

## **COMPANIES ACT, 1913**

### **7 of 1913**

**[27th March, 1913]**

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STATEMENT OF OBJECTS AND REASONS (1936) For some considerable time Government has had under consideration the overhaul of the law relating to Companies. 2. Substantial material has accumulated in the form of communications and suggestions from Local Governments, public bodies and individuals, supplemented by publications in the press, indicating unanimity of opinion that the Indian Companies Act requires fairly extensive changes. The opinions received disclosed a demand for power to deal with mushroom and fraudulent companies, for changes in the provisions relating to the issue and contents of prospectuses, for increased disclosure to share-holders of the financial position of companies and for increased rights to share-holders in connection with the management of companies, for modification of the present law applicable to managing agents, for changes in the provisions applicable to winding up, for special provisions to govern Banking Companies and for numerous other improvements. 3. The Indian Companies Act, 1913, was based on the English Companies (Consolidation) Act of 1908 and followed generally the provisions of that Act. Its revision in order to overtake the subsequent developments in the law is overdue. 4. The English Act of 1908 was examined by a committee presided over by Lord Wrenbury in 1918 and again by a committee presided over by Mr. Greene, K. G., in 1926. The latter committee made extensive recommendations many of which were subsequently incorporated with or without modification in the Companies Consolidation Act, 1929. The guidance afforded by that Act is now available in the task of revising the company law of British India. 5. In September, 1934, the Government of India placed a lawyer with experience in the administration of Company Law on special duty to examine the material collected and to make proposals for the amendment of the

Indian law. These proposals were further discussed by a small committee of business experts specially convened for the purpose. Out of these proposals and discussions there have crystallized the amendments now proposed. 6. The revision of the law in England took the form of a consolidating Act which completely replaced the Act of 1908. This course has not been followed here. The arrangement adopted in the new English Act has attracted unfavourable criticism to an extent which does not encourage its adoption, and there are manifest advantages in retaining the form of the existing Indian Act with the administration of which the Courts are now familiar, even though the additions to it by this Bill are extensive. 7. In the amendments proposed, the lines followed in the overhaul of the English law have in accordance with the policy followed in the past been adopted in the amendments now proposed where the problems dealt with are problems common to India and England. India has, however, problems peculiar to itself, for example, those connected with the managing agency system. 8. The special provisions relating to banking companies have been included, because there is no immediate prospect of legislation dealing solely with this object being undertaken. The recommendations of the Central Banking Enquiry Committee have been carefully considered in drafting these provisions. Gazette of India, 1936, Part V, page 93.

#### PART 1

#### PRELIMINARY

### **1. Short title, commencement and extent :-**

- (1) This Act may be called the Indian Companies Act, 1913.
- (2) It shall come into force on the first day of April 1914 ; and
- (3) It extends to the whole of British India including British Baluchistan and the Santhal Parganas.

### **2. Definitions :-**

(1) In this Act, unless there is anything repugnant in the subject or context,-

(1) " articles " means the articles of association of <sup>1</sup>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 maybe) in a Table B in the Schedule annexed to Act No. 19 of 1857 or in <sup>2</sup>Table A in the First Schedule annexed to Companies

Act, 1882, or in Table A in the First Schedule annexed to this Act:

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

(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) " District Court " means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction;

(7) "existing company "means a company formed and registered under the <sup>3</sup>Companies Act, 1866, or under any Act or Acts repealed thereby, or under Companies Act, 1882 :

(8) " Insurance company " means a company that carries on the business of insurance either solely or in common with any other business or businesses: <sup>4</sup>(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:

<sup>5</sup>(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 purpose 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, <sup>6</sup>[managing agent,] manager or secretary but, save in sections 235 , sections 236 and sections 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 <sup>7</sup>[Central Government] :

**8**[(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:]

**9**[(13A) " public company " means a company incorporated under this Act or under the Companies Act, 1882, or under the Companies Act, 1866, or under any Act, repealed thereby, which is not a private company :]

(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 **10**[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 : and

(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 :

**11**[(17) "trading corporation " means a trading corporation within the meaning of Item 33 in List I in the Seventh Schedule to the Government of India Act, 1935 .]

**12** [(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.]

1. See Appendix I, Infra
2. See Appendix II, Infra
3. Repealed by the Indian Companies Act, 1882 (6 [VI] of 1882), which was in turn repealed by this Act.
4. Clause (9) was substituted by the Indian Companies (Amendment) Act, 1936 (22 [XXII] of 1936), S. 2, for original 01.9. [15-1-1937].
5. Clause (9A) was inserted by the Indian Companies (Amendment) Act, 1936 (22 [XXII] of 1936), S. 2. [15-1-1937].
6. Inserted by the Indian Companies (Amendment) Act, 1936 (22 [XXII] of 1936), S. 2. [15-1-1937]
7. Substituted by A. O. for "Governor-General in Council".
8. Substituted by the Indian Companies (Amendment) Act, 1936 (22 [XXII] of 1936), S. 2 for original clause (13). [15-1-1937]
9. Inserted by the Indian Companies (Amendment) Act, 1986 (22 [XXII] of 1986), S. 2. [15-1-1937]
10. Added by the Indian Companies (Amendment) Act, 1986 (22 [XXII] of 1936), S. 2. [15-1-1937]
11. Inserted by A. O.
12. New sub-section (2) was added by the Indian Companies (Amendment) Act, 1936 (22 [XXII] of 1986 S. 2.[15-1-1937]

## **2A. Provisions as to companies registered in Burma or Aden before separation from India :-**

Notwithstanding anything in the last preceding section, a company which was immediately before the separation of Burma and Aden from India a company as defined by the said section, being a company the registered office whereof is in Burma or Aden,-

(a) shall be deemed for the purposes of this Act to be a company registered and incorporated outside British India, and

(b) shall not, unless the subject-matter or context so requires, be included in the expressions " company ", " existing company ", " public company ", and "private company ":

Provided that-

(i) for the purposes of section 277 of this Act such a company shall, for a period of six months from the separation, be deemed to be a company incorporated and registered in British India;

(ii) the separation of Burma and Aden from India shall not render valid any mortgage or charge which, immediately before that date, was void against <sup>1</sup> [the liquidator or creditors of such a company.]

1. i.e., immediately before the 1st April, 1937.

## **3. Jurisdiction of the Courts :-**

(1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate:

Provided that the <sup>1</sup>[Central Government] may, by notification in the <sup>2</sup> [Official Gazette] and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this 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.

1. Substituted by A. O. for "Local Government".
2. Substituted by A. O. for "Local Official Gazette".

#### PART 2

#### CONSTITUTION AND INCORPORATION

### **4. Prohibition partnerships exceeding certain number :-**

(1) No company, association or partnership consisting of more of than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other <sup>1</sup>[Indian law] or of Royal Charter or Letters Patent.

(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 objects the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other <sup>1</sup> [Indian law] or of Royal Charter or Letters Patent.

(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.]

1. Inserted by A. O.

#### PART 4

#### MANAGEMENT AND ADMINISTRATION

#### PART 5

#### WINDING UP

#### PART 6

#### REGISTRATION OFFICE AND FEES

### **248. Registration offices :-**

(1) For the purposes of the registration of companies under this Act, there shall be office at such places as the <sup>1</sup>[Central Government] thinks fit, and no company shall be registered except at an office within the province in which, by the memorandum, the registered office of the company is declared to be established.

(2) The <sup>1</sup>[Central Government] may appoint such registrars and assistant registrars as it 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 <sup>1</sup>[Central Government].

(4) The <sup>1</sup>[Central Government] 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 <sup>1</sup>[Central Government], 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 <sup>1</sup>[Central Government] 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 <sup>1</sup>[Central Government] 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 <sup>1</sup>[Central Government] may for the time being authorise; but, in the event of the <sup>1</sup>[Central Government] 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 <sup>1</sup>[Central Government] may appoint.

1. Inserted by the Indian Companies (Amendment) Act, 1936 (22 [XXII] of 1936), 8. 115. [15-1-1937].

## **249. Fees :-**

(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 <sup>1</sup> [Central Government] may direct.

(2) All fees paid to the registrar in pursuance of this Act shall be accounted for to the Crown.

1. Inserted by the Indian Companies (Amendment) Act, 1936 (22 [XXII] of 1936), 8. 115. [15-1-1937].

## **249A. Enforcing submission of returns and documents to registrar :-**

(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 7

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

## **250. Application of Act to companies formed under former Companies Acts :-**

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 and Act VII of 1860, or either of them, or under the Companies Act, 1866, or the Companies Act, 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 and Act No. VII of 1860, or either of them, or under the Companies Act, 1866, or the Companies Act, 1882, as the case may be.

**251. Application of Act to companies registered but not formed under former Companies Acts :-**

This Act shall apply to every company registered but not formed under Act No. 19 of 1857 and Act No. VII of 1860 or either of them, or under the Companies Act, 1866, or the Companies Act, 1882, in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act :

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.

**252. Mode of transferring :-**

A company registered under Act XIX of 1857 and Act VII of 1860 or either of 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 8**

**COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT**

**253. Companies capable of being registered :-**

(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, including any company registered under Act No. XIX of 1867 and Act No. VII of 1860 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 or <sup>1</sup>[Indian law] other than this Act, 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 or <sup>1</sup>[Indian law] 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 or <sup>1</sup>[Indian law] 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 or <sup>1</sup> [Indian law] 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 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.

(4) A company registered under the Companies Act, 1882, shall not be registered in pursuance of this section.

1. Substituted by A. O, for "Act of the Governor-General in Council."]

**254. Definition of "jointstock company" :-**

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.

**255. Requirements for registration by jointstock companies**

:-

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, <sup>1</sup> [Indian 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.

1. Substituted by A. O, for "Act of the Governor-General in Council."]

**256. Requirements for registration by other than joint-stock companies :-**

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, <sup>1</sup> [Indian 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.

1. Substituted by A. O, for "Act of the Governor-General in Council."]

**257. Authentication of statement of existing companies :-**

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.

**258. Registrar may require evidence as to nature of company :-**

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.

**259. On registration of banking company with limited liability, notice to be given to customers :-**

(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.

**260. Exemption of certain companies from payment of fees :-**

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 or <sup>1</sup> [Indian law] or by Letters Patent.

1. Substituted by A. O, for "Act of the Governor-General in Council."]

**261. Addition of "Limited" to name :-**

When a company registers in pursuance of this Part with limited liability, the word " Limited " shall form and be registered as part of its name.

**262. Certificate of registration of existing companies :-**

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 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.

**263. Vesting of property on registration :-**

All property, movable and immovable, including all interests and rights in, to and out of property, movable and immovable, 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.

**264. Saving of existing liabilities :-**

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.

**265. Continuation of existing suits :-**

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 effect 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.

**266. Effect of registration under Act :-**

When a company is registered in pursuance of this Part-

(i) all provisions contained in any act of Parliament, <sup>1</sup>[Indian law], deed of settlement, contract of co-partnership, 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;

(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 or <sup>1</sup>[Indian law] relating to the company;

(d) subject to the provisions of this section, the company shall not have power, without sanction of the [Central Government], 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 or 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, <sup>1</sup>[Indian law], Royal Charter, deed of settlement, contract of co-partnership, Letters Patent or other instrument constituting or regulating the company ;

(iv) nothing in this section shall authorise the company to alter any such provisions unless the Act shall derogate from any lawful power of altering its constitution or regulations which may, by virtue of any Act of Parliament, <sup>1</sup> [Indian law], deed of settlement, contract of co-partnership, Letters Patent or other instrument constituting or regulating the company, be vested in the company.

1. Substituted by A. O, for "Act of the Governor-General in Council."]

**267. Power to substitute memorandum and articles for deed of settlement :-**

(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, a n <sup>1</sup> [Indian law], a Royal Charter or Letters Patent.

1. Substituted by A. O, for "Act of the Governor-General in Council."]

**268. Power of Court to stay or restrain proceedings :-**

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 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.

**269. Suits stayed on winding up order :-**

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 9

WINDING UP OF UNREGISTERED COMPANIES

**270. Meaning of "unregistered company" :-**

For the purposes of this Part, the expression " unregistered company " shall not include a railway company incorporated by Act of Parliament or by an <sup>1</sup> [Indian law] nor a company registered under the Companies Act, 1866, or under any Act repealed thereby, or under the Companies Act, 1882; or under this Act, but save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

1. Inserted by the Indian Companies (Amendment) Act, 1938 (2 [II] of 1938), S. 12. [26-2-1938]

**271. Winding up of unregistered companies :-**

(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) an unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding up, be deemed to be registered in the province where its principal place of business is situate or, if it has a principal place of business situate in more than one province, then in each province where it has a principal place of business ; and the principal place of business situate in that province in which proceedings are being instituted shall, for all the purposes of the winding up, 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 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 compounded 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 authorised 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.

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

1. Inserted by the Indian Companies (Amendment) Act, 1938 (2 [II] of 1938), S. 12. [26-2-1938]

## **272. Contributories in winding up of unregistered companies :-**

(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.

**273. Power to stay or restrain proceedings :-**

The provisions of this Act with respect to staying and restraining suits and legal proceeding 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.

**274. Suits stayed on winding up order :-**

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.

**275. Directions as to property in certain casea :-**

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 movable or immovable, including all intereats and rights in, to and out of property, movable 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.

**276. Provisions of this Part cumulative :-**

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 10

COMPANIES ESTABLISHED OUTSIDE BRITISH INDIA

**277. Requirements as to-companics established outside British India :-**

(1) Every company incorporated outaide British India, which at the commencement of this Act has a place of business in British India, and every such company which after the commencement of this Act establishes such a place of business within British India, shall, within six months from the commencement of this Act or within one mouth from the establishment of such place of business as the case may be, file with the registrar in the province in which such place of business is situated,-

(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 English 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 British India authorised to accept on behalf of the company service of process and any notices required to be served on the company ;

<sup>1</sup>[(e) the full address of that office of the company in British India which is to he deemed the principal place of business in British India of the company ;] and, in the event of any alteration being

made in any such instrument <sup>2</sup>[or in any 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 of the province in which the company has its principal place of business-

(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, <sup>3</sup>[three copies of that balance-sheet] <sup>4</sup>[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 [in triplicate] 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 <sup>5</sup>[in triplicate] 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 : <sup>6</sup>[ \* \* \* \* ]

(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 British India, state the country in which the company is incorporated ; and

(b) conspicuously exhibit on every place where it carries on business in British India 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 a High Court, in the characters of one of the vernacular languages used in that place; and

(e) have the name of the company and of the country in which the

company is incorporated mentioned in legible English characters in all bill heads and letter paper, and in all notices, advertisements and other official publications of the company.

7[(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 British India, and to be affixed on every place where it carries on business.]

7[(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[(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.

7 [(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.

1. Inserted by the Indian Companies (Amendment) Act, 1938 (2 [II] of 1938), S. 12. [26-2-1938]

2. Substituted by the Indian Companies (Amendment) Act, 1938, for "or in such address."

3. Substituted, by the Indian Companies (Amendment) Act, 1938, for "a copy of that balance sheet."

4. Inserted, by the Indian Companies (Amendment) Act, 1936 (22

[XXII] of 1936), S. 117. [15-1-1937.]

5. Inserted by the Indian Companies (Amendment) Act, 1938 (2 [II] of 1938), S. 12.

6. Proviso was repealed by the Indian Companies (Amendment) Act, 1936 (22 [XXII] of 1936) S. 117.

7. Sub-section (5) was inserted and the original sub-sections (5), (6) and (7) were re-numbered as sub-sections (6), (7) and (8) respectively.

**277A. Restriction on sale and offer for sale of share :-**

(1) It shall not be lawful for any person-

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

(i) before the issue, circulation or distribution of the prospectus in British India a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the registrar;

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

(iii) the prospectus is dated ; and

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

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

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

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

application whether issued on or with reference to the formation of a company or subsequently.

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

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

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

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

**277B. Requirements as to prospectus :-**

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

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

(i) the objects of the company ;

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

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

(iv) an address in -British India where the said instrument, enactments or provisions; or copies thereof, and if the same or in a foreign language a translation thereof in the English language

certified in the prescribed manner, can be inspected ;

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

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

Provided that the provisions of sub-clauses (i), (ii) 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 get 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.

**277C. Restriction on canvassing for sale of shares :-**

(1) It shall not be lawful for any person to go from house to house offering shares of a company incorporated outside India for subscription or purchase to the public or any member of the public.

(2) In this sub-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 rupees one hundred.

**277D. Registration of charges :-**

<sup>1</sup>[(1)] The provisions of section 109 and section 117 , both inclusive, and 120 to 123, both inclusive, shall extend to charges on properties in British India which are created and to charges on property in British India which is acquired after the commencement of the Indian Companies (Amendment) Act, 1936, by a company incorporated outside British India which has an established place of business in British India.

<sup>1</sup>[Provided that references in the said sections to the registrar shall be deemed to be references to the registrar of the province in which the principal place of business in British India of such company is situated, and references to the registered office of the company shall be deemed to be references to the principal place of business in British India of the company :

Provided further that, where a charge is created outside British

India or the completion of the acquisition of property takes place outside British India, sub clause {i) of the proviso to sub-section (1) of section 109 and the proviso to sub-section (1) of section 109A shall apply as If the property wherever situaied were situated outside British India.

(2) This section shall be deemed not to have come into force until the d [commencement of the Indian Companies (Amendment) Act 1938 :

Provided that where the provisions of section 109 and section 117 section 118 , section 119 , section 120 have not been complied with in respect of any charge or mortgage created since the 15th day of January, 1937, as required by this Act, those provisions shall be complied with within four weeks from the <sup>3</sup> [commencement of the Indian Companies (Amendment) Act, 1938.

1. S. 277 D was renumbered as sub-section (1) and provisos and sub-section (2) were added by the Indian Companies (Amendment) Act, 1938 (2 [II] of 1938), S. 13 [26-2-1938].

3. The amending Act of 1938 came into force on 26th February 1938.

**277E. Notice of appointment of receiver :-**

The provisions of seotions 118 and 119 shall mutatis mutabdis apply to the case of all companies incorporated outside British India but having an established place of business in British India and the provisions of section 130 shall apply to such companies to the extant of requiring tham to keep at their principal place of business in British India 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 British India.]

<sup>1</sup> [Provided that references in the said section to the registrar shall be deemed to be references to the registrar of the province in which the principal place of business in British. India of such company is situated, and references to the registered -office of the company shall be deemed to be references to the principal place of business in British India of the company.]

1. Proviso was added, by the Indian Companies (Amendment) Act, 1938 (2 [II] of 1938), S. 14. [26-2-1938]

PART 10A

BANKING COMPANIES

## **277F. Definition of banking company :-**

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 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, hundees, 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 requiring, 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 [of a company not being a banking company] 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 under taking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise ;

(7) acquisition by purchase, lease, exchange, hire or otherwise of any property immovable or movable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liability :

(8) managing, selling and realising all property movable and immovable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(9) acquiring and holding and generally dealing with any property and any right, title or interest in any property movable or immovable which may form part of the security for any loans or advance or which may : be connected with any such security;

(10) undertaking and executing trusts ;

(11) undertaking the administration of estates as executor, trustee or otherwise ;

(12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company ;

(13) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex. employees of the company or the dependents or connections of such persons ; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object ;

(14) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company ;

(15) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company ;

(16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section;

(17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.]

<sup>1</sup> [Provided that any company which uses as part of the name under which it carries on business the word "bank", "banker" or "banking" shall be deemed to be a banking company notwithstanding that the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, is not, or is not shown to be the principal business of the company.]

1. Proviso was added by the Indian Companies (Second Amendment) Act, 1942 (21 [XXI] of 1942) S. 2, [The amending Act of 1942 came into force on 1-11-1943; See S. 1 (2) of the Act and Com. Dept. notification No. 24 (8) Tr. (CL) 43 in Gazette of India, Part I, dated 26th June 1943.]

### **277G. Limitation of activities Banking company :-**

(1) No company formed after the <sup>1</sup>commencement of the Indian Companies (Amendment) Act, 1936, for the purpose of carrying on business as a banking company or which uses as part of the name under which it proposes to carry on business the word ' bank ', ' banker ' or 'banking' shall be registered under this Act, unless the memorandum limits the objects of the company to the carrying on of the 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 British India shall after the expiry of two years from the <sup>1</sup>commencement of the said Act carry on any form of business other than those specified in section 277F :

Provided that 'the <sup>3</sup>[Central Government] may, by notification in the <sup>4</sup> [Official 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.]

1. The Act came into force on 15-1-1937.

3. Substituted by A. O. for " Governor-General in Council ".

4. Substituted by A. O. for " Gazette of India".

**277H. Banking company not to employ managing agent :-**

No banking company shall after the expiry of two years from the <sup>1</sup> commencement of the Indian Companies (Amendment) Act, 1936, employ or be managed by a managing agent other than a banking company for the management Of the company.]

1. i.e. 15-1-1937.

**277HH. Prohibition of employment of managing agents and restrictions on certain forms of employment :-**

No banking company, whether incorporated in or outside British India, which carries on business in British India, shall, after the expiry of two years from the <sup>1</sup> commencement of the Indian Companies (Amendment) Act, 1944, employ or be managed by a managing agent, or any person whose remuneration or part of whose remuneration takes the form of commission or a share in the profits of the company, or any person having a contract with the company for its management for a period exceeding five years at any one time :

Provided that the period of five years shall, for the purposes of this section, be computed from the date on which this section comes into force :

Provided further that any such contract may be renewed or extended for a further period not exceeding five years at a time if and so often as the directors think fit."

1. This Act came into force on 1st July 1944.

**277I. Restrictions on commencement of business conditions for carryon business by bank company :-**

(1)Notwithstanding anything contained in section 103 , no banking company incorporated under, this Act on or after the 16th day of January 1937, 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.

(2) No banking company, whether incorporated in or outside British

India, if incorporated on or after the 15th day of January 1937 shall, after the expiry of two years from the <sup>1</sup>commencement of the Indian Companies (Amendment) Act, 1944, carry on business in British India unless it satisfies the following conditions, namely :-

(a) that the subscribed capital of the company is not less than half the authorised capital, and the paid up capital is not less than half the subscribed capital, and

(b) that the capital of the company consists of ordinary shares only, or ordinary shares and such preference shares as may have-been-issued before the <sup>1</sup> commencement of the Indian Companies (Amendment) Act, 1944, only, and

(c) that the voting rights of all shareholders are strictly proportionate to the contribution made by the shareholder, whether a preference shareholder or an ordinary shareholder, to the paid up capital of the company." ]

1. This Act came into force on 1st July 1944. (See Gazette of India, 1944, Part I, dated 10-6-1944) Com. Dept. No. 24(22). Tr. (GL) 144.]

**277J. Prohibition of charge on unpaid capital :-**

No banking company shall create any charge upon any un. paid capital of the company, and any such charge shall be invalid.]

**277K. Reserve fund :-**

(1) Every banking company shall, after the <sup>1</sup> commencement of the Indian Companies (Amendment) Act, 1936, maintain a reserve fund.

(2) Every banking company shall out of the declared profits of each year and before any dividend is declared transfer a sum equivalent to not less than 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 Government securities or in securities mentioned or referred to in S.20 of the Indian Trusts Act, 1882, or keep deposited in a special account to be opened by the company for the purpose in a scheduled bank as defined in clause (e) of S.2(E) of the Reserve Bank of India Act, 1934 :

Provided that the provision of the sub-section shall not apply to a banking company incorporated

1. i.e. 15-1-1937.

**277L. Cash reserve :-**

(1) Every banking company shall maintain by way of cash reserve in cash a sum equivalent to at least one and a half per cent of the time liabilities and five per cent of the demand liabilities of such company and shall file with the registrar before the tenth day of every month <sup>1</sup> [three copies of a statement of the amount so held on the Friday of each week of the preceding month with particulars of the time and demand liabilities of each such da

(2) For the purposes of sub.section (1) 'demand liabilities' means liabilities which must be met on demand, and 'time liabilities' means liabilities which are not demand liabilities.

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

(4) If default is made in complying with the requirements of section 277G , section 277H [ section 277HH , section 277I ] section 277J , section 277K or section 277M or with the requirements of this section as to the maintenance of a cash reserve, every 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, and if default is made in complying with the requirements of this section as to the filing of the statement referred to in subsection (1), to a fine not exceeding one hundred rupees for every day during which the default continues.]

1. Inserted, by the Indian Companies (Amendment) Act, 1938 (2 [II] of 1938) S. 16. [26-2-1938]

**277M. Restriction nature of subsidiary companies :-**

<sup>1</sup>[(1)] <sup>2</sup>[A banking company shall not form any subsidiary company except a subsi. diary company] formed for the purpose of undertaking and executing trusts, undertaking the administration o f 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.]

<sup>1</sup>[(2) Save as provided in sub-section (1), a banking company shall

not hold shares in any company whether as pledgee, mortgagee or absolute owner of an amount exceeding forty per cent. of the issued share capital of that company :

Provided that nothing in this sub-section shall apply to shares held by a banking company before the <sup>4</sup> commencement of the Indian Companies (Amendment) Act, 1936.

1. Sec. 277M was re-numbered as sub-section (1) of that section and sub-section (2) was added, by the Indian Companies (Amendment) Act, 1938 (2 [II] of 1938) S. 17. [26-2-1938]

2. Substituted, by the Indian Companies (Amendment) Act, 1938 (2 [II] of 1938).

4. i.e., 15th January 1937.

**277N. Power of Court to stay proceedings :-**

(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

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 11

SUPPLEMENTAL

SCHEDULE 1

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

TABLE B.			
(See sections 349 and 36S)			
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 1,00,000 rupees	5	0	0
	For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 1,00,000 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 taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration.			
		Rs.	A.	P.
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 authorised to be filed, other than the memorandum or the abstract required to be filed, with the registrar by the 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 . II. By a company not having a share capital.	5	0	0

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 name fees as would have been payable <FNR>a</FNR>[in respect of such increase] if such increase had been stated in the articles of association at the time of registration.	<FNR>b</FNR>[*]		
	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.			
	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 authorised 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 authorised or required to be recorded by the registrar a fee of .	5	0	0

SCHEDULE 2

2

SCHEDULE 3

SCHEDULE 4

SCHEDULE. (See section 290) ENACTMENTS REPEALED			
1	2	3	4
Year.	No.	Subject or-short title.	Extent of repeal,
1882 .	VI	The Indian Companies Act, 1882.	So much as has not been repealed.
1887 .	YI	The Indian Companies Act, (1882) Amendment Act, 1887.	The whole.
1891 .	XII	The Amending Act, 1891.	So much of the Second Schedule as relates to the Indian Companies Act, 1882.
1895 .	XII	The Indian Companies (Memorandum of Association) Act, 1895.	The whole.
1899 .	IX	The Indian Arbitration Act, 1899.	The second proviso to section 3 relating to the Indian Companies Act, 1882.
1900 .	IV	The Indian Companies (Branch Registers) Act, 1900.	The whole.
1910 .	IV	The Indian Companies (Amendment) Act, 1910.	The whole.