) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any

person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(*2*) The powers conferred by this section must be exercised by the company in general meeting.

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

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

Notice to Registrar of consolidation of share capital, conversion of shares into stock, etc.

51. (*1*) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares into stock, or re-converted stock into shares, it shall within fifteen days of the consolidation and division, conversion or re-conversion, file notice with the Registrar of the same, specifying the shares consolidated and divided, or converted, or the stock re-converted.

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

Effect of conversion of shares into stock.

52. Where a company having a share capital has converted any of its shares into stock, and filed notice of the conversion with the Registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock ; and the register of members of the company, and the list of members to be filed with the Registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

Notice of increase of share capital or of members.

53. (*1*) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the Registrar, in the case of an increase of share capital, within fifteen days after the passing of the resolution authorizing the increase, and, in the case of an increase of members, within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the Registrar shall record the increase.

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

(*3*) If a company makes a default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company

who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

Reorganization of share capital.

54. (*1*) A company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to reorganize its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes :

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and every resolution so passed shall bind all shareholders of the class.

(*2*) Where an order is made under this section, a certified copy thereof shall be filed with the Registrar within twenty-one days after the making of the order, or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed.

Reduction of Share Capital.

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

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

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

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

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

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

Reduction of share capital.

55. (*1*) Subject to confirmation by the Court, a company limited by shares, if so authorized by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

(*a*) extinguish or reduce the liability on any of its shares in respect of share capital not paid up ; or

(*b*) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets ; or

(*c*) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Act called a resolution for reducing share capital.

Application to Court for confirming order.

56. Where a company has passed a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

Addition to name of company of "and reduced."

57. On and from the passing by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the making of the order confirming the reduction, the company shall add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company :

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced."

Objections by creditors and settlement of list of objecting creditors.

58. (*1*) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(*2*) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

Power to dispense with consent of creditor

59. Where a creditor entered on the list of creditors whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company

securing payment of his debt or claim by appropriating, as the Court may direct, the following amount (that is to say),— on security being given for his debt.

(i) if the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim ;

(ii) if the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

Order confirming reduction.

60. The Court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

Registration of order and minute of reduction.

61. (*1*) The Registrar, on production to him of an order of the Court confirming the reduction of the share capital of a company, and on the filing with him of a certified copy of the order and of a minute (approved by the Court) showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(*2*) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(*3*) Notice of the registration shall be published in such manner as the Court may direct.

(*4*) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

Minute to form part of memorandum.

62. (*1*) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein, and shall be embodied in every copy of the memorandum issued after its registration.

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

Liability of members in respect of reduced shares.

63. (*1*) A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute :

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim, then—

(i) every person who was a member of the company at the date of the registration of the order for reduction and minute shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration ; and

(ii) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

(*2*) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty on concealment of name of creditor.

64. If any officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any officer of the company abets any such concealment or misrepresentation as aforesaid, every such officer shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

Publication of reasons for reduction.

65. In any case of reduction of share capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient, with a view to give proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

66. A company limited by guarantee and registered after the commencement of this Act may, if it has a share capital and is so authorized by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

Variation of Shareholders' Rights.

Rights of holders of special classes of shares.

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

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

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

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

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

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

Registration of Unlimited Company as Limited.

Registration of unlimited company as limited.

67. (*1*) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited, or any company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of, the company before the registration, and those debts, liabilities, obligations and contracts may be enforced in manner provided by Part VIII of this Act in the case of a company registered in pursuance of that Part.

(*2*) On registration in pursuance of this section, the Registrar shall close the former registration of the company, and may dispense with the delivery

to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

Power of unlimited company to provide for reserve share capital on re-registration.

68. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely :—

(*a*) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which its capital is so increased shall be capable of being called up except in the event and for the purposes of the company being wound up;

(*b*) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company.

Reserve liability of limited company.

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

Unlimited Liability of Directors.

Limited company may have directors with unlimited liability.

70. (*1*) In a limited company the liability of the directors or of any director may, if so provided by the memorandum, be unlimited.

(*2*) In a limited company in which the liability of any director is unlimited, the directors of the company (if any) and the member who proposes a person for election or appointment to the office of director shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters and officers of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(*3*) If any director or proposer makes default in adding such a statement, or if any promoter or officer of the company makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand rupees and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Special resolution of limited company making liability of directors unlimited.

71. (*1*) A limited company, if so authorized by its articles, may by special resolution alter its memorandum so as to render unlimited the liability of its directors or of any director.

(*2*) Upon the passing of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

PART IV.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

Registered office of company.

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

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

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

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

Publication of name by a limited company.

73. Every limited company—

(*a*) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible and in English characters, and also, if the registered office be situate in a place beyond the local limits of the ordinary original civil jurisdiction of the High Court, in the characters of one of the vernacular languages used in that place;

(*b*) shall have its name engraven in legible characters on its seal;

(*c*) shall have its name mentioned in legible Burmese [1] characters in all bill-heads and letter paper and in all notices, advertisements and other official publications of the company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

Penalties for non-publication of name.

74. (*1*) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and

[1] Substituted for the word "English" by the Union of Burma (Adaptation of Laws) Order, 1948.

every officer of the company, who knowingly and wilfully authorizes or permits the default, shall be liable to the like penalty.

(*2*) If any officer of a limited company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any bill-head, letter paper, notice, advertisement or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods, for the amount thereof, unless the same is duly paid by the company.

Publication of authorized as well as subscribed and paid-up capital.

75. (*1*) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorized capital of the company, such notice, advertisement or other official publication shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid up.

(*2*) Any company which makes default in complying with the requirements of this section and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding one thousand rupees.

Meetings and Proceedings.

Annual general meeting

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

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

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

Statutory meeting of company.

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

(*2*) The directors shall, at least twenty-one days before the day on which the meeting is held, forward a report (in this Act referred to as the statutory report) certified as required by this section to every member of the company.

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

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

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

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

(*d*) the names, addresses and descriptions of the directors, auditors, managing agents and managers, if any, and secretary of the company and the changes, if any, which have occurred since the date of the incorporation ;

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

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

(*g*) the arrears, if any, due on calls from directors, managing agents and managers ; and

(*h*) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, managing agent or manager, or a partner of the managing agent if the managing agent is a firm, or if the managing agent is a private company a director thereof.

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

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

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

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

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

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

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

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

Calling of extra-ordinary general meeting on requisition.

78. (*1*) Notwithstanding anything in the articles, the directors of a company which has a share capital shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an extraordinary general meeting of the company.

(*2*) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(*3*) If the directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.

(*4*) Any meeting called under this section by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.

(*5*) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to

the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default.

Provisions as to meetings and votes.

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

(*a*) a meeting of a company other than a meeting for the passing of a special resolution may be called by not less than fourteen days' notice in writing ; but with the consent of all the members entitled to receive notice of some particular meeting that meeting may be convened by such shorter notice and in such manner as those members may think fit ;

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

(*c*) five members present in person or by proxy, or the chairman of the meeting, or any member or members holding not less than one-tenth of the issued capital which carries voting rights, shall be entitled to demand a poll : Provided that, in the case of a private company, if not more than seven members are personally present, one member, and if more than seven members are personally present, two members, shall be entitled to demand a poll ;

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

(*e*) any shareholder whose name is entered in the register of shareholders of the company shall enjoy the same rights and be subject to the same liabilities as all other shareholders of the same class.

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

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

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

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

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

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

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

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

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

Representation of companies at meetings of other companies of which they are members.

80. A company which is a member of another company may, by resolution of the directors, authorize any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorized shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

Extraordinary and special resolutions.

81. (*1*) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

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

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special

resolution at a meeting of which less than twenty-one days' notice has been given.

(*3*) At any meeting at which an extraordinary resolut ion or a special resolution is submitted to be passed a declaration of the chairman on a show of hands that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(*4*) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a poll may be demanded.

(*5*) In a case where, if a poll is demanded, it may in accordance with the articles be taken in such manner as the chairman may direct, it may, if the chairman so directs, be taken at the meeting at which it is demanded.

(*6*) When a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by the articles of the company or under this Act.

(*7*) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles or under this Act.

Registration and copies of special and extra-ordinary resolutions.

82. (*1*) A copy of every special and extraordinary resolution shall, within fifteen days from the passing thereof, be printed or typewritten and duly certified under the signature of an officer of the company and filed with the Registrar who shall record the same.

(*2*) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution.

(*3*) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of one rupee or such less sum as the company may direct.

(*4*) If a company makes default in so filing with the Registrar a copy of a special or extraordinary resolution, it shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(*5*) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(*6*) Every officer of a company who knowingly and wilfully authorizes or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

Minutes of proceedings of general meetings and of its directors.

83. (*1*) Every company shall cause minutes of all proceedings of general meetings and of its directors to be entered in books kept for that purpose.

(*2*) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(*3*) Until the contrary is proved, every general meeting of the company or meeting of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.

(*4*) The books containing the minutes of proceedings of any general meeting of a company held after the 15th January, 1937,[1] shall be kept at the registered office of the company and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(5) Any member shall at any time after seven days from the meeting be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any minutes referred to in sub-section (*4*) at a charge not exceeding six annas for every hundred words.

(*6*) If any inspection required under sub-section (*4*) of this section is refused, or if any copy required under sub-section (5) of this section is not furnished within the time specified in sub-section (5), the company and every officer of the company who is knowingly and wilfully in default shall be liable in respect of each offence to a fine not exceeding twenty-five rupees, and to a further fine of twenty-five rupees for every day during which the default continues.

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

Directors.

Directors obligatory.

83A. (*1*) Every company shall have at least three directors.

(*2*) This section shall not apply to a private company except a private company being a subsidiary company of a public company.

Appointment of directors.

83B. (*1*) In default of and subject to any regulations in the articles of a company other than a private company—

(i) the subscribers of the memorandum shall be deemed to be the directors of the company until the first directors shall have been appointed;

(ii) the directors of the company shall be appointed by the members in general meeting; and

(iii) any casual vacancy occurring among the directors may be filled up by the directors, but the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed a director.

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[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

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

Provided that nothing herein contained shall apply to a company incorporated before the 15th January, 1937,[1] where by virtue of the articles of the company the number of directors whose period of office is liable to determination at any time by retirement of directors in rotation falls below the two-thirds proportion mentioned in this section.

Restrictions on appointment or advertisement of director.

84. (*1*) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company or in relation to any intended company or in any statement in lieu of prospectus filed by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorized in writing—

(i) signed and filed with the Registrar a consent in writing to act as such director; and

(ii) save in the case of companies not having a share capital, either signed the memorandum for a number of shares not less than his qualification (if any) or taken from the company and paid or agreed to pay for his qualification shares or signed and filed with the Registrar a contract in writing to take from the company and pay for his qualification shares (if any) or made and filed with the Registrar an affidavit to the effect that a number of shares, not less than his qualification (if any), are registered in his name.

(*2*) On the application for registration of the memorandum and articles, if any, of a company the applicant shall file with the Registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding five hundred rupees.

(*3*) This section shall not apply to a private company or a company which was a private company before becoming a public company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

Qualification of director.

85. (*1*) Without prejudice to the restrictions imposed by section 84, it shall be the duty of every director who is by the articles required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

(*2*) If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

Validity of acts of directors.

86. The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification: Provided that nothing in this section shall be deemed to give validity to acts done by a director after the appointment of such director has been shown to be invalid.

Ineligibility of bankrupt to act as director.

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

(*2*) In this section the expression "company" includes a company incorporated outside the Union of Burma which has an established place of business within the Union of Burma.

Assignment of office by directors.

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

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

Provided always that any such alternate or substitute director shall *ipso facto* vacate office if and when the appointor returns to the district in which meetings of the directors are ordinarily held.

Avoidance of provisions relieving liability of directors.

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

Provided that—

(*a*) in relation to any such provision which is in force on the 15th January, 1937,[1] this section shall have effect only on the expiration of a period of six months from that date, and

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

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

Loans of directors.

86D. (*1*) No company shall make any loan or guarantee any loan made to a director of the company or to a firm of which such director is a partner or to a private company of which such director is a director.

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

(*3*) This section shall not apply to a private company (except a private company which is the subsidiary company of a public company) or to a banking company.

Director not to hold office of profit.

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

Provided that nothing herein contained shall apply to a director elected or appointed before the 15th January, 1937,[1] in respect of any office of profit under the company held by him at the said date.

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

Sanction of directors necessary for certain contracts.

86F. Except with the consent of the directors, a director of the company, or the firm of which he is a partner or any partner of such firm, or the private company of which he is a member or director, shall not enter into any contracts for the sale, purchase or supply of goods and materials with

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[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII ,1936).

the company : Provided that nothing herein contained shall affect any such contract or agreement for such sale, purchase or supply entered into before the 15th January, 1937.[1]

Removal of directors.

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

(*2*) This section shall not apply to directors elected or appointed before the 15th January, 1937.[1]

Restrictions on powers of directors.

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

(*a*) sell or dispose of the undertaking of the company ;

(*b*) remit any debt due by a director.

Vacation of office of director.

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

(*a*) he fails to obtain within the time specified in sub-section (*1*) of section 84, or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment, or

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

(*c*) he is adjudged an insolvent, or

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

(*e*) he or any firm of which he is a partner or any private company of which he is a director, without the sanction of the company in general meeting, accepts or holds any office of profit under the company other than that of a managing director or manager or a legal or technical adviser or a banker, or

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

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

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

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[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

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

Register of directors, managers and managing agents.

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

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

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

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

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

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

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

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

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

Managing Agents.

Duration of appointment of managing agent.

87A. (*1*) No managing agent shall, after the 15th January, 1937, [1] be appointed to hold office for a term of more than twenty years at a time.

[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

(*2*) Notwithstanding anything to the contrary contained in the articles of a company or in any agreement with the company, a managing agent of a company appointed before the 15th January, 1937,[1] shall not continue to hold office after the expiry of twenty years from the said date unless then reappointed thereto or unless he has been reappointed thereto before the expiry of the said twenty years.

(*3*) A managing agent whose office is terminated by virtue of the provisions of sub-section (*2*) shall upon such termination be entitled to a charge upon the assets of the company by way of indemnity for all liabilities or obligations properly incurred by the managing agent on behalf of the company subject to existing charges and encumbrances, if any.

(*4*) The termination of the office of a managing agent by virtue of the provisions of sub-section (*2*) shall not take effect until all moneys payable to the managing agent for loans made to or remuneration due up to the date of such termination from the company are paid.

(*5*) Nothing in this section shall apply to a private company which is not the subsidiary company of a public company.

Conditions applicable to managing agents.

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

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

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

(*b*) the office of a managing agent shall be vacated if he is adjudged insolvent;

(*c*) a transfer of his office by a managing agent shall be void unless approved by the company in general meeting:

Provided that in the case of a managing agent's firm a change in the partners thereof shall not be deemed to operate as a transfer of the office of managing agent, so long as one of the original partners shall continue to be a partner of the managing agent's

[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

firm. For the purpose of this proviso "original partners" shall mean, in the case of managing agents appointed before the 15th January, 1937,[1] partners who were partners at the said date, and in the case of managing agents appointed after the said date, partners who were partners at the date of the appointment;

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

(*e*) if a company is wound up either by the Court or voluntarily, any contract of management made with a managing agent shall be thereupon determined without prejudice, however, to the right of the managing agent to recover any moneys recoverable by the managing agent from the company: Provided that where the Court finds that the winding up is due to the negligence or default of the managing agent himself the managing agent shall not be entitled to receive any compensation for the premature termination of his contract of management; and

(*f*) the appointment of a managing agent, the removal of a managing agent and any variation of a managing agent's contract of management made after the 15th January, 1937,[1] shall not be valid unless approved by the company by a resolution at a general meeting of the company, notwithstanding anything to the contrary in section 86E:

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

Remuneration of managing agent.

87C. (*1*) Where any company appoints a managing agent after the 15th January, 1937,[1] the remuneration of the managing agent shall be a sum based on a fixed percentage of the net annual profits of the company, with provision for a minimum payment in the case of absence of or inadequacy of profits, together with an office allowance to be defined in the agreement of management.

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

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

[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

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

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

Loans to managing agents.

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

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

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

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

(*5*) Except with the consent of three-fourths of the directors present and entitled to vote on the resolution, a managing agent of the company, or the firm of which he is a partner, or any partner of such firm, or, if the managing agent is a private company, a member or director thereof, shall not enter into any contract for the sale, purchase or supply of goods and materials with the company: Provided that nothing herein contained shall affect any such contract for such sale, purchase or supply entered into before the 15th January, 1937.[1]

Loans to or by companies under the same management.

87E. (*1*) No company incorporated under this Act after the 15th January, 1937,[1] which is under the management of a managing agent, shall make any loan to or guarantee any loan made to any company under management by the same managing agent, and no company shall after the expiry of six months from the said date, except by way of renewal of an existing loan or guarantee given, make any loan to or guarantee any loan made to any such company:

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

[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936)

company thereof or to guarantees given by a company on behalf of a subsidiary company thereof.

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

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

87F. A company, other than an investment company, that is to say, a company whose principal business is the acquisition and holding of shares, stocks, debentures or other securities, shall not purchase shares or debentures of any company under management by the same managing agent, unless the purchase has been previously approved by a unanimous decision of the board of directors of the purchasing company.

Restriction on managing agent's powers of management.

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

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

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

Limit on number of directors appointed by managing agent.

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

Contracts.

Form of contracts.

88. (*1*) Contracts on behalf of a company may be made as follows (that is to say):—

(i) any contract which, if made between private persons, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged ;

(ii) any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(*2*) All contracts made according to this section shall be effectual in law and shall bind the company and its successors and all other parties thereto, their heirs, or legal representatives, as the case may be.

Bills of exchange and promissory notes.

89. A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority, express or implied.

Execution of deeds.

90. A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place either in or outside the Union of Burma; and every deed signed by such attorney, on behalf of the company, and under his seal, where sealing is required, shall bind the company, and have the same effect as if it were under its common seal.

Power for company to have official seal for use abroad.

91. (*1*) A company whose objects require or comprise the transaction of business beyond the limits of the Union of Burma may, if authorized by its articles, have for use in any territory, district or place not situate in the Union of Burma an official seal which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(*2*) A company having such an official seal may, by writing under its common seal, authorize any person appointed for the purpose in any territory, district or place not situate in the Union of Burma to affix the same to any deed or other document to which the company is party in that territory, district or place.

(*3*) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(*4*) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(*5*) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Disclosure of interest by director.

91A. (*1*) Every director who is directly or indirectly concerned or interested in any contract or arrangement entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest

then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement :

Provided that a general notice that a director is a director or a member of any specified company or is a member of any specified firm, and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regards any such transaction be sufficient disclosure within the meaning of this sub-section, and after such general notice it shall not be necessary to give any special notice relating to any particular transaction with such firm or company.

(*2*) Every director who contravenes the provisions of sub-section (*1*) shall be liable to a fine not exceeding one thousand rupees.

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

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

Prohibition of voting by interested director.

91B. (*1*) No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested, nor shall his presence count for the purpose of forming a quorum at the time of any such vote; and if he does so vote, his vote shall not be counted :

Provided that the directors or any of them may vote on any contract of indemnity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company.

(*2*) Every director who contravenes the provisions of sub-section (*1*) shall be liable to a fine not exceeding one thousand rupees.

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

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

Disclosure to members in case of contract appointing a manager.

91C. (*1*) Where a company enters into a contract for the appointment of a manager or managing agent of the company in which contract any director of the company is directly or indirectly concerned or interested, or varies any such existing contract, the company shall, within twenty-one days from the date of entering into contract or the varying of the contract, send an abstract of the terms of such contract or variation, as the case may be, together with a memorandum clearly indicating the nature of the interest of the director in such contract, or in such variation, to every member; and the contract shall be open to the inspection of any member at the registered office of the company.

(*2*) If a company makes default in complying with the requirements of sub-section (*1*), it shall be liable to a fine not exceeding one thousand rupees; and every officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

Contracts by agent of company in which company is undisclosed principal.

91D. (*1*) Every manager or other agent of a company, other than a private company not being the subsidiary company of a public company, who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it has been made.

(*2*) Every such manager or other agent shall forthwith deliver the memorandum aforesaid to the company and send copies to the directors, and such memorandum shall be filed in the office of the company and laid before the directors at the next directors' meeting.

(*3*) If any such manager or other agent makes default in complying with the requirements of this section—

(*a*) the contract shall, at the option of the company, be void as against the company; and

(*b*) such manager or other agent shall be liable to a fine not exceeding two hundred rupees.

Prospectus.

Filing of prospectus.

92. (*1*) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(*2*) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be filed for registration with the Registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(*3*) The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(*4*) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(*5*) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding fifty rupees for every day from the date of issue of the prospectus until a copy thereof is so filed.

Specific requirements as to particulars of prospectus.

93. (*1*) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state—

(*a*) the contents of the memorandum, with the names, descriptions and addresses of the signatories and the number of shares subscribed for by them respectively; and the number of founders or

management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company, and the number of redeemable preference shares intended to be issued with the date or, where no date is fixed, the period of notice required and the proposed method of redemption; and

(*b*) the number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and

(*c*) the names, descriptions and addresses of the directors or proposed directors and of the managers or proposed managers and managing agents or proposed managing agents (if any), and any provision in the articles or in any contract as to the appointment of managers or managing agents and the remuneration payable to them; and

(*d*) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount (if any) paid on the shares so allotted; and

(*e*) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or agreed to be issued; and

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

(*f*) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures to the vendor, and, where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors; and

(*ff*) where any property referred to in clause (*f*) has within the two years preceding the issue of the prospectus been transferred by sale, the amount paid by the purchaser at each such transfer so

far as the information is available and, where any such property is a business, the profits accruing from such business during each of the three years immediately preceding the issue of the prospectus, or during each year of the existence of the business if less than three years, so far as the information is available. A balance sheet of the business concerned made up to a date not more than ninety days before the date of the issue of the prospectus shall be appended to the prospectus ; and

(*g*) the amount (if any) paid or payable as purchase-money, in cash, shares or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill ; and

(*h*) the amount (if any) paid within the two preceding years or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure, subscriptions for any shares in, or debentures of, the company, or as discount in respect of shares issued, showing separately the amount, if any, so paid to the managing agents : Provided that it shall not be necessary to state the commission payable to sub-underwriters ; and

(*i*) the amount or estimated amount of preliminary expenses ; and

(*k*) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment ; and

(*l*) the dates of, and parties to, every material contract including contracts relating to the acquisition of property to which clause (*f*) applies, and a reasonable time and place at which any material contract or a copy thereof may be inspected : Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract (except a contract appointing or fixing the remuneration of a managing director or managing agent) entered into more than two years before the date of issue of the prospectus ; and

(*m*) the names and addresses of the auditors (if any) of the company ; and

(*n*) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm, in cash or shares or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company ; and

(*o*) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred

by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively ; and

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

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

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

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

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

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

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

(*2*) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum, or the signatories thereto, and the number of shares subscribed for by them.

(*3*) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons.

(*4*) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and of managers or proposed managers, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business :

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

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

Meaning of "vendor" in section 93.

94. For the purposes of section 93 every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(*a*) the purchase-money is not fully paid at the date of issue of the prospectus ; or

(*b*) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus ; or

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

Application of section 93 to the case of property taken on lease.

95. Where any of the property to be acquired by the company is to be taken on lease, section 93 shall apply as if the expression " vendor " included the lessor, and the expression " purchase-money " included the consideration for the lease, and the expression " sub-purchaser " included a sub-lessee.

Invalidity of certain conditions as to waiver or notice.

96. (*1*) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirements of section 93, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

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

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

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

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

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

Saving in certain cases of non-compliance with section 93.

97. (*1*) If a prospectus is issued which does not comply with the provisions of section 93, every person who is knowingly responsible for the issue of such prospectus shall be liable to a fine not exceeding fifty rupees for every day from the day of the issue of the prospectus until a copy complying with the requirements of section 93 is filed.

(*2*) In the event of non-compliance with or contravention of any of the requirements of section 93, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention if he proves that—

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

(*b*) the non-compliance or contravention arose from an honest mistake of fact on his part ; or

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

Provided that, in the event of non-compliance with or contravention of the requirements contained in clause (*n*) of sub-section (*1*) of section 93, no such director or other person shall incur any liability in respect of the non-compliance or contravention unless it be proved that he had knowledge of the matters not disclosed.

Obligations of companies where no prospectus is issued.

98. (*1*) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the Registrar a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in the form marked I in the Second Schedule.

(*2*) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act, or in so far as it relates to the allotment of shares to a company limited by a guarantee and not having a share capital.

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

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

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

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

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

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

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

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

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

99. A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the company in general meeting.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

100. (*1*) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorized the naming of himself and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for all loss or damage they may have sustained by reason of any misleading or untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

Liability for statements in prospectus.

(*a*) with respect to every misleading or untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement fairly represented the facts or was true;

(*b*) with respect to every misleading or untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation : Provided that the director, person named as director, promoter or person who authorized the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report or valuation was competent to make it; and

(*c*) with respect to every misleading or untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document;

or unless it is proved—

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

(ii) that the prospectus was issued without his knowledge or consent, and that, on becoming aware of its issue, he forthwith gave

reasonable public notice that it was issued without his knowledge or consent; or

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

(*2*) Where a company existing at the commencement of this Act[1] has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein unless he has authorized the issue of the prospectus, or has adopted or ratified it.

(*3*) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any suit or legal proceedings brought against him in respect thereof.

(*4*) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(*5*) For the purposes of this section—

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

(*b*) the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

Allotment.

Restriction as to allotment.

101. (*1*) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which in the opinion of the directors must be raised

[1] *i.e.* on the 1st April, 1914.

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

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

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

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

(*c*) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters ; and

(*d*) working capital.

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

(*2B*) All moneys received from applicants for shares shall be deposited and kept in a scheduled bank until returned in accordance with the provisions of sub-section (*4*) or until the certificate to commence business is obtained under section 103.

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

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

(*4*) If the conditions aforesaid have not been complied with on the expiration of one hundred and eighty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within one hundred and ninety days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of seven per cent. per annum from the expiration of the one hundred and ninetieth day: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(*5*) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

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

(*7*) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for

its shares, no allotment shall be made unless the minimum subscription (that is to say)—

(*a*) the amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(*b*) if no amount is so fixed and named, the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash;

has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

(*8*) Sub-section (*7*) shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act.

Effect of irregular allotment.

102. (*1*) An allotment made by a company to an applicant in contravention of the provisions of section 101 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(*2*) If any director of a company knowingly contravenes or permits or authorizes the contravention of any of the provisions of section 101 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

Restrictions on commencement of business.

103. (*1*) A company shall not commence any business or exercise any borrowing powers unless—

(*a*) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(*b*) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription or, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and

(*c*) there has been filed with the Registrar a duly verified declaration by the secretary or one of the directors in the prescribed form that the aforesaid conditions have been complied with ; and

(*d*) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the Registrar a statement in lieu of prospectus.

(*2*) The Registrar shall, on the filing of a duly verified declaration in accordance with the provisions of this section, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled :

Provided that, in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the Registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(*3*) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(*4*) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(*5*) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding five hundred rupees for every day during which the contravention continues.

(*6*) Nothing in this section shall apply to a private company, or to a company registered before the commencement of this Act which does not issue a prospectus inviting the public to subscribe for its shares or, in so far as its provisions relate to shares, to a company limited by guarantee and not having a share capital.

Return as to allotments.

104. (*1*) Whenever a company having a share capital makes any allotment of its shares, the company shall, within one month thereafter,—

(*a*) file with the Registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount (if any) paid or due and payable on each share ; and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the Registrar a contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and file with the Registrar copies verified in the prescribed manner

of all such contracts, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(*2*) Where such a contract as above mentioned is not reduced to writing, the company shall, within one month after the allotment, file with the Registrar the prescribed particulars of the contract stamped with the same stamp-duty as would have been payable if the contract had been reduced to writing, and these particulars shall be deemed to be an instrument within the meaning of the Burma Stamp Act, and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

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

Provided that, in case of default in filing with the Registrar within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the Court may think proper.

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

Commissions and Discounts.

Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.

105. (*1*) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorized by the articles and the commission paid or agreed to be paid does not exceed the amount or rate so authorized, and if the amount or rate per cent. of the commission paid or agreed to be paid is—

(*a*) in the case of shares offered to the public for subscription, disclosed in the prospectus ; or

(*b*) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the Registrar, and where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.

(*2*) Save as aforesaid and save as provided in section 105A, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase-money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase-money or contract price, or otherwise.

(*3*) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

Power to issue shares at a discount.

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

Provided that –

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

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

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

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

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

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

Issue of redeemable preference shares.

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

Provided that—

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

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

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

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

(*2*) There shall be included in every balance-sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be, liable to be redeemed or, where no definite date is fixed for redemption, the period of notice to be given for redemption.

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

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

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

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be

deemed to have been issued in pursuance of this sub-section unless the old shares are redeemed within one month after the issue of the new shares.

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

Further issue of capital.

105C. Where the directors decide to increase the capital of the company by the issue of further shares, such shares shall be offered to the members in proportion to the existing shares held by each member (irrespective of class), and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined ; and after the expiration of such time, or on receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

Statement in balance-sheet as to commissions and discounts.

106. Where a company has paid any sums by way of commission in respect of any shares or debentures or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance-sheet of the company until the whole amount thereof has been written off.

Payment of Interest out of Capital.

Power of company to pay interest out of capital in certain cases.

107. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building or the provision of plant :

Provided that—

(1) no such payment shall be made unless the same is authorized by the articles or by special resolution ;

(2) no such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the President of the Union, which sanction shall be conclusive evidence for the purposes of this section that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section ;

(3) before sanctioning any such payment, the President of the Union may, at the expense of the company, appoint a person to inquire and report to the President of the Union as to the circumstances

of the case, and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry.

(4) the payment shall be made only for such period as may be determined by the President of the Union, and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided ;

(5) the rate of interest shall in no case exceed four per cent. per annum or such lower rate as the President of the Union may, by notification in the Gazette, prescribe ;

(6) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid ;

(7) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate ;

(8) nothing in this section shall affect any company to which the Railway Companies Act or the Tramways Act applies.

Certificates of Shares, etc.

Limitation of time for issue of certificates.

108. (*1*) Every company shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within three months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

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

Information as to Mortgages, Charges, etc.

Certain mortgages and charges to be void if not registered.

109. (*1*) Every mortgage or charge created after the commencement of this Act by a company and being either—

(*a*) a mortgage or charge for the purpose of securing any issue of debentures ; or

(*b*) a mortgage or charge on uncalled share capital of the company ; or

(*c*) a mortgage or charge on any immoveable property wherever situate, or any interest therein ; or

(*d*) a mortgage or charge on any book debts of the company ; or

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

(*f*) a floating charge on the undertaking or property of the company ;

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the

company unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable:

Provided that—

(i) in the case of a mortgage or charge created out of the Union of Burma, comprising solely property situate outside the Union of Burma, twenty-one days after the date on which the instrument or copy could, in due course of post and if despatched with due diligence, have been received in the Union of Burma shall be substituted for twenty-one days after the date of the creation of the mortgage or charge as the time within which the particulars and instrument or copy are to be filed with the Registrar; and

(ii) where the mortgage or charge is created in the Union of Burma but comprises property outside the Union of Burma, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and

(iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and

(iv) the holding of debentures entitling the holder to a charge on immoveable property shall not be deemed to be an interest in immoveable property.

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

Registration of charges on properties acquired subject to charge.

109A. (*1*) Where after the 15th January, 1937,[1] a company registered in the Union of Burma acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this

[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed :

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

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

Particulars in case of series of debentures entitling holders *pari passu*.

110. Where a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it shall be sufficient for the purposes of section 109 if there are filed with the Registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars—

(*a*) the total amount secured by the whole series ; and

(*b*) the dates of the resolution authorizing the issue of the series and the date of the covering deed (if any) by which the security is created or defined ; and

(*c*) a general description of the property charged ; and

(*d*) the names of the trustees (if any) for the debenture-holders ;

together with the deed or a copy thereof verified in the prescribed manner containing the charge, or if there is no such deed, one of the debentures of the series, and the Registrar shall, on payment of the prescribed fee, enter those particulars in the register :

Provided that, where more than one issue is made of debentures in the series, there shall be filed with the Registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

Particulars in case of commission, etc., on debentures.

111. Where any commission, allowance or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under sections 109 and 110 shall include particulars as to the amount or rate per cent. of

the commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

Register of mortgages and charges.

112. (*1*) The Registrar shall keep, with respect to each company, a register in the prescribed form of all mortgages and charges created by the company after the commencement of this Act and requiring registration under section 109, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(*2*) After making the entry required by sub-section (*1*), the Registrar shall return the instrument (if any) or the verified copy thereof, as the case may be, filed in accordance with the provisions of section 109 or section 110, to the person filing the same.

(*3*) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one rupee for each inspection.

Index to register of mortgages and charges.

113. The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

Certificate of registration.

114. The Registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of section 109, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of sections 109 to 112 as to registration have been complied with.

Endorsement of certificate of registration on debenture or certificate of debenture stock.

115. The company shall cause a copy of every certificate of registration, given under section 114, to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered:

Provided that nothing in this section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

Duty of company and right of interested party as regards registration

116. (*1*) It shall be the duty of the company to file with the Registrar for registration the prescribed particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under section 109, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

(*2*) Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration.

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

Copy of instrument creating mortgage or charge to be kept at registered office.

117. Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under section 109 to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

Registration of appointment of receiver.

118. (*1*) If any person obtains an order for the appointment of a receiver of the property of a company, or appoints such a receiver under any powers contained in any instrument, he shall, within fifteen days from the date of the order or of the appointment under the powers contained in the instrument, file notice of the fact with the Registrar, and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(*2*) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Filing of accounts of receivers.

119. (*1*) Every receiver of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall once in every half-year while he remains in possession, and also on ceasing to act as receiver, file with the Registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also, on ceasing to act as receiver, file with the Registrar notice to that effect, and the Registrar shall enter the notice in the register of mortgages and charges.

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

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

Rectification of register of mortgages.

120. (*1*) The Court, on being satisfied that the omission to register a mortgage or charge within the time required by section 109, or that the omission or mis-statement of any particular with respect to any such mortgage or charge, or the omission to give intimation to the Registrar of the payment or satisfaction of a debt for which a charge or mortgage was created, was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or share-holders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or mis-statement be rectified, and may make such order as to the costs of the application as it thinks fit.

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

Registration of satisfaction of mortgages and charges.

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

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

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

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

Penalties.

122. (*1*) If any company makes default in filing with the Registrar for registration the particulars—

(*a*) of any mortgage or charge created by the company; or

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

(*c*) of the issues of debentures of a series,

requiring registration with the Registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every officer of the company or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(*2*) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the Registrar of any mortgage or charge created by the company, the company, and every officer of the company who knowingly and wilfully authorizes or permits the default, shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

(*3*) If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock requiring registration with the Registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

Company's register of mortgages.

123. (*1*) Every company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company and all floating charges on the undertaking or on any property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(*2*) If any director, manager or other officer of the company knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding five hundred rupees.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

124. (*1*) The copies kept at the registered office of the company in pursuance of section 117 of instruments creating any mortgage or charge requiring registration under this Act with the Registrar, and the register of mortgages kept in pursuance of section 123, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one rupee for each inspection, as the company may prescribe.

(*2*) If inspection of the said copies or register is refused, the company shall be liable to a fine not exceeding fifty rupees, and a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorizes or permits the refusal shall incur the like penalty, and in addition to the above penalty, the Court may by order compel an immediate inspection of the copies or register.

Right to inspect the register of debenture-holders and to have copies of trust-deed.

125. (*1*) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject ot such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every

such holder may require a copy of the register or any part thereof on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(*2*) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment, in the case of a printed trust-deed, of the sum of one rupee or such less sum as may be prescribed by the company, or, where the trust-deed has not been printed, on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(*3*) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorizes or permits the refusal shall incur the like penalty, and the Court may by order compel an immediate inspection of the register.

Transitory provisions as respects Indian companies.

125A. The separation of Burma and India shall not, as respects a company which was under the provisions of this Act as in force before the separation of Burma and India a company within the meaning of this Act, render valid any mortgage or charge which, by virtue of this Part of this Act, as in force immediately before the said date, was void against the liquidator and creditors of the company.

Debentures and Floating Charges.

Perpetual debentures.

126. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote or on the expiration of a period however long.

Power to re-issue redeemed debentures in certain cases.

127. (*1*) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(*2*) Where with the object of keeping debentures alive for the purpose of re-issue they have, either before or after the commencement of this Act,

been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(*3*) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(*4*) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp-duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp-duty and penalty.

(*5*) Nothing in this section shall prejudice—

(*a*) * * * * *

(*b*) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

Specific performance of contract to subscribe for debentures.

128. A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

Payments of certain debts out of assets subject to floating charge in priority to claim under the charge.

129. (*1*) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(*2*) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(*3*) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

Statements, Books and Accounts.

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

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

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

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

(*c*) the assets and liabilities of the company.

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

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

Annual balance-sheet.

131. (*1*) The directors of every company shall at some date not later than eighteen months after the incorporation of the company, and subsequently once at least in every calendar year, lay before the company in general meeting a balance-sheet and profit and loss account, or in the case of a company not trading for profit an income and expenditure account for the period, in the case of the first account since the incorporation of the company, and in any other case since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or in the case of a company carrying on business or having interests outside the Union of Burma by more than twelve months :

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

(*2*) The balance-sheet and the profit and loss account, or income and expenditure account, shall be audited by the auditor of the company as hereinafter provided, and the auditor's report shall be attached thereto, or there shall be inserted at the foot thereof a reference to the report, and the report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(*3*) Every company other than a private company shall send a copy of such balance-sheet and profit and loss account, or income and expenditure account, so audited, together with a copy of the auditors' report, to the registered address of every member of the company at least fourteen days before the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of the members of the company during a period of at least fourteen days before that meeting.

Directors' report.

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

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

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

Contents of balance-sheet.

132. (*1*) The balance-sheet shall contain a summary of the property and assets and of the capital and liabilities of the company, giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at.

(*2*) The balance-sheet shall be in the form marked F in the Third Schedule, or as near thereto as circumstances admit.

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

Balance-sheet to include particulars as to subsidiary companies.

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

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

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

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

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

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

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

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

(*5*) The holding company may by a resolution authorize representatives named in the resolution to inspect the books of account kept in accordance with section 130 by any subsidiary company, and on such resolution being passed those books of account shall be open to inspection by those representatives at any time during business hours.

(*6*) The rights conferred by section 138 upon members of a company may be exercised in respect of any subsidiary company by members of the holding company as if they were members of that subsidiary company.

Authentication of balance-sheet.

133. (*1*) Save as provided by sub-section (*2*), the balance-sheet and profit and loss account, or income and expenditure account, shall—

(i) in the case of a banking company, be signed by the manager or managing agent (if any) and, where there are more than three

directors of the company, by at least three of those directors and, where there are not more than three directors, by all the directors ;

(ii) in the case of any other company, be signed by two directors or, when there are less than two directors, by the sole director and by the manager or managing agent (if any) of the company.

(*2*) When the total number of directors of the company for the time being in the Union of Burma is less than the number of directors whose signatures are required by sub-section (*1*), then the balance-sheet and profit and loss account, or income and expenditure account, shall be signed by all the directors for the time being in the Union of Burma or, if there is only one director for the time being in the Union of Burma, by such director, but in such a case there shall be subjoined to the balance-sheet and profit and loss account, or income and expenditure account, a statement signed by such directors or director explaining the reason for non-compliance with the provisions of sub-section (*1*).

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

Copy of balance-sheet to be forwarded to the Registrar.

134. (*1*) After the balance-sheet and profit and loss account have been laid before the company at the general meeting, a copy of the balance-sheet, signed by the manager or secretary of the company, shall be filed with the Registrar at the same time as the copy of the annual list of members and summary prepared in accordance with the requirements of section 32.

(*2*) If the general meeting before which a balance-sheet is laid does not adopt the balance-sheet, a statement of that fact and of the reasons therefor shall be annexed to the balance-sheet and to the copy thereof required to be filed with the Registrar.

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

(*4*) If a company makes default in complying with the requirements of this section, the company and every officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty as is provided by section 32 for a default in complying with the provisions of that section.

Right of member of company to copies of the balance-sheet and the auditor's report.

135. Save as otherwise provided in this Act, any member of a company shall be entitled to be furnished with copies of the balance-sheet and the profit and loss account, or the income and expenditure account, and the auditor's report at a charge not exceeding six annas for every hundred words or fractional part thereof.

Statement to be published by Banking and certain other Companies.

Certain companies to publish statement in schedule.

136. (*1*) Every company being a limited banking company or an insurance company or a deposit, provident or benefit society shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked G in the Third Schedule, or as near thereto as circumstances will admit.

(*2*) A copy of the statement, together with a copy of the last audited balance-sheet laid before the members of the company, shall be displayed and, until the display of the next following statement, kept displayed in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(*3*) Every member and every creditor of the company shall be entitled to a copy of the statement on payment of a sum not exceeding eight annas.

(*4*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues ; and every officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

(*5*) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the Life Assurance Companies Act or of the Provident Insurance Societies Act, as the case may be, as to the annual statements to be made by such company or society, apply with or without modifications, if the company or society complies with those provisions.

Investigation by the Registrar.

Power of Registrar to call for information or explanation.

137. (*1*) Where the Registrar, on perusal of any document which a company is required to submit to him under the provisions of this Act, is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in his order.

(*2*) On the receipt of an order under sub-section (*1*), it shall be the duty of all persons who are or have been officers of the company to furnish such information or explanation to the best of their power.

(*3*) If any such person refuses or neglects to furnish any such information or explanation, he shall be liable to a fine not exceeding fifty rupees in respect of each offence, and the Court may on the application of the Registrar and upon notice to the company make an order on the company for production of such documents as in its opinion may reasonably be required by the Registrar for his investigation and allow the Registrar inspection thereof on such terms and conditions as it thinks fit.

(*4*) On receipt of such information or explanation the Registrar may annex the same to the original document submitted to him ; and any additional

document so annexed by the Registrar shall be subject to the like provisions as to inspection and the taking of copies as the original document is subject.

(*5*) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the Registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the Registrar shall report in writing the circumstances of the case to the President of the Union.

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

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

Inspection and Audit.

Investigation of affairs of company by inspectors.

138. The President of the Union may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the President of the Union may direct—

(i) in the case of a banking company having a share capital, on the application of members holding not less than one-fifth of the shares issued ;

(ii) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued ;

(iii) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members ;

(iv) in the case of any company, on a report by the Registrar under section 137, sub-section (*5*).

Application for inspection to be supported by evidence.

139. An application by members of a company under section 138 shall be supported by such evidence as the President of the Union may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation ; and the President of the Union may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

Inspection of books and examination of officers.

140. (*1*) It shall be the duty of all persons who are or have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company.

(*2*) An inspector may examine on oath any such person in relation to its business, and may administer an oath accordingly.

(*3*) If any person refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding fifty rupees in respect of each offence.

Results of examination how dealt with.

141. (*1*) On the conclusion of the investigation the inspectors shall report their opinion to the President of the Union, and a copy of the report shall be forwarded by the President of the Union to the Registrar and another copy to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

(*2*) The report shall be written or printed, as the President of the Union directs.

(*3*) All expenses of, and incidental to, the investigation shall be defrayed by the applicants unless the President of the Union directs the same to be paid by the company, which the President of the Union is hereby authorized to do :

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

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

Institution of prosecutions.

141A. (*1*) If from any report made under section 138 it appears to the President of the Union that any person has been guilty of any offence in relation to the company for which he is criminally liable, the President of the Union shall refer the matter to the Attorney-General [1] or the Public Prosecutor.

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

(*3*) For the purposes of sub-section (*2*), the expression "agents" in relation to a company shall be deemed to include the bankers and legal advisers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(*4*) Any director, manager or other officer of the company convicted as the result of a prosecution initiated under this section shall not without the

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

leave of the Court be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for a period of five years from the date of such conviction,

Power of company to appoint inspectors.

142. (*1*) A company may by a special resolution appoint inspectors to investigate its affairs.

(*2*) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the President of the Union, except that, instead of reporting to the President of the Union, they shall report in such manner and to such persons as the company in general meeting may direct.

(*3*) All persons who are or have been officers of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the President of the Union.

Report of inspectors to be evidence.

143. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Qualifications and appointment of auditors.

144. (*1*) No person shall be appointed or act as an auditor of any company, other than a private company not being the subsidiary company of a public company, unless he holds a certificate from the President of the Union entitling him to act as an auditor of companies:

Provided that a firm whereof all the partners practising in the Union of Burma hold such certificates may be appointed by its firm-name to be auditor of a company, and may act in its firm-name.

(*2*) The President of the Union may, by notification in the Gazette and after previous publication, make rules providing for the grant, renewal or cancellation of such certificates and prescribing conditions and restrictions for such grant, renewal or cancellation:

Provided that nothing contained in such rules shall preclude any person from being granted a certificate merely by reason that he does not practise as a public accountant.

(*2A*) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(*a*) provide for the maintenance of a register of Accountants entitled to apply for such certificates;

(*b*) prescribe the qualifications for enrolment on the register and the fees therefor;

(*c*) provide for the examination of candidates for enrolment, and prescribe the fees to be paid by examinees;

(*d*) prescribe the circumstances in which the name of any person may be removed from or restored to the register;

(*e*) provide for the establishment, constitution and procedure of an Accountancy Board, consisting of persons representing the interests principally affected or having special knowledge of accountancy, to advise him on all matters of administration relating to accountancy, and to assist him in maintaining the standards of qualification and conduct of persons enrolled on the register; and

(*f*) provide for the establishment, constitution and procedure of local accountancy boards at such centres as the President of the Union may select, to advise him and the Accountancy Board on any matter that may be referred to them.

(*2B*) The holder of a certificate granted under this section shall be entitled to be appointed and act as an auditor of companies throughout the Union of Burma.

(*3*) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(*4*) If an appointment of an auditor is not made at an annual general meeting, the President of the Union may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(*5*) The following persons, that is to say,

(i) a director or officer of the company, and

(ii) a partner of such director or officer, and

(iii) in the case of a company, other than a private company not being the subsidiary company of a public company any person in the employment of such director or officer, and

(iv) any person indebted to the company,

shall not be appointed auditors of the company, and if any person after being appointed auditor becomes indebted to the company his appointment shall thereupon be terminated.

(*6*) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company to the company not less than fourteen days before such annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to its members, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:

Provided that, if after notice of the intention to nominate an auditor has been given to the company, an annual general meeting is called for a date fourteen days or less after the notice has been given, the requirements of this section as to time in respect of such a notice shall be deemed to have been satisfied, and the notice otbe sent or given by the company may, instead of being sent or given

within the time required by this section, be sent or given at the same time as the notice of the annual general meeting.

(*7*) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting unless previously removed by a resolution of the members of the company in general meeting, in which case such members at that meeting may appoint auditors.

(*8*) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act.

(*9*) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

Powers and duties of auditors.

145. (*1*) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(*2*) The auditors shall make a report to the members of the company on the accounts examined by them, and on every balance-sheet and profit and loss account laid before the company in general meeting during their tenure of office, and the report shall state :—

(*a*) whether or not they have obtained all the information and explanations they have required ; and

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

(*c*) whether or not such balance-sheet exhibits a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company ; and

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

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

(*3*) In the case of a banking company, if the company has branch banks beyond the limits of the Union of Burma, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in the Union of Burma.

(*4*) The auditors of a company shall be entitled to receive notice of and to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the

company and may make any statement or explanation they desire with respect to the accounts.

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

Rights of preference shareholders, etc., as to receipt and inspection of reports, etc.

146. (*1*) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance-sheets and profit and loss accounts of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(*2*) This section shall not apply to a private company, nor to a company registered before the commencement of this Act :

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

Carrying on Business with less than the Legal Minimum of Members.

Liability for carrying on business with fewer than seven or, in the case of a private company, two members.

147. If at any time the number of members of a company is reduced, in the case of a private company, below two, or in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same without joinder in the suit of any other member.

Service and Authentication of Documents.

Service of documents on company.

148. A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company.

Service of documents on Registrar.

149. A document may be served on the Registrar by sending it to him by post, or delivering it to him, or by leaving it for him at his office.

Authentication of documents.

150. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorized officer of the company, and need not be under its common seal.

Tables, Forms and Rules as to Prescribed Matters.

Application and alteration of tables and forms, and power to make rules as to prescribed matters.

151. (*1*) The forms in the Third Schedule or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(*2*) The President of the Union may alter any of the Tables and forms in the First Schedule, so that he does not increase the amount of fees payable to the Registrar in the said Schedule mentioned, and may alter or add to the forms in the Third Schedule.

(*3*) Any such Table or form, when altered, shall be published in the Gazette, and on such publication shall have effect as if enacted in this Act, but no alteration made by the President of the Union in Table A in the First Schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that Table.

(*4*) In addition to the powers hereinbefore conferred by this section, the President of the Union may make rules providing for all or any matters which by this Act are to be prescribed by his authority.

(5) Every such rule shall be published in the Gazette, and on such publication shall have effect as if enacted in this Act.

Arbitration and Compromise.

Power for companies to refer matters to arbitration.

152. (*1*) A company may by written agreement refer to arbitration, in accordance with the Arbitration Act, an existing or future difference between itself and any other company or person.

(*2*) Companies, parties to the arbitration, may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(*3*) The provisions of the Arbitration Act [* * * *] [1] shall apply to all arbitrations between companies and persons in pursuance of this Act.

Power to compromise with creditors and members.

153. (*1*) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors or of the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(*2*) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on all the members or class of members, as the case may be, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

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

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[1] Deleted by Act IV, 1944.

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

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

(*6*) In this section the expression " company " means any company liable to be wound up under this Act, and for the purposes of this section unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

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

Provisions for facilitating arrangements and compromises.

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

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

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

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

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

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

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

(*2*) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred

to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(*3*) Where an order is made under this section, every company in relation to which the order is made shall cause a certified copy thereof to be delivered to the Registrar for registration within fourteen days after the completion of the order, and if default is made in complying with this sub-section, the company and every officer of the company who is knowingly and wilfully in default shall be liable to a fine not exceeding fifty rupees.

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

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

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

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

Provided that, where any such scheme or contract has been so approved at any time before the 15th January, 1937,[1] the Court may by order, on an application made to it by the transferee company within two months after the said date, authorize notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the Court may by the order direct instead of the terms provided by the scheme or contract.

(*2*) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the

[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

expiration of one month from the date on which the notice has been given or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

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

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

Conversion of Private Company into Public Company.

Conversion of private company into public company.

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

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

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

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

PART V.

WINDING UP.

Preliminary.

Mode of winding up.

155. (*1*) The winding up of a company may be either—

(i) by the Court ; or

(ii) voluntary ; or

(iii) subject to the supervision of the Court.

(*2*) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of these modes.

Contributories.

Liability as contributories of present and past members.

156. (*1*) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, be liable to contribute to the assests of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following (that is to say) :—

(i) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up ;

(ii) a past member shall not be liable to contribute in respect of any debt, or liability of the company contracted after he ceased to be a member ;

(iii) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act ;

(iv) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect to which he is liable as a present or past member ;

(v) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up ;

(vi) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract ;

(vii) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member

in a case of competition between himself and any other creditor not a member of the company ; but any such sum may be taken into account for the purpose of the final adjustments of the rights of the contributories among themselves.

(*2*) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Liability of directors whose liability is unlimited.

157. In the winding up of a limited company any director, whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company :

Provided that—

(i) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up ;

(ii) a past director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office ;

(iii) subject to the articles a director shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

Meaning of "contributory."

8. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability of contributory.

159. (*1*) The liability of a contributory shall create a debt payable at the time specified in the calls made on him by the liquidator.

(*2*) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes.

Contributories in case of death of member.

160. (*1*) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(*2*) If the legal representatives or heirs make default in paying any money ordered to be paid by them, proceedings may be taken for administering the property of the deceased contributory, whether moveable or immoveable, or both and of compelling payment thereout of the money due.

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

Contributories in case of insolvency of member.

161. If a contributory is adjudged insolvent either before or after he has been placed on the list of contributories, then—

(1) his assignees shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company ; and

(2) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

Winding up by Court.

Circumstances in which company may be wound up by Court.

162. A company may be wound up by the Court—

(i) if the company has by special resolution resolved that the company be wound up by the Court ;

(ii) if default is made in filing the statutory report or in holding the statutory meeting ;

(iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;

(iv) if the number of members is reduced, in the case of a private company, below two ; or, in the case of any other company, below seven ;

(v) if the company is unable to pay its debts ;

[1] (va) if its licence is withdrawn in accordance with the provisions of section 55 of the Union Bank of Burma Act, 1952 ;

(vi) if the Court is of opinion that it is just and equitable that the company should be wound up.

Company when deemed unable to pay its debts.

163. (*1*) A company shall be deemed to be unable to pay its debts—

(i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by causing the same to be delivered by registered post or otherwise at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ; or

[1] Inserted by Act IX, 1952.

(ii) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

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

Winding up may be referred to District Court.

164. Where the High Court makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding up the company, be deemed to be " the Court " within the meaning of this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court.

Transfer of winding up from one District Court to another.

165. If during the progress of a winding up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court having jurisdiction to wind up companies, the High Court may transfer the same to such other Court, and thereupon the winding up shall proceed in such other District Court.

Provisions as to applications for winding up.

166. An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately, or by the Registrar:

Provided that—

(*a*) a contributory shall not be entitled to present a petition for winding up a company unless—

(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, or

(ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder;

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

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

(ii) unless the previous sanction of the President of the Union has been obtained to the presentation of the petition :

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

(*b*) a petition for winding up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held ;

(*c*) the Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the Court.

Effect of winding up order.

167. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Commencement of winding up by Court.

168. A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Court may grant injunction.

169. The Court may, at any time after the presentation of the petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any suit or proceeding against the company, upon such terms as the Court thinks fit.

Powers of Court on hearing petition.

170. (*1*) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it deems just, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(*2*) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

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

Suits stayed on winding up order.

171. When a winding up order has been made or a provisional liquidator has been appointed no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

Vacancy in the office of liquidator.

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

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

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

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

Copy of winding up order to be filed with Registrar.

172. (*1*) On the making of a winding up order it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the Registrar a copy of the order within a month from the date of the making of the order.

(*2*) On the filing of a copy of a winding up order, the Registrar shall make a minute thereof in his books relating to the company, and shall notify in the Gazette that such an order has been made.

(*3*) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of the company is continued.

Power of Court to stay winding up.

173. The Court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

Court may have regard to wishes of creditors or contributories.

174. The Court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Official Liquidators.

Appointment of official liquidator.

175. (*1*) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a person or persons other than the official receiver to be called an official liquidator or official liquidators.

(*2*) The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up, but shall before making any such appointment give notice to the company, unless for reasons to be recorded it thinks fit to dispense with notice.

(*3*) If more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act by this Act required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons.

(*4*) The Court may determine whether any, and what, security is to be given by any official liquidator on his appointment.

(*5*) The acts of an official liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment : Provided that nothing in this sub-section shall be deemed to give validity to acts done by an official liquidator after his appointment has been shown to be invalid.

(*6*) A receiver shall not be appointed of assets in the hands of an official liquidator.

Resignations, removals, filling up vacancies and compensation.

176. (*1*) Any official liquidator may resign or be removed by the Court on due cause shown.

(*2*) Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court and until the vacancy is so filled up the official receiver shall be and act as the official liquidator.

(*3*) There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct ; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

Official liquidator.

177. The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name.

Statement of affairs to be made to the liquidator.

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

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

(*b*) the debts and liabilities ;

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

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

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

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

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

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

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

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

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

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

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

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

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

Statemnet by liquidator.

177B. (*1*) In a case where a winding up order is made, the official liquidator shall, as soon as practicable after receipt of the statement to be submitted under section 177A, and not later than four, or with the leave of the Court, six months from the date of the order, or in a case where the Court orders

that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—

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

(i) cash and negotiable securities ;
(ii) debts due from contributories ;
(iii) debts due to and securities, if any, available to the company ;
(iv) moveable and immoveable properties belonging to the company ;
(v) unpaid calls ; and

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

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

(*2*) The official liquidator may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matter which in his opinion it is desirable to bring to the notice of the Court.

Custody of company's property.

178. (*1*) The official liquidator, whether appointed provisionally or not, shall take into his custody, or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

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

Committee of inspection in compulsory winding up.

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

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

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

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

meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.

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

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

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

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

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

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

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

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

Powers of official liquidator.

179. The official liquidator shall have power, with the sanction of the Court, to do the following things :—

(*a*) to institute or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company ;

(*b*) to carry on the business of the company so far as may be necessary for the beneficial winding up of the same ;

(*c*) to sell the immoveable and moveable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels ;

(*d*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal ;

(*e*) to prove, frank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors ;

(*f*) to draw, accept, make and indorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business ;

(*g*) to raise, on the security of the assets of the company, any money requisite ;

(*h*) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company ; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself: Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of the Administrator-General ;

(*i*) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Discretion of official liquidator.

180. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

Provision for legal assistance to official liquidator.

181. The official liquidator may, with the sanction of the Court, appoint a legal practitioner entitled to appear before the Court to assist him in the performance of his duties : Provided that, where the official liquidator is a legal practitioner, he shall not appoint his partner unless the latter consents to act without remuneration.

Liquidator to keep books containing proceedings of meetings and to submit account of his receipts to Court.

182. (*1*) The official liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

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

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

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

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

Exercise and control of liquidator's powers.

183. (*1*) Subject to the provisions of this Act, the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(*2*) The official liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(*3*) The official liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising in the winding up.

(*4*) Subject to the provisions of this Act, the official liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(5) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances.

Ordinary Powers of Court.

Settlement of list of contributories and application of assets.

184. (*1*) As soon as may be after making a winding up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(*2*) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

Power to require delivery of property.

185. The Court may, at any time after making a winding up order, require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the official liquidator any money, property or documents in his hands to which the company is *prima facie* entitled.

Power to order payment of debts by contributory.

186. (*1*) The Court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(*2*) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance:

Provided that, in the case of any company whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of Court to make calls.

187. (*1*) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

(*2*) In making the call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Power to order payment into bank.

188. The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the account of the official liquidator in any scheduled bank instead of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of account with Court.

189. All moneys, bills, hundis, notes and other securities paid and delivered into the bank where the liquidator of the company may have his account, in the event of a company being wound up by the Court, shall be subject in all respects to the orders of the Court.

Order on contributory conclusive evidence.

190. (*1*) An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(*2*) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

191. The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved. Power to exclude creditors not proving in time.

192. The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto. Adjustment of rights of contributories.

193. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just. Power to order costs.

194. (*1*) 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 be dissolved accordingly. Dissolution of company.

(*2*) The order shall be reported within fifteen days of the making thereof by the official liquidator to the Registrar, who shall make in his books a minute of the dissolution of the company.

(*3*) If the official liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which he is in default.

Extraordinary Powers of Court.

195. (*1*) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company. Power to summon persons suspted of having property of company.

(*2*) The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(*3*) The Court may require him to produce any documents in his custody or power relating to the company; but, where he claims any lien on documents produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien,

(*4*) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

196. (*1*) When an order has been made for winding up a company by the Court, and the official liquidator has applied to the Court stating that in his opinion a fraud has been committed by any person in the promotion or Power to order public examination of premoters, directors, etc.

formation of the company or by any director or other officer of the company, in relation to the company since its formation, the Court may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, manager or other officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director, manager or other officer thereof.

(*2*) The official liquidator shall take part in the examination, and for that purpose may, if specially authorized by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(*3*) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court.

(*4*) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(*6*) A person ordered to be examined under this section may at his own cost employ any person entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him : Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit.

(*7*) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(*8*) The Court may, if it thinks fit, adjourn the examination from time to time.

(*9*) An examination under this section may, if the Court so directs, and subject to any rules in this behalf, be held before any District Judge or before any officer of the High Court, being an official referee, master, registrar or deputy registrar, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the examination is held.

Power to arrest absconding contributory.

197. The Court, at any time either before or after making a winding up order, on proof of probable cause for believing that a contributory is about to quit the Union of Burma or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and moveable property to be seized, and him and them to be safely kept until such time as the Court may order.

198. Any powers by this Act conferred on the Court shall be in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums. Saving of other proceedings.

Enforcement of and Appeal from Orders.

199. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced. Power to enforce orders.

200. Any order made by a Court for or in the course of the winding up of a company shall be enforced in any place in the Union of Burma, other than that in which such Court is situate, by the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate at such other place, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same. Order made in any Court to be enforced by other Courts.

201. Where any order made by one Court is to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made ; and thereupon the last-mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same. Mode of dealing with orders to be enforced by other Courts.

202. Re-hearings of and appeals from any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction. Appeals from orders.

Voluntary Winding up.

203. A company may be wound up voluntarily— Circumstances in which company may be wound up voluntarily.

(1) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily ;

(2) if the company resolves by special resolution that the company be wound up voluntarily ;

(3) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up ;

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

Commencement of voluntary winding up.

204. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntarily winding up.

Effect of voluntary winding up on status of company.

205. When a company is wound up voluntarily, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Notice of resolution to wind up voluntarily.

206. (*1*) Notice of any special resolution or extraordinary resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by advertisement in the Gazette and also in some newspaper (if any) circulating in the district where the registered office of the company is situate.

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues ; and every officer of the company who knowingly and wilfully authorizes or permits the default shall be liable to a like penalty.

Declaration of solvency.

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

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

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

Members' Voluntary Winding up.

Provisions applicable to a members' voluntary winding up.

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

Power of company to appoint and fix remuneration of liquidators.

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

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

Power to fill vacancy in office of liquidator.

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

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

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

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

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

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

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

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

(*5*) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for

voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

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

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

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

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

Final meeting and dissolution.

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

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

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

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

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

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an orde

deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

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

Creditors' Voluntary Winding up.

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

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

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

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

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

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

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

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

(*6*) If default is made—

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

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

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

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

Appointment of liquidator.

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

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

Appointment of committee of inspection.

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

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

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

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

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

Power to fill vacancy in office of liquidator.

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

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

209F. The provisions of section 208C shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the

said section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

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

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

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

Final meeting and dissolution.

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

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

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

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

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

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

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

Members' or Creditors' Voluntary Winding up.

Provisions applicable to every voluntary winding up.

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

Distribution of property of company.

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

Powers and duties of liquidator in voluntary winding up.

212. (*1*) The liquidator may—

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

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

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

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

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

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

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

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

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

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

Notice by liquidator of his appointment.

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

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

Arrangement when binding on creditors.

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

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

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

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

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

Such application shall be made—

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

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

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

Cost of voluntary winding up.

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

Saving for rights of creditors and contributories.

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

219. * * * *

Power of Court to adopt proceedings of voluntary winding up.

220. Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

Winding up subject to Supervision of Court.

Power to order winding up subject to supervision.

221. When a company has by special or extraordinary resolution resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

Effect of petition for winding up subject to supervision.

222. A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court.

Court may have regard to wishes of creditors and contributories.

223. The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Power for Court to appoint or remove liquidators.

224. (*1*) Where an order is made for a winding up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator.

(*2*) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(*3*) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal or by death or resignation.

Effect of supervision order.

225. (*1*) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

(*2*) Except as provided in sub-section (*1*), and save for the purposes of section 196, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suit

and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

(*3*) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

Appointment in certain cases of voluntary liquidators to office of official liquidator.

226. Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last-mentioned order or by any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidator in the winding up by the Court.

Supplemental Provisions.

Avoidance of transfers, etc., after commencement of windingup.

227. (*1*) In the case of voluntary winding up every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(*2*) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

Debts of all descriptions to be proved.

228. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of insolvency) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or for some other reason do not bear a certain value.

Application of insolvency rules in winding up of insolvent companies.

229. In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under

the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Preferential payments.

230. (*1*) In a winding up there shall be paid in priority to all other debts—

(*a*) all revenue, taxes, cesses and rates, whether payable to the Government or to a local authority, due from the company at the date hereinafter mentioned and having become due and payable within the twelve months next before that date ;

(*b*) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant ;

(*c*) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piecework, in respect of services rendered to the company within the two months next before the said date ;

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

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

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

(*2*) The foregoing debts shall—

(*a*) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion ; and

(*b*) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(*3*) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(*4*) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof :

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(*5*) The date hereinbefore in this section referred to is—

(*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and

(*b*) in any other case, the date of the commencement of the winding up.

Disclaimer of property.

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

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

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

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

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

(*5*) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the

contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

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

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

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

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

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

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

Fraudulent preference.

231. (1) Any transfer, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of insolvency in the case of an individual.

(*3*) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

Avoidance of certain attachments, executions, etc.

232. (*1*) Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force without leave of the Court against the estate or effects, or any sale held without leave of the Court of any of the properties, of the company after the commencement of the winding up shall be void.

(*2*) Nothing in this section applies to proceedings by the Government.

Effect of floating charge.

233. Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

General scheme of liquidation may be sanctioned.

234. (*1*) The liquidator may, with the sanction of the Court when the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company in the case of a voluntary winding up, do the following things or any of them :

(i) pay any classes of creditors in full ;

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the company may be rendered liable ;

(iii) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, subsisting or supposed to subsist, between the company and a contributory, or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(*2*) The exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers.

Power of Court to assess damages against delinquent directors, etc.

235. (*1*) Where, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach

of truts in relation to the company, the Court may, on the application of the liquidator or of any creditor or contributory, made within three years from the date of the first appointment of a liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(*2*) This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible.

Penalty for falsification of books.

236. If any director, manager, officer or contributory of any company being wound up destroys, mutilates, alters or falsifies or fraudulently secretes any books, papers or securities, or makes, or is privy to the making of, any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Prosecution of delinquent directors.

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

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

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

(*4*) If on any report to the Registrar under sub-section (*2*) it appears to him that the case is not one in which proceedings ought to be taken by him,

he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the Court, the liquidator may himself take proceedings against the offender.

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

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

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

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

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

Penalty for false evidence.

238. If any person, upon any examination upon oath authorized under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and also be liable to fine.

Penal provisi ns.

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

wound up by the Court or subsequently passes a resolution for voluntary winding up—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Meetings to ascertain wishes of creditors or contributories.

239. (*1*) Where by this Act the Court is authorized in relation to winding up to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may

appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(*2*) In the case of creditors, regard shall be had to the value of each creditor's debt.

(*3*) In the case of contributories regard shall be had to the number of votes conferred on each contributory by the articles.

Documents of company to be evidence.

240. Where any company is being wound up, all documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Inspection of documents.

241. After an order for a winding up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its documents as the Court thinks just, and any documents in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Disposal of documents of company.

242. (*1*) When a company has been wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say):—

(*a*) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs;

(*b*) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs.

(*2*) After three years from the dissolution of the company, no responsibility shall rest on the company or the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

Power of Court to declare dissolution of company void.

243. (*1*) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(*2*) It shall be the duty of the person on whose application the order was made, within twenty-one days after the making of the order, to file with the Registrar a certified copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Information as to pending liquidations.

244. (*1*) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidator shall, once in each year and at intervals of not more than twelve months, until the winding up is concluded, file in Court or with the Registrar, as the case may be, a

statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(*2*) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating imself to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Penal Code, and shall be punishable accordingly on the application of the liquidator.

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

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

Payments of liquidator into bank.

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

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

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

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

Court or person before whom affidavit may be sworn.

245.[1] (*1*) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in the Union of Burma, or elsewhere, before any Court, Judge or person lawfully authorized to take and receive affidavits, or in any place outside the Union of Burma before any Consul, Vice-Consul or Ambassador of His Britannic Majesty or the Union of Burma.

(*2*) All Courts, Judges, Justices, Commissioners, and persons acting judicially in the Union of Burma shall take judicial notice of the seal or stamp

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948

or signature (as the case may be) of any such Court, Judge, person, Consul or [Vice-Consul or Ambassador][1], attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

Rules.

Power of High Court to make rules.

246. (*1*) The High Court may, from time to time, make rules[2] consistent with this Act and with the Code of Civil Procedure concerning the mode of proceedings to be had for winding up a company in such Court and in the Courts subordinate thereto, and for voluntary winding up (both members' and creditors'), for the holding of meetings of creditors and members in connection with proceedings under section 153 of this Act, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-divisions of the shares of a company, and generally for all applications to be made to the Court under the provisions of this Act, and shall make rules providing for all matters relating to the winding up of companies which, by this Act, are to be prescribed.

(*2*) Without prejudice to the generality of the foregoing power, the High Court may by such rules enable or require all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the matters following, to be exercised or performed by the official liquidator and subject to the control of the Court, that is to say, the powers and duties of the Court in respect of—

(*a*) holding and conducting meetings to ascertain the wishes of creditors and contributories;

(*b*) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;

(*c*) requiring delivery of property or documents to the liquidator;

(*d*) making calls;

(*e*) fixing a time within which debts and claims must be proved :

Provided that the official liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without the special leave of the Court.

Removal of defunct Companies from Register.

Registrar may strike defunct company off register.

247. (*1*) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(*2*) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] *See* High Court Rules and Orders, and *Burma Gazette* 1940, Part IV, page 1023.

(*3*) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(*4*) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the Registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the Registrar may publish in the Gazette and send to the company a like notice as is provided in the last preceding sub-section.

(*5*) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Gazette, and, on the publication in the Gazette of this notice, the company shall be dissolved : Provided that the liability (if any) of every director and member of the company shall continue and may be enforced as if the company had not been dissolved.

(*6*) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on the application of the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off ; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had not been struck off.

(*7*) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director, manager or other officer of the company, or, if there is no director, manager or other officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

PART VI.

REGISTRATION OFFICE AND FEES.

Registration offices

248. (*1*) For the purposes of the registration of companies under this Act, there shall be offices at such places as the President of the Union thinks fit, and no company shall be registered except at an office within the Union of Burma.

(*2*) The President of the Union may appoint such Registrars and assistant Registrars as he thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties.

(*3*) The salaries of the persons appointed under this section shall be fixed by the President of the Union.

(*4*) The President of the Union may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(*5*) Any person may inspect the documents kept by the Registrar on payment of such fees as may be appointed by the President of the Union, not exceeding one rupee for each inspection ; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar on payment for the certificate, certified copy or extract, of such fees as the President of the Union may appoint, not exceeding three rupees for a certificate of incorporation, and not exceeding six annas for every hundred words or fractional part thereof required to be copied.

(*6*) Whenever any act is by this Act directed to be done to or by the Registrar it shall, until the President of the Union otherwise directs, be done to or by the existing Registrar of joint-stock companies, or in his absence to or by such person as the President of the Union may for the time being authorize ; but, in the event of the President of the Union altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as the President of the Union may appoint.

Fees.

249. (*1*) There shall be paid to the Registrar in respect of the several matters mentioned in Table B in the First Schedule the several fees therein specified, or such smaller fees as the President of the Union may direct.

(*2*) All fees paid to the Registrar in pursuance of this Act shall be accounted for to the Government.

Enforcing submission of returns and documents to Registrar.

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

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

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

PART VII.

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS.

Application of Act to companies formed under former Companies Acts.

250. In the application of this Act to existing companies, it shall apply in the same manner in the case of a limited company, other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares ; in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee ; and, in the case of a company, other than a limited company, as if the company had been formed and registered under this Act as an unlimited company :

Provided that—

(1) nothing in Table A in the First Schedule shall apply to a company formed and registered under Act XIX of 1857 [1] and Act VII of 1860 [1], or either of them, or under the Indian Companies Act, 1866 [1], or the Indian Companies Act, 1882 [1] ;

India X, 1866. India VI, 1882.

(2) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under Act No. XIX of 1857 [1] and Act No. VII of 1860 [1], or either of them, or under the Indian Companies Act, 1866 [1], or the Indian Companies Act, 1882[1], as the case may be.

India X, 1866. India VI, 1882.

Application of Act to companies registered but not formed under former Companies Acts.

251. This Act shall apply to every company registered but not formed under Act No. XIX of 1857 [1] and Act No. VII of 1860[1], or either of them, or under the Indian Companies Act, 1866[1], or the Indian Companies Act, 1882[1], in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act :

India X, 1866. India VI, 1882.

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the said Acts or any of them.

Mode of transferring.

252. A company registered under Act XIX of 1857 [1] and Act VII of 1860 [1], or either them, may cause its shares to be transferred in the manner hitherto in use, or in such other manner as the company may direct.

PART VIII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

Companies capable of being registered.

253. (*1*) With the exceptions and subject to the provisions mentioned and contained in this section,—

(i) any company consisting of seven or more members, which was in existence on the first day of May, eighteen hundred and eighty-two,

[1] India Acts XIX of 1857 and VII of 1860 were repealed by India Act X of 1866. India Act X of 1866 was repealed by India Act VI of 1882, and the latter Act, in its turn, was repealed by India Act VII of 1913.

including any company registered under Act No. XIX of 1857 [1] and Act No. VII of 1860,[1] or either of them, and

(ii) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of [Parliament of the United Kingdom of Great Britain and Ireland] [2] or other law in force in the Union of Burma or of Letters Patent, or being otherwise duly constituted according to law and consisting of seven or more members,

may at any time register under this Act as an unlimited company or as a company limited by shares, or as a company limited by guarantee ; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up :

(*2*) Provided as follows :—

(*a*) a company having the liability of its members limited by Act of [Parliament of the United Kingdom of Great Britain and Ireland] [2] or by any law in force in the Union of Burma or by Letters Patent, and not being a joint-stock company as hereinafter defined, shall not register in pursuance of this section ;

(*b*) a company having the liability of its members limited by Act of [Parliament of the United Kingdom of Great Britain and Ireland] [2] or by any law in force in the Union of Burma or by Letters Patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee ;

(*c*) a company that is not a joint-stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares ;

(*d*) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the articles) at a general meeting summoned for the purpose ;

(*e*) where a company not having the liability of its members limited by Act of [Parliament of the United Kingdom of Great Britain and Ireland] [2] or by any law in force in the Union of Burma or by Letters Patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting ;

(*f*) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member or within one

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[1] *See* footnote 1 on previous page.

[2] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

year afterwards, for payment of the debts and liabilities of the Company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount.

(*3*) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the articles.

India VI, 1882. (*4*) A company registered under the Indian Companies Act, 1882,[1] shall not be registered in pursuance of this section.

Definition of "joint-stock company."

254. For the purposes of this Part as far as relates to registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons ; and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

Requirements for registration by joint-stock companies.

255. Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the Registrar the following documents (that is to say) :—

(1) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number ;

(2) a copy of any Act of [Parliament of the United Kingdom of Great Britain and Ireland],[2] law, Royal Charter, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company ; and

(3) if the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say) :—

(*a*) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists ;

(*b*) the number of shares taken and the amount paid on each share ;

(*c*) the name of the company, with the addition of the word "Limited" as the last word thereof ; and

(*d*) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

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[1] Repealed by India Act VII of 1913.

[2] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

Requirements for registration by other than joint-stock companies.

256. Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the Registrar—

(1) a list showing the names, addresses and occupations of the directors of the company; and

(2) a copy of any Act of [Parliament of the United Kingdom of Great Britain and Ireland], [1] law, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company; and

(3) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Authentication of statement of existing companies.

257. The list of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company.

258. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as hereinbefore defined.

On registration of banking company with limited liability, notice to be given to customers.

259. (*1*) Where a banking company, which was in existence on the first day of May eighteen hundred and eighty-two, proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(*2*) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain companies from payment of fees.

260. No fees shall be charged in respect of the registration in pursuance of this Part of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some Act of [Parliament of the United Kingdom of Great Britain and Ireland] [1] or law in force in the Union of Burma or by Letters Patent.

Addition of "Limited" to name.

261. When a company is registered in pursuance of this Part with limited liability, the word "Limited" shall form and be registered as part of its name.

Certificate of registration of existing companies.

262. On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Table B in the First Schedule, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

the case of a limited company that it is limited, and thereupon the company shall be incorporated and shall have perpetual succession and a common seal.

Vesting of property on registration.

263. All property, moveable and immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Saving of existing liabilities.

264. The registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of, the company before registration.

Continuation of existing suits.

265. All suits and other legal proceedings which at the time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

Effect of registration under Act.

266. When a company is registered in pursuance of this Part—

(i) all provisions contained in any Act of [Parliament of the United Kingdom of Great Britain and Ireland],[1] law in force in the Union of Burma, deed of settlement, contract of co-partnery, Letters Patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidence as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles;

(ii) all the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows (that is to say):—

(*a*) the regulations in Table A in the First Schedule shall not apply unless adopted by special resolution;

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

(*b*) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered ;

(*c*) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of [Parliament of the United Kingdom of Great Britain and Ireland][1] or law in force in the Union of Burma relating to the company ;

(*d*) subject to the provisions of this section, the company shall not have power, without the sanction of the President of the Union, to alter any provision contained in any Letters Patent relating to the company ;

(*e*) the company shall not have power to alter any provision contained in a Royal Charter or Letters Patent with respect to the objects of the company ;

(*f*) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the cost and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid ; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid ; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply ;

(iii) the provisions of this Act with respect to—

(*a*) the registration of an unlimited company as limited ;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

shall apply notwithstanding any provisions contained in any Act of [Parliament of the United Kingdom of Great Britain and Ireland],[1] law in force in the Union of Burma, Royal Charter,

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company;

(iv) nothing in this section shall authorize the company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorized to be altered by this Act;

(v) nothing in this Act shall derogate from any lawful power of altering its constitution or regulations which may, by virtue of any Act of [Parliament of the United Kingdom of Great Britain and Ireland],[1] law in force in the Union of Burma, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, be vested in the company.

Power to substitute memorandum and articles for deed of settlement.

267. (*1*) Subject to the provisions of this section, a company registered in pursuance of this Part may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(*2*) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall, so far as applicable, apply to an alteration under this section with the following modifications :—

(*a*) there shall be substituted for the printed copy of the altered memorandum required to be filed with the Registrar a printed copy of the substituted memorandum and articles ; and

(*b*) on the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(*3*) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(*4*) In this section the expression " deed of settlement " includes any contract of co-partnery or other instrument constituting or regulating the company, not being an Act of [Parliament of the United Kingdom of Great Britain and Ireland],[1] a law in force in the Union of Burma, a Royal Charter or Letters Patent.

Power of Court to stay or restrain proceedings.

268. The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order

[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

Suits stayed on winding up order.

269. Where an order has been made for winding up a company registered in pursuance of this Part, no suit or other legal proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court and subject to such terms as the Court may impose.

PART IX.

WINDING UP OF UNREGISTERED COMPANIES.

Meaning of "unregistered company."

270. For the purposes of this Part, the expression "unregistered company" shall not include a railway company incorporated by Act of [Parliament of the United Kingdom of Great Britain and Ireland][1] or by a law in force in the Union of Burma, nor a company registered under the Indian Companies Act, 1866,[2] or under any Act repealed thereby, or under the Indian Companies Act, 1882,[3] or under this Act, but save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

India X, 1866. India VI, 1882.

Winding up of unregistered companies.

271. (*1*) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

(i) the principal place of business of the company in the Union of Burma shall be deemed to be the registered office of the company;

(ii) no unregistered company shall be wound up under this Act voluntarily or subject to supervision;

(iii) the circumstances in which an unregistered company may be wound up are as follows (that is to say):—

(*a*) if the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;

(*b*) if the company is unable to pay its debts;

(*c*) if the Court is of opinion that it is just and equitable that the company should be wound up;

(iv) an unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(*a*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.
[2] India Act X of 1866 was repealed by India Act VI of 1882.
[3] India Act VI of 1882 was repealed by India Act VII of 1913.

rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;

(*b*) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured or compuonded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(*c*) if execution or other process issued on a decree or order obtained in any Court in favour of a creditor against the company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied; and

(*d*) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(*2*) Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

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

Contributories in winding up of unregistered companies.

272. (*1*) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(*2*) In the event of any contributory dying or being adjudged insolvent, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, and to the assignees of insolvent contributories, shall apply.

Power to stay or restrain proceedings.

273. The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

Suits stayed on winding up order.

274. Where an order has been made for winding up an unregistered company, no suit or other legal proceedings shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

Directions as to property in certain cases.

275. If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order or by any subsequent order, direct that all or any part of the property, moveable or immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to the company or to trustees on its behalf, is to vest in the official liquidator by his official name, and thereupon the property or the part thereof specified in the order shall vest accordingly; and the official liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any suit or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

Provisions of this Part cumulative.

276. The provisions of this Part with respect to unregistered companies shall be in addition to, and not in restriction of, any provisions hereinbefore in this Act contained with respect to winding up companies by the Court, and the Court or official liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be

deemed to be a company under this Act, and then only to the extent provided by this Part.

PART X.

COMPANIES ESTABLISHED OUTSIDE THE UNION OF BURMA.

Requirements as to companies established outside the Union of Burma.

277. (*1*) Every company incorporated outside the Union of Burma which has a place of business within the Union of Burma shall, within one month from the establishment of such place of business, or within six months from the date of separation,[1] as the case may be, file with the Registrar,—

(*a*) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the [Burmese][2] language, a certified translation thereof;

(*b*) the full address of the registered or principal office of the company;

(*c*) a list of the directors and managers (if any) of the company;

(*d*) the names and addresses of some one or more persons resident in the Union of Burma authorized to accept on behalf of the company service of process and any notices required to be served on the company;

and, in the event of any alteration being made in any such instrument or in such address or in the directors or managers or in the names or addresses of any such persons as aforesaid, the company shall, within the prescribed time, file with the Registrar a notice of the alteration.

(*2*) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(*3*) Every company to which this section applies shall in every year file with the Registrar—

(i) in a case where by the law for the time being in force of the country in which the company is incorporated such company is required to file with the public authority an annual balance-sheet,—a copy of that balance-sheet, and if the balance-sheet does not contain all the information provided for in the form marked H in the Third Schedule, such supplementary statements as shall furnish such information; or

(ii) in a case where no such provision is made by the law for the time being in force of the country in which the company is incorporated,—such a statement in the form of a balance-sheet as such company would, if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act.

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[1] *i.e.* the separation of Burma and India which took place on the 1st April, 1937.

[2] Substituted for the word "English" by the Union of Burma (Adaptation of Laws) Order, 1948.

(*4*) Every company to which this section applies and which uses the word "Limited" as part of its name, shall—

(*a*) in every prospectus inviting subscriptions for its shares or debentures in the Union of Burma state the country in which the company is incorporated; and

(*b*) conspicuously exhibit on every place where it carries on business in the Union of Burma the name of the company and the country in which the company is incorporated in letters easily legible in English characters and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of the High Court, in the characters of one of the vernacular languages used in that place; and

(*c*) have the name of the company and of the country in which the company is incorporated mentioned in legible [Burmese][1] characters in all bill-heads and letter paper, and in all notices, advertisements and other official publications of the company.

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

(*6*) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred rupees or, in the case of a continuing offence, fifty rupees for every day during which the default continues.

(*7*) For the purposes of this section—

(*a*) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

(*b*) the expression "place of business" includes a share transfer or share registration office;

(*c*) the expression "director" includes any person occupying the position of director, by whatever name called; and

(*d*) the expression "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(*8*) There shall be paid to the Registrar for registering any document required by this section to be filed with him a fee of five rupees or such smaller fee as may be prescribed.

[2] (*9*) * * * *

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[1] Substituted for the word "English" by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] Omitted *ibid.*

Restriction on sale and offer for sale of shares.

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

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

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

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

(iii) the prospectus is dated; and

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

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

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

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

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

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

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

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

Requirements as to prospectus.

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

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

(i) the objects of the company ;

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

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

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

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

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

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

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

Provided that—

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

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

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

(*3*) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the

prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

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

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

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

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

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

Restriction on canvassing for sale of shares.

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

(*2*) In this section the expression "house" shall not include an office used for business purposes.

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

Registration of charges.

277D. The provisions of sections 109 to 117, both inclusive, and 120 to 125A, both inclusive, shall extend to charges on properties in the Union of Burma which are created and to charges on property in the Union of Burma which is acquired after the 15th January, 1937,[1] by a company incorporated outside the Union of Burma which has an established place of business in the Union of Burma.

Notice of appointment of receiver.

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

[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII 1936).

PART XA.

BANKING COMPANIES.

Definition of banking company.

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

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

(2) acting as agents for Governments or local authorities or for any other person or persons; the carrying on of agency business of any description other than the business of a managing agent, including the power to act as attorneys and to give discharges and receipts;

(3) contracting for public and private loans and negotiating and issuing the same;

(4) the promoting, effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans, or of shares, stock, debentures, or debenture stock of any company, corporation or association, and the lending of money for the purpose of any such issue;

(5) carrying on and transacting every kind of guarantee and indemnity business;

(6) promoting or financing or assisting in promoting or financing any business undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise;

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

(*2*) No banking company, whether incorporated in or outside the Union of Burma, shall after the expiry of two years from the said date carry on any form of business other than those specified in section 277F:

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

Banking company not to employ managing agent.

277H. No banking company shall after the expiry of two years from the 15th January, 1937,[1] employ or be managed by a managing agent other than a banking company for the management of the company.

Restriction on commencement of business by banking company.

277I. Notwithstanding anything contained in section 103, no banking company incorporated under this Act after the 15th January, 1937,[1] shall commence business unless shares have been allotted to an amount sufficient to yield a sum of at least fifty thousand rupees as working capital, and unless a declaration duly verified by an affidavit signed by the directors and the manager that such a sum has been received by way of paid-up capital has been filed with the Registrar.

Prohibition of charge on unpaid capital.

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

Reserve fund.

277K. (*1*) Every banking company shall, after the 15th January, 1937,[1] maintain a reserve fund.

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

(*3*) A banking company shall invest the amount standing to the credit of its reserve fund in [securities issued or guaranteed by the Union Government],[2] or keep it deposited in a special account to be opened by the company for the purpose in a scheduled bank [or in the Union Bank of Burma]:[3]

Provided that the provision of the sub-section shall not apply to a banking company incorporated before the 15th January, 1937,[1] till after the expiry of two years from the said date.

[3] (*4*) Nothing in this section shall apply to a scheduled bank.

Penalties.

[2] **277L.** If default is made in complying with the requirements of section 277G, section 277H, section 277J, section 277K or section 277M, every

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[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

[2] Substituted by Act IX, 1952.

[3] Inserted *ibid.*

director or other officer of the company who is knowingly and wilfully a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

Restriction on nature of subsidiary companies.

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

Power of Court to stay proceedings.

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

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

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

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

PART XI.

SUPPLEMENTAL.

Legal proceedings, offences, etc.

Cognizance of offences.

278. (*1*) No Court inferior to that of a Magistrate of the first class shall try any offence against this Act.

(*2*) * * * *

(*3*) Notwithstanding anything in the Code of Criminal Procedure, every offence against this Act shall, for the purposes of the said Code, be deemed to be non-cognizable.

Application of fines.

279. The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

Power to require limited company to give security for costs.

280. Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Court having jurisdiction in the matter may, if it appears that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of Court to grant relief in certain cases.

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

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

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

(*a*) directors of a company ;

(*b*) managers and managing agents of a company ;

(*c*) officers of a company ;

(*d*) persons employed by a company as auditors, whether they are or are not officers of the company.

282. Whoever in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Penalty for wrongful withholding of propetry.

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

Penalty for misapplication of securities by employers.

282B. (*1*) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company in a special account to be opened by the company for the purpose in a scheduled bank, and no portion thereof shall be utilized by the company except for the purposes agreed to in the contract of service.

(*2*) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or accruing by way of interest or otherwise to such fund after the 15th January, 1937,[1] [shall be either deposited in a Post Office Savings Bank Account or invested][2] in securities mentioned or referred to in clauses (*a*) to (*e*) of section 20 of the Trusts Act, and all moneys belonging to such fund at the said date [which are not so deposited or invested shall be so deposited or invested][2] in such securities by annual instalments not exceeding ten in number and not less in amount in any year than one-tenth of the whole amount of such moneys.

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

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

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

Penalty for improper use of word "Limited."

283. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be liable to a fine not exceeding fifty rupees for every day upon which that name or title has been used.

Saving of pending proceedings for winding up.

284. The provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed, and, for the purposes of the winding up, the Indian Companies Act, 1882, shall be deemed to remain in full force.

India VI, 1882.

Saving of documents.

285. Every instrument of transfer or other document made before the commencement of this Act, in pursuance of any enactment hereby repealed, shall be of the same force as if this Act had not been passed, and for the purposes of that instrument or document the repealed enactment shall be deemed to remain in full force.

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[1] Date of commencement of the Indian Companies (Amendment) Act, 1936 (India Act XXII, 1936).

[2] Substituted by Act XXVII, 1950.

Former registration offices, registers and Registrars continued.

286. (*1*) The offices existing at the commencement of this Act for registration of joint-stock companies shall be continued as if they had been established under this Act.

(*2*) Registers of companies kept in any such existing offices shall respectively be deemed part of the registers of companies to be kept under this Act.

(*3*) The existing Registrars, assistant Registrars and officers in those offices shall, during the pleasure of the President of the Union, hold the offices and receive the salaries hitherto held and received by them, but subject to any regulations of the President of the Union with regard to the execution of their duties.

Savings for Life Assurance Companies Act and Provident Insurance Societies Act.

287. Nothing in this Act shall affect the provisions of the Life Assurance Companies Act or of the Provident Insurance Societies Act.

SCHEDULES.

THE FIRST SCHEDULE.

(*See* sections 2, 17, 18, 79, 266.)

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Burma Companies Act, or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined ; and words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 103 of the Burma Companies Act, if, and so far as, those restrictions are binding upon the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may with the

sanction of a special resolution be issued on the terms that it is or at the option of the company is liable to be redeemed.

4. If at any time the share capital 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, subject to the provisions of section 66A of the Burma Companies Act, 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 an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 101 and 104 of the Burma Companies Act as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon: Provided that, in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint-holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. Except to the extent allowed by section 54A of the Burma Companies Act, no part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding

payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or insolvency to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the application of the purchase-money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payments) pay to the company at the time or times so specified the amount called on his shares.

13. The joint-holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve :—

I, *A B* of , in consideration of the sum of rupees paid to me by *C D* of (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share [*or* shares] numbered in the undertaking called the Company, Limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee, do hereby agree to take the said share [*or* shares] subject to the conditions aforesaid. As witness our hands the day of .

Witness to the signatures of, etc.

20. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognize any instrument of transfer unless—

(*a*) a fee not exceeding two rupees is paid to the company in respect thereof ; and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within two months after the date on which the transfer was lodged with the company send to the transferee and the transferor notice of the refusal.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognized by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognized by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person

could have made ; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent person before the death or insolvency.

23. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit; and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company received payment in full of the nominal amount of the shares.

29. A duly verified declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of

shall be registered as the holder of the share and shall not be bound to see to the application of the purchase-money (if any), nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction re-convert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit ; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share-warrants), as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Share-warrants.

35. The company may issue share-warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate (if any) of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating

that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends or other moneys on the shares included in the warrant.

36. A share-warrant shall entitle the bearer to the shares included in it and the shares shall be transferred by the delivery of the share-warrant, ad the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share-warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share-warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share-warrant. The company shall, on two days' written notice, return the deposited share-warrant to the depositor.

39. Subject as herein otherwise expressly provided, no person shall, as bearer of a share-warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company ; but the bearer of a share-warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share-warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

Alteration of Capital.

41. The directors may, with the sanction of the company in general meeting, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares

offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference is the payment of calls, lien, transfer, transmission, forfeiture and otherwise at the shares in the original share capital.

44. The company may, by ordinary resolution,—

(*a*) consolidate and divide its share capital into shares of larger amount than its existing shares ;

(*b*) by sub-division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (*d*) of sub-section (*1*) of section 59 of the Burma Companies Act ;

(*c*) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

44A. The company may, by special resolution, reduce its share capital on any manner, and with and subject to any incident authorized and consent required by law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section 77 of the Burma Companies Act.

46. A general meeting shall be held within eighteen months from the date of its incorporation and thereafter once at least in every year at such time (not being more then fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner, as nearly as possible, as that in which meetings are to be called by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings ; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, call an extraordinary general meeting, and extraordinary general meetings shall also be called on such requisition, or in default may be called by such requisitionists, as provided

by section 78 of the Burma Companies Act. If at any time there are not within the Union of Burma sufficient directors capable of action to form a quorum, any director or any two members of the company may call an extra-ordinary general meeting in the same manner, as nearly as possible, as that in which meeting may be called by the directors.

Proceedings at General Meeting.

49. Subject to the provisions of sub-section (*2*) of section 81 of the Burma Companies Act relating to special resolutions, fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the Burma Companies Act or the regulations of the company, entitled to receive such notices from the company; but the accidental omission to give notice to or the non-receipt of notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extra ordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, two members in the case of a private company and five members in the case of any other company personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved; in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished

at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the businees to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the show of hands) demanded by at least three members, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote in respect of each share or each hundred rupees of stock held by him.

61. In the case of joint-holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint-holders ; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy: Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Burma Companies Act is in force.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorized. No person shall act as a proxy unless he is a member of the company.

66. The instrument appointing a proxy, and the power-of-attorney or other authority (if any) under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve :—

Company, Limited.

"I of in the district of , being a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be,) general meeting of the company to be held on the day of and at any adjournment thereof."

Signed this day of

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 85 of the Burma Companies Act.

Powers and Duties of Directors.

71. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Burma Companies Act or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another), as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors, but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the Burma Companies Act or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it, and to keeping a register of the directors, and to sending to the Registrar an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) of all appointments of officers made by the directors ;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors ;

(*c*) of all resolutions and proceedings at all meetings of the company and of the directors and of committees of directors ;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose ; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors.

77. The office of director shall be vacated if the director—

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

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

(*c*) is adjudged insolvent; or

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

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

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

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

(*h*) is concerned or participates in the profits of any contract with the company; or

(*i*) is punished with imprisonment for a term exceeding six months:

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for, the company of which he is director, but a director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.

Rotation of Directors.

78. At the first ordinary meeting of the company, the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors or such of them as have not had their places filled up shall be deemed to have been re-elected at the adjourned meeting.

83. Subject to the provisions of sections 83A and 83B of the Burma Companies Act, the company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring on the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

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

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of

increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and, in case of an equality of votes, the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividends shall be paid otherwise than out of profits of the year or any other undistributed profits.

98. Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividends payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

103. The directors shall cause to be kept proper books of account with respect to—

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

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

(*c*) the assets and liabilities of the company.

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

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorized by the directors or by the company in general meeting.

106. The directors shall, as required by sections 131 and 131A of the Burma Companies Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance-sheets, and reports as are referred to in those sections.

107. The profit and loss account shall, in addition to the matters referred to in sub-section (*3*) of section 132 of the Burma Companies Act, show arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the

amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

108. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to a reserve fund.

109. A copy of the balance-sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

110. The directors shall in all respects comply with the provisions of sections 130 to 135 of the Burma Companies Act or any statutory modification thereof for the time being in force.

Audit.

111. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Burma Companies Act or any statutory modification thereof for the time being in force.

Notices.

112. (*1*) A notice may be given by the company to any member either personally or by sending it by post to him to his registered address or (if he has no registered address in the Union of Burma) to the address, if any, within the Union of Burma supplied by him to the company for the giving of notices to him.

(*2*) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

113. If a member has no registered address in the Union of Burma, and has not supplied to the company an address within the Union of Burma for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

114. A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

115. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased or assignee of the insolvent, or by any like description, at the address (if any) in the Union of Burma supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

116. Notice of every general meeting shall be given in some manner hereinbefore authorized to (*a*) every member of the company (including bearers of share-warrants) except those members who (having no registered address within the Union of Burma) have not supplied to the company an address within the Union of Burma for the giving of notices to them, and also to (*b*) every person entitled to a share in consequence of the death or insolvency of a member who but for his death or insolvency would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

———

TABLE B.

(*See* sections 249 and 262.)

TABLE OF FEES TO BE PAID TO THE REGISTRAR.

I.—By a company having a share capital.

	Rs.	A.	P.
1. For registration of a company whose nominal share capital does not exceed Rs. 20,000, a fee of	40	0	0
2. For registration of a company whose nominal share capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say)—			
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees	20	0	0
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 50,000 rupees up to 10,00,000 rupees	5	0	0
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 10,00,000 rupees	1	0	0
3. For registration of any increase of share capital made after the first registration of the company, the same fees per 10,000 rupees, or part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration :			
Provided that no company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration.			
4. For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
5. For filing any document by this Act required or authorized to be filed, other than the memorandum or the abstract required to be filed with the Registrar by a receiver or the statement required to be filed with the Registrar by the liquidator in a winding up.	5	0	0
6. For making a record of any fact by this Act authorized or required to be recorded by the Registrar, a fee of	5	0	0

II.—By a company not having a share capital.

1. For registration of a company whose number of members, as stated in the articles of association, does not exceed 20	40	0	0
2. For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100	100	0	0
3. For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100.			
4. For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of	400	0	0
5. For registration of any increase on the number of members made after the registration of the company, the same fees as would have been payable in respect of such increase if such increase had been stated in the articles of association at the time of registration :			
Provided that no one company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the company.			
6. For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
7. For filing any document by this Act required or authorized to be filed, other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up.	5	0	0
8. For making a record of any fact by this Act authorized or required to be recorded by the registrar, a fee of	5	0	0

THE SECOND SCHEDULE.

(*See* sections 98 and 154.)

FORM I.

THE BURMA COMPANIES ACT.

STATEMENT IN LIEU OF PROSPECTUS

filed by

.....LIMITED,

pursuant to section 98 of the Burma Companies Act.

Presented for filing by

The nominal share capital of the company ...	Rs.....
Divided into	Shares of Rs.....each. Shares of Rs.....each. Shares of Rs.....each.
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of Rs.....each.
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors and managers or proposed managers, and any provision in the articles, or in any contract, as to appointment of and remuneration payable to directors or managers.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. —shares of Rs.....fully paid. 2. —shares upon which Rs..... per share credited as paid. 3. Debentures Rs..... 4. Consideration.
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company. Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill.	Total purchase price Rs..... Cash Rs..... Shares Rs..... Debentures Rs..... Goodwill Rs.....

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or rate of the commission.	Amount paid. Amount payable. Rate per cent.
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses ...	Rs. ....
Amount paid or intended to be paid to any promoter ... Consideration for the payment	Name of promoter..... Amount Rs..... Consideration.
Dates of and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the company, or contracts, other than contracts appointing or fixing the remuneration of a managing director or managing agent, entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the amounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement: provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.	

(Signatures of the persons above-named as directors or proposed directors or of their agents authorized in writing.) _____

_____

_____

Date

FORM II.

THE BURMA COMPANIES ACT.

STATEMENT IN LIEU OF PROSPECTUS

filed by

.....LIMITED,

pursuant to sub-section (*1*) of section 154 of the Burma Companies Act.

Presented for filing by

The nominal share capital of the company	Rs.....
Divided into	Shares of Rs..... each. Shares of Rs.....each. Shares of Rs ....each.
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of Rs.....each.
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors and managers or proposed managers, and any provision in the articles, or in any contract, as to appointment of and remuneration payable to directors or managers.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by and the rights in respect of capital and dividends attached to several classes of shares respectively.	
Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	1. Shares of Rs.....fully paid. 2. Shares upon which Rs..... per share credited as paid. 3. Debentures Rs..... 4. Consideration.
Names and addresses of vendors of property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company.	
Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill.	Total purchase price Rs..... Cash Rs..... Shares Rs..... Debentures Rs..... Goodwill Rs.....
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or rate of the commission.	Amount paid. Amount payable. Rate per cent.
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	

Unless more than two years have elapsed since the date on which the company was entitled to commence business ;— Estimated amount of preliminary expenses. Amount paid or intended to be paid to any promoter. Consideration for the payment.	Rs..... Name of promoter..... Amount Rs..... Consideration.
Dates of, and parties to every material contract (except contracts entered into in the ordinary course of the business intended to be carried on by the company, or contracts, other than contracts appointing or fixing the remuneration of a managing director or managing agent, entered into more than two years before the delivery of this statement).	
Times and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company.	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or the formation of the company.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement: provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirements shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.	
(Signatures of the persons above-named as directors or proposed directors or of their agents authorized in writing.)	

Dated the day of

THE THIRD SCHEDULE.

FORM A.

(*See* sections 6 and 151.)

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st.—The name of the company is " The Eastern Steam Packet Company, Limited."

2nd.—The registered office of the company will be situate in the Union of Burma.

3rd.—The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—The share capital of the company is two hundred thousand rupees, divided into one thousand shares of two hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and descriptions of subscribers.	Number of shares taken by each subscriber.
1. A.B. of , merchant	200
2. C.D. ,, , ,, ...	25
3. E.F. ,, , ,, ...	30
4. G.H. ,, , ,, ...	40
5. I. J. ,, , ,, ...	15
6. K.L. ,, , ,, ...	5
7. M.N. ,, , ,, ...	10
TOTAL SHARES TAKEN ...	325

Dated the day of 19

Witness to the above signatures.

X. Y. of

FORM B.

(*See* sections 7 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Mutual Rangoon Marine Association, Limited ".

2nd.—The registered office of the company will be situate in Rangoon.

3rd.—The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member,

or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one hundred rupees.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

" 1. A. B. of
" 2. C. D. of
" 3. E. F. of
" 4. G. H. of
" 5. I. J. of
" 6. K. L. of
" 7. M. N. of

Dated the *day of*

Witness to the above signatures,
X. Y. of

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

Number of Members.

1. The company for the purpose of registration is declared to consist of five hundred members.

2. The directors hereinafter mentioned may, whenever the business or the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

4. The first general meeting shall be held at such time not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner, as nearly as possible, as that in which meetings are to be called by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, call an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to call a general meeting; if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members may themselves call a meeting.

Proceedings at General Meetings.

10. Fourteen days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say):—if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five, if they exceed ten, there shall be added to the above quorum one for every five additional members with this limitation, that no quorum shall in any case exceed ten.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if called on the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot, he may vote by his committee or other legal guardian.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy : Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Burma Companies Act is in force. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

23. (*1*) No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

(*2*) The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form :—

Company, Limited.

I, , of , being a member of the Company, Limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be,] general meeting of the company to be held on the day of and at any adjournment thereof.

Signed this day of 19

Directors.

25. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall, for all the purposes of the Burma Companies Act, be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Burma Companies Act, or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

Elections of Directors.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

(Here insert *rules as to mode in which business of insurance is to be conducted.*)

Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Burma Companies Act, or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders," and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

Dated the *day of* *19*

Witness to the above signatures.

X.Y., of

FORM C.

(*See* sections 7 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is " The Snowy Range Hotel Company, Limited. "

2nd.—The registered office of the company will be situate in the Union of Burma.

3rd.—The objects for which the company is established are " the facilitating travelling in the Snowy Range by providing hotels and conveyances by sea and by land for the accommodation of travellers and the doing all such other things as are incidental or conducive to the attainment of the above object. "

4th.—The liability of the members is limited.

5th.—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding fifty rupees.

6th.—The share capital of the company shall consist of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and descriptions of Subscribers.	Number of shares taken by each Subscriber.
" 1. A. B. of	200
" 2. C. D. of	25
" 3. E. F. of	30
" 4. G H. of	40
" 5. I. J. of	15
" 6. K. L. of	5
" 7. M. N. of	10
Total shares taken ...	325

Dated the *day of* *19* .

Witness to the above signatures.

X.Y., of

Articles of Association to accompany preceding Memorandum of Association.

1. The share capital of the company is five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A of the Burma Companies Act shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of merchant.
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

Dated the day of 19 .

Witness to the above signatures.

X.Y., of

FORM D.

(*See* sections 8 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is " The Patent Stereotype Company.

2nd.—The registered office of the company will be sutuate in the Union of Burma.

3rd.—The objects for which the company is established are " the working of a patent method of founding and casting stereotype plates of which method P.Q., of Rangoon, is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association

and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and descriptions of Subscribers.	Number of shares taken by each Subscriber.
"1. A. B. of	3
"2. C. D. of	2
"3. E. F. of	1
"4. G. H. of	2
"5. I. J. of	2
"6. K. L. of	1
"7. M. N. of	1
Total shares taken ...	12

Dated the *day of* *19* .

Witness to the above signatures.

X.Y., of

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

2. All the articles of Table A of the Burma Companies Act shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of , merchant.
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

Dated the *day of* *19* .

Witness to the above signatures.

X,Y., of

FORM E.

AS REQUIRED BY PART II OF THE ACT.

(*See* section 32.)

Summary of Share Capital and Shares of the Company, Limited, made up to the day of 19 (being the day of the first ordinary general meeting in 19).

Nominal share capital Rs. divided into [1] shares of Rs. each.
shares of Rs. each.

Total number of shares[1] taken up to the day of 19 which number must agree with the total shown in the list as held by existing members ... ...

Number of shares issued subject to payment wholly in cash ... ...

Number of shares issued as fully paid up otherwise than in cash ... ...

Number of shares issued as partly paid up to the extent of per share otherwise than in cash ... ...

[2] There has been called upon each—of shares ... ... Rs.

There has been called upon each—of shares ... ... Rs.

There has been called up on each—of shares ... ... Rs.

[3] Total amount of calls received, including payments on application and allotment ... ... Rs.

Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash ... ... Rs.

Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share ... ... Rs.

Total amount of calls unpaid ... ... Rs

Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary ... Rs

Total amount (if any) paid on [4] shares forfeited ... ... Rs

Total amount of shares and stock for which share-warrants are outstanding... Rs

Total amount of share-warrants issued and surrendered respectively since date of last summary ... ... Rs.

Number of shares or amount of stock comprised in each share-warrant ... Rs.

Total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the Registrar under this Act ... ... Rs.

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[1] When there are shares of different kinds or amounts (*e.g.*, Preference and Ordinary of Rs. 200 or Rs. 100) state the numbers and nominal values separately.

[2] Where various amounts have been called or there are shares of different kinds, state them separately.

[3] Include what has been received on forfeited as well as on existing shares.

[4] State the aggregate number of shares forfeited.

List of Persons holding shares in the Company, Limited, on the day of 19 , and of persons who have held shares therein at any time since the date of the last return, showing their names and addresses and an account of the shares so held.

Folio in register ledger containing particulars.	Names, Addresses and Occupations.				Account of Shares.					Remarks.
	Name in full.	Father's name.	Address.	Occupation or caste.	[1] Number of shares held by existing members at date of return.	[4] Particulars of shares transferred since the date of the last return by persons who are still members.		[4] Particulars of shares transferred since the date of the last return by persons who have ceased to be members.		
						Number.[2]	Date of registration of transfer.	Number.[3]	Date of registration of transfer.	

[1] State the aggregate number of shares forfeited (if any).

[2] The aggregate number of shares held, and not the distinctive numbers, must be stated and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

[3] When the shares are of different classes, these columns may be sub-divided so that the number of each class held or transferred may be shown separately.

[4] The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the remarks column immediately opposite the particulars of each transfer.

Names and addresses of the persons who are the Directors of the Limited, on the day of 19 .

Names.	Addresses.

Names and addresses of the persons who are the managers of the Limited, on the day of 19 .

Names.	Addresses.

NOTE.—Banking companies must add a list of all their places of business.

I, , do hereby certify that the above list and summary truly and correctly states the facts as they stood on day of 19 .

(Signature)..... .....

(State whether Director, Manager or Secretary.)

FORM F.

(*See* section 132.)

.....LIMITED.

Balance-Sheet as at.....19

CAPITAL AND LIABILITIES.						PROPERTY AND ASSETS.					
CAPITAL—						FIXED CAPITAL EXPENDITURE—					
Authorized Capital.....shares of Rs.....each						(Distinguishing as far as possible between expenditure upon goodwill, land, buildings, lease-holds, railway sidings, plant, machinery, furniture, development of property, patents, trade marks and designs, interest paid out of capital during construction, etc., and stating in every case the original cost and the additions thereto and deductions therefrom during the year, and the total depreciation written off under each head. Where sums have been written off on a reduction of capital or a revaluation of assets every balance-sheet after the first balance-sheet subsequent to the reduction or revaluation shall show the reduced figures, with the date of and the amount of the reduction made).					
(Distinguishing between the various classes of Capital.)											
Issued Capital.....shares of Rs.....each...											
(i) Shares issued as fully paid up pursuant to any contract without payments being received in cash .....shares of Rs.....each.											
(ii) Shares issued for payments in cash.....shares of Rs.....each.											
Subscribed Capital.....shares of Rs.....each ...											
Amount called up at Rs.....per share						PRELIMINARY EXPENSES					
Less - Calls unpaid—						COMMISSION OR BROKERAGE					
(i) due from Managing Agents						(Commission or Brokerage paid for underwriting or placing or subscribing shares or debentures until written off.)					
(ii) due from others											
Add—Forfeited shares (amount paid up).						DISCOUNT ALLOWED on the issue of shares or so much as has not been written off at the date of the balance-sheet.					
Note.—Where circumstances permit issued and subscribed capital and amount called up may be shown as one item, *e g.*.											
Issued and Subscribed Capital.....shares of Rs.....each, Rs.....paid up						STORES AND SPARE PARTS					
						LOOSE TOOLS					
RESERVES						LIVE-STOCK AND VEHICLES					
DEBENTURES stating the nature of security						STOCK IN TRADE					
ANY SINKING FUND						(Stating mode of valuation, *e.g.*, cost or market value.)					
ANY OTHER FUND CREATED OUT OF NET PROFITS, including any development fund											
ANY PENSION OR INSURANCE FUND						BILLS OF EXCHANGE					
PROVISION FOR BAD AND DOUBTFUL DEBTS						BOOK DEBTS					

CAPITAL AND LIABILITIES.		PROPERTY AND ASSETS.	
LOANS—		(Distinguishing between those considered good and in respect of which the company is fully secured and those considered good for which the company holds no security other than the debtor's personal security, and distinguishing between debts considered good and debts considered doubtful or bad. Debts due by directors or other officers of the company or any of them either severally or jointly with any other persons to be separately stated.)	
(*a*) Secured—			
(i) loans on mortgages or fixed assets		ADVANCES	
(ii) loans on debentures		(Recoverable in cash or in kind or for value to be received, *e.g.*, Rates, Taxes, Insurance, etc., showing separately—	
(iii) loans from banks stating the nature of security ...		(i) loans given to subsidiary companies,	
(iv) liabilities to subsidiary companies		(ii) loans including temporary advances made at any time during the year to directors or managers of the company.)	
(v) other secured loans, stating the nature of security ...		INVESTMENTS	
(vi) interest accrued on mortgages, debentures or other secured loans		[Showing nature of investments and mode of valuation, *e.g.*, cost or market value and distinguishing—	
(*b*) Unsecured—		(i) investments in Government or trust securities,	
(i) loans from banks		(ii) investments in shares, debentures or bonds (showing separately shares fully paid up and partly paid up),	
(ii) fixed deposits		(iii) investments in shares, debentures or bonds of subsidiary companies,	
(iii) short term loans...		(iv) immovable properties].	
(iv) advance by directors or managers and managing agents		INTEREST ACCRUED ON INVESTMENTS	
(v) interest accruing but not due and interest accrued and due		CASH AND OTHER BALANCES	
(vi) liabilities to subsidiary companies		Amount in hand	
UNCLAIMED DIVIDENDS		Balances with Agents and Bankers (in detail showing whether on deposit or current account, etc.) ...	
LIABILITIES—		Profit and Loss	
For Goods supplied			
For Expenses			
For Acceptances			
For Other Finance			
ADVANCE PAYMENTS AND UNEXPIRED DISCOUNTS			
(For the portion for which value has still to be given, *e.g.*, in the case of the following classes of companies:— Newspaper, Fire Insurance, Theatre, Club, Banking, Steamship Companies, etc.)			
PROFIT AND LOSS			
CONTINGENT LIABILITIES—			
Claims against the company not acknowledged as debts			
Money for which the company is contingently liable ...			
(Showing separately the amount of any guarantees given by the company on behalf of directors or officers of the company.)			
Arrears of Cumulative Preference Dividends ...			

The information required to be given under any of the items or sub-items in this Form, if not included in the Balance-Sheet itself, shall be furnished in a separate Schedule or Schedules to be attached to and to form part of the Balance-Sheet.

FORM G.

(*See* section 136.)

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT, OR BENEFIT SOCIETIES.

[1] The share capital of the company is Rs. divided into shares of Rs. each.
The number of shares issued is . Calls to the amount of Rs. per share have been made, under which the sum of Rs. has been received.
The liabilities of the company on the thirty-first day of December (or thirtieth of June) were—

Debts owing to sundry persons by the company :
Under decree, Rs.
On mortgages or bonds, Rs.
On notes, bills or hundis, Rs.
On other contracts, Rs.
On estimated liabilities, Rs.

The assets of the company on that day were—

Government securities [stating them], Rs.
Bills of exchange, hundis and promissory notes, Rs.
Cash at the Bankers, Rs.
Other securities, Rs.

FORM H.

(*See* section 277.)

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

Liabilities.

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

Assets.

1. Fixed Assets, with sufficient particulars to disclose their general nature, and stating how their values are arrived at.
2. Preliminary expenses, so far as not written off.

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[1] If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

3. Any expenses incurred in connection with any issue of Share Capital or Debentures, so far as not written off.

4. If it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the amount of the good-will and of any patents and trade marks as so shown or ascertained.

5. Interest paid on capital, so far as not written off, showing the Share Capital on which and the rate at which interest has been paid out of capital during the period to which the accounts relate.

6. Discount allowed on shares issued, so far as not written off.

7. Commission paid or allowed in respect of any shares or debentures, so far as not written off.

8. Loans outstanding to enable employees or trustees on their behalf to purchase shares in the company.

9. Particulars showing :—

(*a*) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer of the company, including any such loans which were repaid during the said period ;

and

(*b*) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof ;

and

(*c*) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages, or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company.

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

(*a*) in the case of a company the ordinary business of which includes the lending of money, loans made by the company in the ordinary course of its business ;

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

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

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