

**BIRD AND COMPANY LIMITED (ACQUISITION AND
TRANSFER OF UNDERTAKINGS AND OTHER PROPERTIES)
ACT, 1980**

67 of 1980

[27th December, 1980]

CONTENTS

CHAPTER 1 :- PRELIMINARY

1. Short title and commencement
2. Definitions

**CHAPTER 2 :-ACQUISITION AND TRANSFER OF THE
UNDERTAKINGS OF THE COMPANY AND OF SHARES HELD BY THE
COMPANY IN THE SPECIFIED COMPANIES**

- 3 . Transfer to, and vesting in. Central Government of the
undertakings of the Company
- 4 . Transfer and vesting of shares held by the Company in-the
specified companies
5. General effect of vesting
6. Central Government or the Government company not to be liable
for prior liabilities
- 7 . Power of Central Government to direct vesting of the
undertakings of the Company in Government company

CHAPTER 3 :- PAYMENT OF AMOUNTS

8. Payment of amounts to the Company and specified companies

**CHAPTER 4 :-MANAGEMENT, ETC., OF THE UNDERTAKINGS OF
THE COMPANY**

9. Management, etc., of the undertakings of the Company
10. Duty of persons in charge of management of the undertakings
of the Company to deliver all assets, etc

**CHAPTER 5 :-PROVISION RELATING TO EMPLOYEES OF THE
COMPANY**

11. Continuance of employees
12. Provident fund and other funds

CHAPTER 6 :- COMMISSIONER OF PAYMENTS

13. Appointment of Commissioner of Payments
14. Payment by the Central Government to the Commissioner
15. Certain powers of the Central Government or Government Company
16. Claims to be made to the Commissioner
17. Priority of claims
18. Examination of claims
19. Admission or rejection of claims
20. Disbursement of money by the Commissioner to claimants
21. Disbursement of amounts to the Company and possession of certain machinery equipment, etc
22. Undisbursed or unclaimed amount to be deposited to the general revenue account

CHAPTER 7 :- MISCELLANEOUS

23. Act to have overriding effect
24. Contracts to cease to have effect unless ratified by the Central Government or Government company
25. Penalties
26. Offences by companies
27. Protection of action taken in good faith
28. Delegation of powers
29. Power to make rules
30. Power to remove difficulties
31. Repeal and saving

SCHEDULE 1 :- THE SCHEDULE

SCHEDULE 2 :- THE SCHEDULE

BIRD AND COMPANY LIMITED (ACQUISITION AND TRANSFER OF UNDERTAKINGS AND OTHER PROPERTIES) ACT, 1980

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STATEMENT OF OBJECTS AND REASONS Messrs. Bird and Company Limited was engaged in production of goods vital to the various basic industries like fertilisers, petroleum products, steel, petrochemicals and power generation. Production of the Company had been going down in the recent years and the Company started incurring losses since 1973-74, The Company Law Board, who had received complaints regarding mismanagement of the Company, came to the conclusion in 1976 that the affairs of the Company were being conducted in a manner oppressive to the members and

prejudicial to the interests of the Company, its employees and the public interest, and appointed under S.408 of the Companies Act, 1956. five Government Directors on the Board of the Company, and subsequently also a Managing Director. The Company Law Board also ordered an investigation in respect of the Company under S.237(b) of the Companies Act, 1956. 2. Appointment of Government Directors, however, did not improve the functioning of Bird and Company Limited. The production continued to decline. Turnover of the Company dropped from Rs. 15.38 crores in 1975-76 to Rs.4.28 crores in 1979-80. The accumulated losses increased to Rs. 5.68 crores and the liabilities went up to Rs. 9.0 crores by March, 1980. The Company could not execute orders in time for want of working capital. The Central Government gave counter guarantee to the Chartered Bank in 1977 on the basis of which the Bank could issue guarantees to the Company's customers up to an amount of Rs. 1.0 crore. and also gave guarantees to the Industrial Reconstruction Corporation of India in 1980 for an aggregate amount of Rs. 1.15 crores for provision of working capital to the Company. However, functioning of the Company continued to be unsatisfactory and it was not able to generate sufficient funds to finance the production. Not only the production suffered and losses increased, but the Company was finding it difficult to obtain fresh orders from the customers who lost faith in the Company's ability to execute orders. 1500 employees of the Company had not received their full wages and salaries. The undertaking of the Company was on the verge of closure: and if it had been allowed to be closed down. it would have adversely affected the production of goods vital to the needs of the country. Industrial Development Bank of India had, therefore, prepared a scheme for rehabilitation of the undertaking. The scheme required an investment of Rs. 140 lakhs to be provided by the Central Government 3. Messrs. Bird and Company Limited is a leading company in a group of 23 other companies engaged in manufacturing, mining, trading and investment activities. While two of the companies are subsidiaries of the Company, the other companies in the group are under varying degrees of control of the company through its direct shareholding or by shareholding by the investment companies in the group. The Company provides marketing and management services to some of the group companies. The manufacturing companies in the group are engaged in production of goods which are vital to the needs of' the country. There had been .several allegations against the management of some of these companies

indicating misuse of the companies, mismanagement, misfeasance or malfeasance. The Company Law Board ordered investigations in 1977 under S.237(b) of the Companies Act, 1956, in respect of some of these companies. Four of the companies have already been nationalised. Management of two of the companies has been taken over under the provisions of Industries (Development and Regulation) Act, 1951. It was in the public interest to acquire the Company's share in the group companies to secure for the undertakings of the Company the facilities and advantages derived by it by such shareholding and to enable the Central Government to exercise such control on the affairs of the companies as may be necessary to prevent their mismanagement. 4. In view of the circumstances explained above, the Central Government decided that. would be in the public interest to acquire the undertakings of the Bird and Company Limited, its investments in its two subsidiary companies-and shares held by the Company in the other group companies. The Bird and Company Limited (Acquisition and Transfer of Undertakings and Other Properties) Ordinance. 1980 (No. 18 of 1980) was promulgated by the President on 25th October 1980 to give effect to this decision 5. The Bill seeks to replace the sad Ordinance.- Gaz. of Ind... 25-11-1980, Pti. II, S. 2. Ext.. p. 1135.

CHAPTER 1
PRELIMINARY

1. Short title and commencement :-

This Act may be called The Bird and Company Limited (Acquisition and Transfer of Undertakings and Other Properties) Act 1980.

(2) It shall be deemed to have come into force on the 25th day of October, 1980.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(a) "appointed day" means the 25th day of October, 1980;

(d) "notification" means a notification published in the Official Gazette:

(e) "prescribed" means prescribed by rules made under this Act;

(f) "share" means ashare, whether equity or preference, held by the Company in the capital of a specified company and includes any such share pledged by the Company with any bank or any other

creditor:

(g) specified company" means a company specified in Schedule I;

(h) "specified date" means such date as the Central Government may, for the purposes of any provision of this Act, by notification, specify, and different dates may be specified for different provisions of this Act.

CHAPTER 2

ACQUISITION AND TRANSFER OF THE UNDERTAKINGS OF THE COMPANY AND OF SHARES HELD BY THE COMPANY IN THE SPECIFIED COMPANIES

3. Transfer to, and vesting in. Central Government of the undertakings of the Company :-

On the appointed day, the undertakings of the Company and the right, title and interest of the Company in relation to its undertakings shall, by virtue of this Act, stand transferred to, and vest in, the Central Government.

4. Transfer and vesting of shares held by the Company in the specified companies :-

(1) On the appointed day, all the shares held by the Company in the specified companies shall, by virtue of this Act, stand transferred to, and vest in, the Central Government.

(2) The Central Government shall be deemed, on and from the appointed day, to have been registered in the Register of Members of the concerned specified company as the holder of each share which stands transferred to, and vested in. it by virtue of the provisions of sub-section (1).

5. General effect of vesting :-

(1) The undertakings of the Company shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges, and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments, book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership possession, power or control of the Company, whether within or outside India, and all books of account, registers and other documents of whatever nature relating; thereto.

(3) Every mortgage of any property which has vested under this Act, in the Central Government and every person holding any charge, lien or other interest in, or in relation to, any such property, shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgage, charge, lien or other interest.

6. Central Government or the Government company not to be liable for prior liabilities :-

7. Power of Central Government to direct vesting of the undertakings of the Company in Government company :-

(2) Where the right, title and interest of the Company in relation to its undertakings, vest under sub-section (1), in a Government company that Government company shall, on and from the date of such vesting, be deemed to have become the owner in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of that Government company.

CHAPTER 3

PAYMENT OF AMOUNTS

8. Payment of amounts to the Company and specified computes :-

(3) The amount specified in sub-section (1) and the amount specified in sub-section (2) shall carry simple interest of four per cent per annum for the period commencing on the appointed day and ending on the date on which payment of such amount is made by the Central Government to the Commissioner.

(4) For the removal of doubts, it is hereby declared that the liabilities of the Company, in relation to its undertakings, shall be met, in accordance with the rights and interests of the creditors of the Company, from the amounts due to the Company under sub-section (1) and sub-section (2).

CHAPTER 4

MANAGEMENT, ETC., OF THE UNDERTAKINGS OF THE COMPANY

9. Management, etc., of the undertakings of the Company :-

(3) The Custodian shall receive from the funds of the undertakings of the Company such remuneration as the Central Government may

fix and shall hold office during the pleasure of the Central Government.

10. Duty of persons in charge of management of the undertakings of the Company to deliver all assets, etc :-

(1) On the vesting of the management of the undertakings of the Company in a Government company or on the appointment of a Custodian, all persons in charge of the management of the undertakings of the Company immediately before such vesting or appointment, shall be bound to deliver to such Government company or Custodian, as the case may be, all assets, books of account, registers or other documents in their custody relating to the undertakings of the Company.

(2) The Central Government may issue such directions as it may deem desirable in the circumstances of the case to the Government company or the Custodian as to the powers and duties of such Government company or Custodian and such Government company or Custodian may also, if it is considered necessary so to do, apply to the Central Government at any time for instructions as to the manner in which the management of the undertakings of the Company shall be conducted or in relation to any other matter arising in the course of such management.

CHAPTER 5

PROVISION RELATING TO EMPLOYEES OF THE COMPANY

11. Continuance of employees :-

(1) Every employee of the Company, employed in connection with any undertaking owned by it, shall, on and from the appointed day, become an employee of the Central Government, and where such undertaking is vested in a Government company under this Act, become, on and from the date of such vesting in such Government company, an employee thereof and shall hold office or service under the Central Government or the Government company, as the case may be, with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Central Government or the Government company, as the case may be, is duly terminated or until his remuneration and other conditions of service are duly altered by the Central Government or the Government company as the case may be.

12. Provident fund and other funds :-

(1) Where the Company has established a provident fund. superannuation fund. welfare and or other fund for the benefit of the person employed in any of the undertakings of the Company, the monies relatable to the employee, whose services have become transferred by or under this Act. to the Central Government or the Government company, shall out of the monies standing, on the appointed day, to the credit of such provident, superannuation, welfare or other fund. stand transferred to. and vest in the Central Government or the Government company, as the case may be.

(2) The monies which stand transferred under sub-section (1) to the Central Government or the Government company, as the case may be, shall be dealt with by that Government or the Government company in such manner as may be prescribed.

CHAPTER 6

COMMISSIONER OF PAYMENTS

13. Appointment of Commissioner of Payments :-

(2) The Central Government may appoint such other persons as it may think fit to assist the Commissioner and thereupon the Commissioner may authorise one or more of such persons also to exercise all or any of the powers exercisable by him under this Act and different persons may be authorised to exercise different powers.

(3) Any person authorised by the Commissioner to exercise any of the powers exercisable by the Commissioner may exercise those powers in the same manner and with the same effect as if they have been conferred on that person directly by this Act and not by way of authorisation.

(4) The salaries and allowances of the Commissioner and other persons appointed under this section shall be defrayed out of the Consolidated Fund of India

14. Payment by the Central Government to the Commissioner :-

(2) A deposit account shall be opened by the Central Government in favour of the Commissioner, in the Public Account of India, and every amount paid under this Act to the Commissioner shall be deposited by him to the credit of the said deposit account and the

said deposit account shall be operated by the Commissioner.

(3) Records shall be maintained by the Commissioner in respect of the undertakings of the Company and the shares held by it in the specified companies, in relation to which payment has been made to him under this Act.

(4) The interest accrued on the amount standing to the credit of the deposit account referred to in sub-section (2) shall enure to the benefit of the company.

15. Certain powers of the Central Government or Government Company :-

(1) The Central Government or the Government company, as the case may be, shall be entitled to receive, up to the specified date, to the exclusion of all other persons, any money due to the Company, or the Government company, and realised after the appointed day, notwithstanding that the realisation pertains to a period prior to the appointed day.

(2) The Central Government or the Government company, as the case may be, may make a claim to the Commissioner with regard to every payment made by it after the appointed day for discharging any liability of the Company in relation to any period prior to the appointed day; and every such claim shall have priority in accordance with the priorities attaching under this Act, to the matter in relation to which such liability has been discharged by the Central Government or the Government company.

(3) Save as otherwise provided in this Act. the liabilities of the Company in respect of any transaction prior to the appointed day. which have not been discharged on or before the specified date. shall be the liabilities of the Company.

16. Claims to be made to the Commissioner :-

Every person having a claim against the Company shall prefer such claim before the Commissioner within thirty days from the specified date.¹ Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of thirty days he may entertain the claim within a further period of thirty days and not thereafter.

1. For the Bird and Company Limited (Acquisition and Transfer of Undertakings and Other Properties) Rules. 1981 - See G.O. of Ind..4-4-1981. Pt. II. S. 3(ii) p.1047.

17. Priority of claims :-

The claims arising out of the matters specified in Schedule II shall have priorities in accordance with the following principles, namely :-

(a) Category I shall have precedence over all other categories and Category II shall have precedence over Category III. and so on.

(b) the claims specified in each of the categories shall rank equally and be paid in full, but, if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly:

(c) the question of discharging any liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.

18. Examination of claims :-

(2) If, on an examination of the claims, the Commissioner is of opinion that the amount paid to him under this Act is not sufficient to meet the liabilities specified in any lower category, he shall not be required to examine the claims in respect of such lower category.

19. Admission or rejection of claims :-

(1) After examining the claims with reference to the priorities set out in Schedule II, the Commissioner shall fix a certain date on or before which every claimant shall file the proof of his claim or be excluded from the benefit of the disbursements made by the Commissioner.

(2) Not less than fourteen days' notice of the date so fixed shall be given by advertisement in one issue of any daily newspaper in the English language and in one issue of such daily newspaper in the regional language as the Commissioner may consider suitable, and every such notice shall call upon the claimant to file the proof of his claim with the Commissioner within the time specified in the advertisement.

(3) Every claimant who fails to file the proof of his claim within the time specified by the Commissioner shall be excluded from the disbursements made by the Commissioner.

(4) The Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving the Company an opportunity of refuting the claim and after giving the claimant a reasonable opportunity of being heard, by order in writing, admit or reject the claim in whole or in part.

(7) A claimant, who is dissatisfied with the decision of the Commissioner, may prefer an appeal against the decision to the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the registered office of the Company is situated : Provided that where a person who is a Judge of a High Court is appointed to be the Commissioner, such appeal shall lie to the High Court at Calcutta, and such appeal shall be heard and disposed of by not less than two Judges of that High Court.

20. Disbursement of money by the Commissioner to claimants :-

After admitting a claim under this Act. the amount due in respect of such claim shall be paid by the Commissioner to the person or persons to whom such amount is due. and, on such payment, the liability of the Company in respect of such claim shall stand discharged.

21. Disbursement of amounts to the Company and possession of certain machinery equipment, etc :-

(1) If, out of the monies paid to him in relation to the undertakings of the Company, there is a balance left after meeting the liabilities as specified in Schedule II, the Commissioner shall disburse such balance to the Company.

(2) Where any machinery, equipment or other property, has vested, under this Act, in the Central Government or the Government company, as the case may be, but such machinery, equipment or other property does not belong to the Company, it shall be lawful for the Central Government or the Government company, as the case may be, to continue to possess such machinery, equipment and other property on the same terms and conditions under which they were possessed by the Company immediately before the appointed day,

22. Undisbursed or unclaimed amount to be deposited to the general revenue account :-

Any money paid to the Commissioner which remains undisbursed or unclaimed on the date immediately preceding the date on which

the office of the Commissioner is finally wound up, shall be transferred by the Commissioner, before his office is finally wound up, to the general revenue account of the Central Government: but a claim to any money so transferred may be preferred to the Central Government by the person entitled to such payment and shall be dealt with as if such transfer had not been made, and the order, if any, for payment of the claim, being'treated as an order for the refund of revenue.

CHAPTER 7

MISCELLANEOUS

23. Act to have overriding effect :-

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act or in any decree or order of any Court, tribunal or other authority.

24. Contracts to cease to have effect unless ratified by the Central Government or Government company :-

Every contract entered into by the Company in relation to the undertakings owned by it. which has vested in the Central Government under section 3 , for any service, sale or supply, and in force immediately before the appointed day, shall, on and from the expiry of a period of one hundred and eighty days from the appointed day cease to have effect unless such contract is before the expiry of that period, ratified, in writing, by the Central Government or Government company in which such undertakings have been vested under this Act. and in ratifying such contract, the Central Government or Government company may make such alteration or modification therein as it may think fit : Provided that the Central Government or Government company shall not omit to ratify a contract and shall not make any alteration or modification in a contract--

(a) unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interests of the Central Government or such Government company: and

(b) except after giving to the parties to the contract a reasonable opportunity of being heard and except after recording, in writing, its reasons for refusal to ratify the contract or for making any alteration or modification therein.

25. Penalties :-

Any person who-

(a) having in his possession, custody or control any property forming part of any undertaking of the Company, or any share held by the Company in any specified company wrongfully withholds such property or share from the Central Government or Government company: or

(b) wrongfully obtains possession of, or retains any property forming part of any undertaking of the Company or wilfully withholds or fails to furnish to the Central Government or Government company or any person specified by that Government or Government company, any document relating to such undertaking or share which may be in his possession, custody or control or fails to deliver to the Central Government or Government company or any person specified by that Government or Government company, any assets, books of account, register or other documents in his possession, custody or control, relating to the undertaking of the Company or any share held by the Company in any specified company: or

(c) wrongfully recovers or destroys any property forming part of any undertaking of the Company or prefers any claim under this Act which he knows or has reasonable cause to believe to be false or grossly inaccurate.

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees, or with both.

26. Offences by companies :-

(1) Where an offence punishable under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves, that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where

any offence under this Act has been committed by a company and- it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company such director manager secretary, or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

27. Protection of action taken in good faith :-

No suit, prosecution or other legal proceeding shall lie against the Central Government or the Custodian of the undertakings of the Company or the Government company or any officer or other person authorised by that Government or Government company for anything which is in good faith done or intended to be done under this Act.

28. Delegation of powers :-

(2) Whenever any delegation of power is made under sub-section (1), the person to whom such power has been delegated shall act under the direction, control and supervision of the Central Government.

29. Power to make rules :-

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be: so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

30. Power to remove difficulties :-

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty : Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

31. Repeal and saving :-

(1) The Bird and Company Limited (Acquisition and Transfer of Undertakings and Other Properties) Ordinance, 1980, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act,

SCHEDULE 1

THE SCHEDULE

[See section 2 (g)] 1. Bisra Stone Lime Company Limited. 2. Burrakur Coal Company Limited. 3. Birds Trading and Investments Company Limited. 4. Eastern Investments Limited. 5. Garuda Investment Limited. 6. Karanpura Development Company Limited. (including Funders- Shares). Having Registered 7. Kinnison Jute Mills Company Limited. Office as Chartered 8. Kumardhubi Fireclay and Silica Works Limited. Bank Buildings. 9. Lawrence Investments and Property Company Limited. Calcutta 700001 10. Ondal Investments Company Limited. 11. Orissa Minerals Development Company Limited. 12. Sendra Investments Company Limited. 13. Birds Employees' Co-operative Society Limited. 14. Becker Gray and Company (1930) Limited. 15. Karanpura Collieries Limited Preference Shares. having registered office at 11 British Indian Street. Calcutta-700069. 16. Calcium Carbide and Chemicals Ltd.. having registered office at 161 Mahatma Gandhi Road. Calcutta-700007 (Partly paid). Having Registered 17. Holman-Climax (Rock Drills) Limited. Office at Dolphin Court. 18. Holman-Climax Manufacturing Limited. 7-A. Middleton Street. Calcutta-.700016. 19. Patya Tea Company Limited, having registered office at 12 Dilkusha Street. Calcutta-700017" 20. The Titagur Paper Mills Company Limited, having registered office at 95. Park Street. Calcutta-700016 21. Sonakunda Baling Company Limited, having registered office in Bangla Desh.

SCHEDULE 2

THE SCHEDULE

(See section 17 . rule 18. rule 19 and rule 21) ORDER OF PRIORITIES FOR THE DISCHARGE OF LIABILITIES OF THE COMPANY Category 1- (a) Wages, salaries and other dues payable to the employees of the Company. (b) Arrears in relation to contributions to be made by the Company to the Provident Fund. Employees' State Insurance Fund. Life Insurance Corporation premium and any other arrear under any law for the time being in force (excluding gratuity). Category II Principal amount of secured loans advanced by- (i) Central Government: (ii) State Government: (iii) Bank;; (iv) Public financial institutions. Category III- Principal amount of unsecured loans advanced by-- (i) Central Government: (ii) State Government: (iii) Banks: (iv) Public financial institutions. Category IV- (a) Any credit availed of the Company for the purpose of carrying on any trading or manufacturing operations (b) Any dues payable to the State Electricity Boards or other Government or semi-Government institutions for supply of goods or services. (c) Arrears of interest on loans and advances. Category V (a) Revenue, taxes, cesses. rates or other dues to Central Government. State Government and local authorities. (b) Any other loans or dues.

